

Circuit Court for Baltimore City
Case No. 113175005

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 204

September Term, 2017

WALTER MCCOY

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Baltimore City, Walter McCoy, appellant, was convicted of attempted second-degree murder; use of a handgun in the commission of a crime of violence; wearing, carrying, or transporting a handgun; possession of a firearm by a disqualified person; and violation of a protective order. This Court affirmed his convictions on direct appeal but remanded for resentencing. *See McCoy v. State*, No. 1704, Sept. Term, 2014 (filed September 14, 2015). On remand, the trial court merged McCoy’s sentences for wearing, carrying, and transporting a handgun and use of a firearm during a crime of violence and resented him on his convictions for use of a firearm in a crime of violence and possession of firearm by a disqualified person. It did not change his sentences for attempted second-degree murder and violation of a protective order. McCoy now appeals from that resentencing, claiming that his sentences for attempted second-degree murder and use of a firearm in the commission of a crime of violence should have merged. For the reasons that follow, we affirm.

Section 4-204 of the Criminal Law Article (formerly Article 27, § 36B(d)) of the Maryland Code provides that the penalty for the use of a handgun in the commission of a crime of violence or felony shall be “in addition to any other penalty imposed for the crime of violence or felony.” In *Whack v. State*, 288 Md. 137, 149–150 (1980), the Court of Appeals held that the legislature, in enacting this provision, clearly intended that separate and distinct sentences be imposed for the use of a handgun in the commission of a felony and the underlying felony, even where the two offenses were part of the same incident. Consequently, the circuit court was not required to merge McCoy’s sentences for attempted second-degree murder and use of a firearm in the commission of a crime of violence.

Although McCoy contends that *Whack* was “wrongly decided and should be overruled,” this Court must follow opinions assented to by a majority of the Court of Appeals unless they are subsequently overruled in another case or by statute. *See Marlin v. State*, 192 Md. App. 134, 151 (2012).

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**