

Circuit Court for Baltimore County
Case No. 03-K-00-000520

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1817

September Term, 2016

LUNDES A. CARTWRIGHT

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: January 2, 2018

*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.

On August 2, 2000, a jury in the Circuit Court for Baltimore County convicted Lundes Anthony Cartwright, appellant, of second-degree murder, first-degree assault, and the use of a handgun in a crime of violence. The circuit court subsequently imposed the following sentences:

The sentence of the Court in regard to the murder in the first degree – in the second degree, thirty years to the Commissioner of Correction.

In regard to the first-degree assault . . . twenty years to the Commissioner of Correction, consecutive with the sentence imposed in the first count.

In regard to the use of a handgun in the commission of a crime of violence, twenty years to the Commissioner of Correction, concurrent with the sentence imposed in the first and second charges, the second-degree murder and the first-degree assault. Total sentence is to serve fifty years.

We affirmed the judgments in an unreported opinion. *See Cartwright v. State*, No. 1508, Sept. Term 2000 (filed Aug. 16, 2001).

Relative to this appeal, on December 8, 2016, appellant filed a “Motion for Nunc Pro Tunc Judgment.”¹ He argued that his commitment record was ambiguous and did not accurately reflect the sentence imposed by the court. He maintained that he was actually serving all three sentences concurrently because that would be the only way he could serve the handgun sentence concurrently with both sentences. The circuit court denied his motion.

¹ Because there is no statute or rule providing for a motion for *nunc pro tunc* judgment in criminal law, we treat appellant’s motion as one to correct his commitment record.

This Court has noted that “the function of an order or judgment *nunc pro tunc* is to make the record reflect an action actually and properly taken but improperly recorded due to clerical error, not to correct a judicial error or to adjust for a failure to have a matter resolved in a timely fashion.” *Doser v. Dosser*, 106 Md. App. 329, 347 (1995). The State characterizes appellant’s motion as one to correct his commitment record, citing Rule 4-351. Regardless of how we classify appellant’s motion, his arguments have no merit.

Appellant contends that his commitment record is ambiguous because it does not include a beginning date for his sentences for second-degree murder and first-degree assault. He maintains, therefore, that the rule of lenity requires this Court to rectify the ambiguity and to order that his commitment record reflect a thirty-year sentence because that is the only way he could serve the handgun offense concurrently with the sentence for assault. We disagree: appellant is creating an ambiguity where none exists.

Appellant is correct that “[w]hen there is a conflict between the transcript and the commitment record, unless it is shown that the transcript is in error, the transcript prevails.” *Potts v. State*, 231 Md. App. 398, 411 (2016) (quoting *Lawson v. State*, 187 Md. App. 101, 108 (2009)). In this case, however, there is no conflict. The commitment record accurately reflects the sentence that was imposed. Even if there was any ambiguity in the court’s phrasing at the sentencing hearing, any ambiguity was removed when the court stated that appellant’s “[t]otal sentence is to serve fifty years.”

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**