

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2852

September Term, 2014

RANDOLPH THOMPSON

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Nazarian,

JJ.

PER CURIAM

Filed: December 8, 2016

*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.

In 1995, Randolph Thompson, appellant, was convicted of first degree murder and use of a handgun in the commission of a felony or crime of violence (use of a handgun) following a jury trial, in the Circuit Court for Baltimore City. In 2013, Thompson filed a motion to correct illegal sentence, contending that the circuit court did not have jurisdiction to try and sentence him for those offenses because, he claims, he was tried on a criminal information and was never given a preliminary hearing as required by Maryland Rule 4-201 (c). After determining that Thompson had been tried on an indictment, and not on an information, the circuit court denied his motion. On appeal, Thompson presents one question for our review: Did the trial court err in denying his motion to correct illegal sentence? For the reasons that follow, we affirm.

Maryland Rule 4-201(c) provides, in pertinent part, that an offense may be tried in the circuit court:

(1) on an indictment, or

(2) on an information if the offense is (A) a misdemeanor, or (B) a felony within the jurisdiction of the District Court, or (C) any other felony and lesser included offense if the defendant requests or consents in writing to be charged by information, or if the defendant has been charged with the felony and a preliminary hearing pursuant to Rule 4-221 has resulted in a finding of probable cause, or if the defendant has been charged with the felony as to which a preliminary hearing has been waived[.]

(emphasis added). Based on our review of the record, which, as supplemented, includes a true test copy of Thompson's indictment for first degree murder and use of handgun, we conclude that the trial court's determination that Thompson was tried on an indictment, and not on an information, was not clearly erroneous. *See Yonga v. State*, 221 Md. App. 45, 95 (2015) (noting that we accept the trial judge's fact-finding "as historic reality unless

it was clearly erroneous"). Accordingly, the failure to hold a preliminary hearing in Thompson's case did not violate Rule 4-201(c).

Moreover, even if Thompson had been tried by information, as he claims, the failure to hold a preliminary hearing would not have deprived the circuit court of jurisdiction and, therefore, his resulting sentence would not be illegal. *See Powell v. State*, 324 Md. 441, 446 (1991) ("Maryland Rules 4-201(c) and 4-213(a)(4) address a procedural matter: the regulation of the movement of cases from the District Court, in which the preliminary hearing process is lodged, to the circuit court; they do not control the fundamental jurisdiction of the circuit courts."); *see also Hoile v. State*, 404 Md. 591, 621 (2008) (noting that a sentence is not illegal "merely because a required procedure was not followed prior to the court imposing the sentence").

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