

Circuit Court for Baltimore City
Case No.: 118262014

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 50

September Term, 2023

TAVON BRADLEY

v.

STATE OF MARYLAND

Friedman,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Following a jury trial in the Circuit Court for Baltimore City, Tavon Bradley, appellant, was convicted of first-degree assault, reckless endangerment, and related firearm offenses. We affirmed previously Bradley’s conviction. *Bradley v. State*, No. 879, Sept. Term, 2019 (filed Aug. 7, 2020). The circuit court sentenced Bradley as follows:

- First-degree assault: 25 years
- Use of a firearm in a crime of violence: 20 years, consecutive
- Possession of a firearm by a disqualified person: 15 years, consecutive
- Wearing/Carrying a firearm: 3 years, concurrent
- Reckless endangerment: 5 years, concurrent
- Discharging a firearm within Baltimore City: 1 year, concurrent

Bradley later filed a Motion to Correct an Illegal Sentence arguing that his sentences for reckless endangerment and wearing/carrying a firearm should have merged (reckless endangerment into first-degree assault; wearing/carrying a firearm into use of a firearm in a crime of violence). The circuit court agreed and vacated Bradley’s sentences for those convictions. Bradley then filed a Supplemental Motion to Correct an Illegal Sentence arguing that he was entitled to concurrent sentences for his three remaining offenses¹ because they had the “same indispensable elements of assault.” The circuit court denied that motion, and this appeal timely followed.

¹ Bradley had been incarcerated for more than a year at this point, and so had served fully his concurrent sentence for discharging a firearm within Baltimore City.

We must first clear up some apparent confusion by the parties. In their briefs, both Bradley and the State argue over the propriety of Bradley’s sentence for wearing/carrying a firearm under Md. Code Ann., Crim. Law § 4-203. But, as just mentioned, the circuit court already vacated Bradley’s sentence for that conviction after finding that it indeed should have merged with his conviction for use of a firearm in a crime of violence. *See Holmes v. State*, 209 Md. App. 427, 456 (2013). It appears, from other language in his brief, that Bradley means to challenge sentence of possession of a firearm by a disqualified person under Md. Code Ann., Public Safety § 5-133. We will therefore review his arguments as they apply to that sentence.

On appeal, Bradley argues that his sentences for use of a firearm in a crime of violence and possession of a firearm by a disqualified person should have both merged into his sentence for first-degree assault under the required-evidence test. We disagree.

In the use of a firearm in a crime of violence statute, the General Assembly made clear that any sentence imposed under it would be “in addition to any other penalty imposed for the crime of violence or felony[.]” Md. Code Ann., Crim Law § 4-204(c)(1)(i). When the “legislature specifically authorizes cumulative punishment under two statutes,” the required-evidence test does not apply. *Grandison v. State*, 234 Md. App. 564, 575 (2017) (cleaned up). This offense therefore does not merge.

Similarly, although § 5-133 of the Public Safety Article lacks the same provision, it does not merge with first-degree assault because the offenses have distinct elements. As relevant here, first-degree assault requires and “assault with a firearm[.]” Md. Code Ann., Crim Law § 3-202(b)(2). Possession of a firearm by a disqualified person, in contrast,

requires that a person must possess a firearm and have been convicted of a disqualifying crime. Md. Code Ann., Public Safety § 5-133(c). Bradley’s sentences are thus not illegal, and the circuit court did not err in denying his motion.

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