

Circuit Court for Wicomico County
Case No. 22-K-05-000945

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 248

September Term, 2019

BRIAN KEITH WATERS

v.

STATE OF MARYLAND

Fader, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 11, 2020

*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.

Brian Keith Waters, appellant, challenges the denial, by the Circuit Court for Wicomico County, of a motion to correct illegal sentence. For the following reasons, we shall affirm the judgment of the circuit court.

In October 2005, Mr. Waters was charged by criminal information in the circuit court with first degree burglary of the dwelling house of Susan Wilkins, first degree burglary of the dwelling house of Joseph Saulsbury,¹ and nineteen other offenses. In January 2006, Mr. Waters and the State entered an agreement under which Mr. Waters would plead guilty to first degree burglary of Mr. Saulsbury's residence, pay Mr. Saulsbury restitution in the amount of \$800, and pay Ms. Wilkins restitution in the amount of \$2000. In exchange, the State agreed to “move to place all the remaining counts on the stet docket,” and “recommend that the [c]ourt impose [an] active sentence [of] five years of incarceration.” Mr. Waters subsequently pleaded guilty to the offense. During the colloquy, the court stated to Mr. Waters: “The State is . . . asking that a condition of your probation be restitution awarded to [Mr. Saulsbury] in the amount of \$800 and [Ms.] Wilkins in the amount of \$2,000, but that you acknowledge that you owe restitution to all victims. Do you understand that?” Mr. Waters replied: “Yes, ma'am.” The court subsequently sentenced Mr. Waters to a term of eight years' imprisonment, all but five years suspended, and a term of three years' probation upon release. The court issued notices stating that the amounts of restitution had been recorded as judgments, and the docket entries indicate that the judgments were indexed.

¹Elsewhere in the record, and in the parties' briefs, this individual is identified as “Salisbury.” For consistency, we shall use the name included in the criminal information.

In January 2013, the Division of Parole and Probation charged Mr. Waters with violating the terms of probation by receiving two new convictions in the Circuit Court for Worcester County for first degree burglary, and by testing positive for a narcotic drug. At a subsequent hearing, Mr. Waters admitted to receiving the new convictions. When the court asked “what amount of restitution [Mr. Waters] has . . . paid,” a probation agent stated that “there have been no payments at any time.” The State asked that “judgment[s] of restitution be indexed in favor of” Mr. Saulsbury and Ms. Wilkins. The court subsequently found Mr. Waters to have violated the terms of probation and sentenced him to a term of three years’ imprisonment, to be served consecutive to the sentence that he was then serving. When the court stated, “I’m going to go ahead and order that the judgments be entered as proposed by the State,” the clerk replied: “They have already been entered before, Your Honor.” The court acknowledged: “So they’re already entered as judgments.”

In March 2019, Mr. Waters filed the motion to correct illegal sentence, in which he contended that the court “lacked the [a]uthority” to order him to pay restitution to Ms. Wilkins. Mr. Waters further contended that the court “lacked authority to impose[] restitution as a judgment after probation was revoked.” (Underlining omitted.) The court denied the motion.

Mr. Waters contends that the court erred in denying the motion for two reasons. He first contends that the court “was prohibited from imposing a sentence/sanction for the Susan Wilkins case,” because “that [case] was steted.” We disagree. The Court of Appeals has stated that “[t]he allowance of restitution for other criminal conduct as the

result of a plea bargain is just as rational for unrelated crimes as related crimes, provided a defendant gives his or her voluntary and express agreement to the restitution.” *State v. Stachowski*, 440 Md. 504, 517 (2014). Here, Mr. Waters gave voluntary and express agreement to the term of his plea bargain requiring restitution for criminal conduct unrelated to the first degree burglary of Mr. Saulsbury’s residence. Hence, the court was not prohibited from ordering the restitution.

Mr. Waters next contends that the court “lacked authority,” following its revocation of probation, “to index a restitution judgment against” him, because “[t]here was never a[n] index judgment original imposed on record or ordered,” and the indexing “increase[d]” or “enhance[d]” the sentence. But, the record reflects that the court recorded the amounts of restitution as judgments, and indexed the judgments, following the 2006 plea hearing, and there is no evidence that the court re-entered or re-indexed the judgments following the 2013 violation of probation hearing. Also, the court revoked Mr. Waters’s probation not because he failed to pay the restitution, but because he received two new convictions for first degree burglary. Hence, the court did not err in denying the motion to correct illegal sentence.

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