Circuit Court for Montgomery County
Case No. 118450

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 276

September Term, 2017

SILVERIO AZAMAR-CASTRO

v.

STATE OF MARYLAND

Woodward, CJ
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2018

In 2011, a jury, in the Circuit Court for Montgomery County, convicted Silverio Azamar-Castro, appellant, of one count of sexual abuse of a minor (Count 1), one count of second-degree sexual offense (Count 2), and two counts of third-degree sexual offense (Counts 3 and 4). Azamar-Castro was sentenced to a term of 25 years' imprisonment on Count 1; a consecutive term of 15 years' imprisonment on Count 2; a consecutive term of ten years' imprisonment on Count 3; and, a consecutive term of ten years' imprisonment on Count 4. In 2017, Azamar-Castro filed a motion to correct an illegal sentence, arguing that his conviction of second-degree sexual offense and his two convictions of third-degree sexual offense should have merged for sentencing purposes into his conviction of sexual abuse of a minor. The circuit court denied the motion without a hearing.

In this appeal, Azamar-Castro contends that the circuit court erred in denying his motion. In support, Azamar-Castro relies almost exclusively on *Blockburger v. U.S.*, 284 U.S. 299, 304 (1932) (holding that two offenses are the "same," and thus multiple punishments prohibited, when one offense contains all of the elements of the other offense) and *Nightingale v. State*, 312 Md. 699, 708-09 (1988) (holding that, under the "rule of lenity," separate convictions of child abuse and sexual offense should merge when there is an ambiguity as to which "acts" served as the basis for each conviction). Azamar-Castro also argues that the sentences should have merged because "fundamental fairness dictates that the defendant understands clearly what debt he must pay to society for his transgressions."

We hold that the circuit court did not err in denying Azamar-Castro's motion to correct an illegal sentence. The "required evidence test" announced by the Supreme Court

in *Blockburger*, and on which Azamar-Castro relies, does not apply when the legislature expressly authorizes cumulative punishments. *Grandison v. State*, 234 Md. App. 564, 575 (2017). Here, Azamar-Castro was indicted and convicted pursuant to Section 3-602 of the Criminal Law Article of the Maryland Code, which states that "[a] sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for . . . any crime based on the act establishing the violation of this section[.]" Md. Code, Crim. Law § 3-602(d). Consequently, merger was not required under *Blockburger*.

Azamar-Castro's reliance on *Nightingale* is equally misplaced, as that holding was overruled by the enactment of § 3-602, which, as previously noted, permits multiple punishments. *Twigg v. State*, 447 Md. 1, 11 n. 6 (2016); *See also Clark v. State*, 218 Md. App. 230, 255 (2014) (noting that the rule of lenity involves the interpretation of ambiguous statutes and prohibits separate punishments only when the legislature intended two statutory offenses to be punished by one sentence.). For that same reason, merger under the doctrine of "fundamental fairness" would be inappropriate. *See Alexis v. State*, 437 Md. 457, 491 (2014) (holding that the doctrine of fundamental fairness did not apply "where the clear and plain language of the relevant statutes indicates that merger is precluded."). In any event, given that the indictment against Azamar-Castro expressly mentioned § 3-602, a reasonable person in his position would have been well-aware of the consequences that he was facing upon conviction.

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