

Circuit Court for Baltimore County  
Case No.: 03-K-10-002461

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 293

September Term, 2021

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TROY NEAL TRAYLOR

v.

STATE OF MARYLAND

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Graeff,  
Ripken,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: February 28, 2022

\*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 2010, Troy Neal Taylor, appellant, was charged with various offenses stemming from his involvement in a home invasion. In a nutshell, appellant and his confederates entered, at gunpoint, the home of a group of college students. Appellant and his confederates proceeded to ransack the home taking items including, but not limited to, money, laptops, DVDs, and a video game console. Although only one of the students, Kevin Deighan, was at home at the time of the break-in and ransacking, the property of at least one other roommate, Thomas Hepner, was taken by appellant and his confederates.

Following trial in the Circuit Court for Baltimore County in 2010, a jury found appellant guilty of first-degree burglary, robbery of Kevin Deighan with a deadly or dangerous weapon, use of a handgun in the commission of a crime of violence, theft of property valued less than \$1,000 from Kevin Deighan, and theft of property valued between \$1,000 and \$10,000 from Thomas Hepner.<sup>1</sup>

Thereafter, the court sentenced appellant to ten years' imprisonment for the robbery of Kevin Deighan with a deadly or dangerous weapon, ten years concurrent for first-degree burglary, 18 months concurrent for theft of property valued less than \$1,000 from Kevin Deighan, ten years concurrent for theft of property valued between \$1,000 and \$10,000 from Thomas Hepner, and twenty years consecutive for use of a handgun in the commission of a crime of violence.

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<sup>1</sup> The jury acquitted appellant of first-degree assault, and second-degree assault, on Kevin Deighan. In addition, the court granted a motion for judgment of acquittal on a count charging appellant with possession of a handgun while under 21 years of age, and a count charging theft of property valued between \$1,000 and \$10,000 from another roommate, Sean Hughes.

In the decade or so since his trial, appellant has mounted numerous attacks on his convictions and sentences. Presently before the court is a *pro se* appeal from the summary denial of a *pro se* motion to correct an illegal sentence.<sup>2</sup> For the reasons that follow, we shall affirm.

### I.

Appellant first contends that his “conviction and sentence” for theft of property valued under \$1,000 from victim Kevin Deighan is unlawful because the “conviction and sentence” for the theft offense was required to be merged, under the *Blockburger*<sup>3</sup> required evidence test, into his conviction for robbery with a deadly or dangerous weapon against the same victim.

“When a court fails to merge a sentence when it is required, this constitutes an illegal sentence as a matter of law.” *White v. State*, 250 Md. App. 604, 643 (2021), (citing *Britton v. State*, 201 Md. App. 589, 598–99 (2011)). The Court of Appeals has described the required evidence test as follows:

If each offense requires proof of a fact which the other does not, the offenses are not the same and do not merge. However, if only one offense requires proof of a fact which the other does not, the offenses are deemed the same, and separate sentences for each offense are prohibited.

*Twigg v. State*, 447 Md. 1, 13 (2016) (quoting *Nightingale v. State*, 312 Md. 699,

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<sup>2</sup> In the notice of appeal giving rise to the present action, appellant also untimely sought to appeal a previously denied motion to reopen a closed post-conviction proceeding he had filed. On October 8, 2021, we issued an Order limiting the scope of this appeal to the review of the circuit court’s denial of his motion correct an illegal sentence.

<sup>3</sup> *Blockburger v. United States*, 284 U.S. 299 (1932).

703 (1988), abrogated by statute). Our cases make clear that misdemeanor theft merges into robbery with a deadly or dangerous weapon because only one offense (robbery with a deadly or dangerous weapon) requires proof of a fact which the other (misdemeanor theft) does not. *Ndunguru v. State*, 233 Md. App. 630, 641 (2017), *Smith v. State*, 412 Md. 150, 166 & n.9 (2009). As a result, appellant was entitled to have his *sentence*, but not his *conviction*, for theft merged into his sentence for armed robbery. *See Twigg*, 447 Md. at 19 n.10 (“It is clear under case law of the United States Supreme Court and Maryland that, for purposes of resentencing, the remedy is to vacate only the sentence imposed upon the lesser included offense, not the conviction itself.”)

However, because appellant completed his 18-month sentence for the theft conviction years ago, his claim of error is moot. *See Barnes v. State*, 423 Md. 75, 88 (2011) (holding that, after a defendant serves his or her full sentence, the issue of whether the sentence is illegal is moot because the court can “no longer fashion an effective remedy.” (quotation marks and citation omitted)).

## II.

Appellant makes several arguments concerning the alleged illegality of certain of his sentences owing to allegedly inconsistent verdicts. Specifically, he contends that, because he was acquitted of first- and second-degree assault, his convictions and sentences are illegal, within the meaning of Maryland Rule 4-345, for (1) robbery with a deadly or dangerous weapon, and (2) use of a handgun in a crime of violence. He further contends that, because the court granted a motion for judgment of acquittal on the charge of possession of a handgun by a minor, his conviction and sentence for use of a handgun in

the commission of a crime of violence is likewise illegal.<sup>4</sup>

We shall address these arguments of appellant collectively. In *Pitts v. State*, 250 Md. App. 496, 526, *cert. denied*, 475 Md. 714 (2021), this Court held that sentences resulting from un-objectioned-to inconsistent verdicts are not illegal within the contemplation of Maryland Rule 4-345. With that fundamental premise removed from each of appellant’s arguments, they collapse under their own weight.

### III.

Next, appellant claims that his sentence for robbery with a dangerous or deadly weapon should have merged, under the *Blockburger, supra*, required evidence test, into his sentence for use of a handgun in a crime of violence. While it is true that the two offenses are the “same” within the meaning of the *Blockburger* required evidence test, *Grandison v. State*, 234 Md. App. 564, 574 (2017), that is not the end of the inquiry. This is so because the Maryland General Assembly adopted, and the Court of Appeals approved, the anti-merger provision found in Section 4-204(c) of the Criminal Law Article (“CL”) which provides that “[a] person who violates this section is guilty of a misdemeanor and, *in addition to any other penalty imposed for the crime of violence or felony*, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.” (emphasis added).

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<sup>4</sup> In its brief, the State points out that, while it is not at all clear from the record, it is doubtful that the acquittal on the charge of minor in possession of a handgun is inconsistent, much less legally inconsistent, with the conviction for use of a handgun in the commission of a crime of violence.

*Whack v. State*, 288 Md. 137, 148-49 (1980).<sup>5</sup>

Accordingly, just because two offenses are deemed the “same” under the required evidence test, they do not merge for sentencing if the legislature intended, as in the case of CL § 4-204, for the court to have the power to impose separate sentences for each offense.

#### IV.

Finally, appellant baldly asserts that both his trial counsel and the prosecutor erred by not bringing the aforementioned allegedly illegal sentences to the attention of the trial court. These contentions are not cognizable in a Maryland Rule 4-345 motion to correct an illegal sentence because they do not render his sentences inherently illegal. *Evans v. State*, 396 Md. 256, 276 (2006); *Bailey v. State*, 464 Md. 685, 697 (2019).

#### CONCLUSION

Appellant’s sentences are not illegal within the meaning of Maryland Rule 4-345. Consequently, we shall affirm the judgment of the circuit court.

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

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<sup>5</sup> *Whack* addressed Article 27, § 36B(d) of the Maryland Code which is the predecessor to CL § 4-204. The anti-merger provisions in both statutes are analytically indistinct.