

Circuit Court for Baltimore City
Case No. 117262003

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 555

September Term, 2019

JARED AARON

v.

STATE OF MARYLAND

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 6, 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.

Following a jury trial in the Circuit Court for Baltimore City, Jared Aaron, appellant, was convicted of first-degree assault; second-degree assault; reckless endangerment; use of a firearm in the commission of a crime of violence; wearing, carrying, or transporting a firearm; and discharge of a firearm within Baltimore City. He raises two issues on appeal: (1) whether there was sufficient evidence to sustain his convictions because, he claims, the State failed to prove his identity as the perpetrator, and (2) whether the sentence imposed was improper because it exceeded the Maryland Sentencing Guidelines and was otherwise disproportional to the crimes committed. For the reasons that follow, we shall affirm the judgments but remand the case to the circuit court to correct the commitment record to reflect that the total term of imprisonment to be served by Mr. Aaron is 45 years, not 60 years.

Mr. Aaron first contends that there was insufficient evidence to sustain his convictions because the State failed to prove that he was the perpetrator of the charged offenses. In reviewing the sufficiency of the evidence, we ask “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Ross v. State*, 232 Md. App. 72, 81 (2017) (citation omitted). Furthermore, we “view[] not just the facts, but ‘all rational inferences that arise from the evidence,’ in the light most favorable to the” State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, “[w]e give ‘due regard to the [fact-finder’s] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity

to observe and assess the credibility of witnesses.” *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)).

At trial, the State presented evidence that Harry Brown was shot in the back during an altercation involving multiple people that occurred on the street outside his home. Sean Calp, a friend of Mr. Brown who was present during the shooting, identified Mr. Aaron as the shooter, first in a photo array and then at trial.¹ That testimony, standing alone, was sufficient to prove Mr. Aaron’s criminal agency. *See Archer v. State*, 383 Md. 329, 372 (2004) (“It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction.”).²

Mr. Aaron nevertheless contends that Mr. Calp was not a credible witness because he initially told the police that he did not know the identity of the shooter and that it could have been one of several different people. However, it is “not a proper sufficiency argument to maintain that the [fact-finder] should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses.” *Correll v. State*, 215 Md. App. 483, 502 (2013). That is because any inconsistencies or weaknesses

¹ Mr. Calp also testified that Mr. Aaron had pulled a gun on him prior to the shooting of Mr. Brown. Mr. Aaron was convicted of second-degree assault based on this testimony.

² We note that this was not the only evidence implicating Mr. Aaron. The State also presented: (1) testimony from the victim’s neighbor that he heard gun shots and immediately saw a person who matched Mr. Aaron’s general description running away from the scene of the shooting holding a gun, and (2) body camera footage depicting an interview between one of the officers and Kim Wilder, Mr. Aaron’s girlfriend, during which the officer asked Ms. Wilder why Mr. Aaron had shot the victim and Ms. Wilder responded that it was to stop the victim from “hitting everybody.”

in the testimony of the State’s witnesses affects the weight of the evidence, and not its sufficiency. *Owens v. State*, 170 Md. App. 35, 103 (2006) (“A witness’s credibility goes to the weight of the evidence, not its sufficiency.”). Here “[t]he jury was well aware of the prior inconsistent statement[s] of [Mr. Calp],” and thus, the jury “was faced with judging [his] credibility in the light of such inconsistency.” *Wilson v. State*, 261 Md. 551, 558 (1971). And ultimately the jury determined him to be a credible witness. Consequently, we hold that there was sufficient evidence to sustain Mr. Aaron’s convictions.

Mr. Aaron also maintains that the court’s sentence of 60 years’ imprisonment “exceeded the Maryland Sentencing Guidelines and was otherwise disproportional to the crimes committed.” Specifically, he asserts that, because the court’s sentence exceeded the sentencing guidelines recommendation, which called for a maximum total sentence of 10 years’ imprisonment, “the court was motivated by ill will or other impermissible considerations.”

Before addressing Mr. Aaron’s sentencing claim, we must first determine what sentence the court imposed. Mr. Aaron states in his brief that the court sentenced him to a total term of 60 years’ imprisonment. This is consistent with the total sentence to be served as set forth in the commitment record. However, the transcript of the sentencing hearing indicates that the court imposed the following sentence:

Count 3, assault in the first-degree of Harry Brown. The sentence of the Court is 25 years to the department of corrections.

Count 2, second-degree – I’m sorry Count 5, second-degree assault of Harry Brown merges with Count 3.

Count 6, assault in the second-degree of Sean Calp, the Sentence of the Court is ten years to the department of corrections. And that will be consecutive to Count 3, the first-degree assault.

Count 7, the reckless endangerment, the sentence of the Court is five years to the department of corrections. That will run consecutive to Count 6.

Count 8, the use of a firearm in the commission of a crime of violence, the sentence of the Court is 20 years to the department of corrections. **That will run consecutive to . . . Count 3, the first-degree assault.** The first five is mandatory without the possibility of parole.

The handgun violation, three years to the department of corrections. That will run concurrent to Count 8. The handgun violation is Count 10 Mr. Clerk. That's concurrent to Count 8.

Count 11, discharge of a firearm within the city limits of Baltimore City, the sentence of the Court is one year. And that too is concurrent to Count 8.

(Emphasis added.)

Although the court ordered both the 10-year sentence on Count 6 and the 20-year sentence on Count 8 to run consecutive to Count 3, it did not order those sentences to run consecutive to each other. And there is a presumption that if the court does not specify that a subsequently imposed sentence is to be consecutive to an earlier imposed sentence, the latter is concurrent. *Collins v. State*, 69 Md. App. 173, 196-99 (1986). Thus, the sentences imposed on Counts 6 and 8 are concurrent. Similarly, the court's 5-year sentence on Count 7, while consecutive to the 10-year sentence on Count 8, is also concurrent to the 20-year sentence on Count 8. Consequently, the total sentence imposed by the court was 45 years. *See Gatewood v. State*, 158 Md. App. 458, 482 (2004) (noting that, where there is a variance, the transcript takes precedence over the commitment record). Because the commitment record incorrectly reflects that Mr. Aaron's total sentence to be served is 60

years, and the State concedes this point, we shall remand the case with instructions to amend the commitment record, rather than requiring Mr. Aaron to file a motion to amend the commitment record in the circuit court.

However, we find no in merit Mr. Aaron’s sentencing claim. Mr. Aaron acknowledges that we generally only review a court’s sentencing judgment on three recognized grounds: “(1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill will, prejudice or other impermissible considerations; and (3) whether the sentence is within statutory limits.” *See Triggs v. State*, 382 Md. 27, 39 (2004). He has not demonstrated the existence of any of these grounds on appeal.

First, each sentence imposed by the court was within statutory limits. Moreover, although he states in his question presented that the total sentence was “disproportional to the crimes committed” he does not present any particularized argument that his sentences, either individually or collectively, amounted to cruel and unusual punishment under the Eighth Amendment. Nor does he cite any case law in support of such a claim. Consequently, that issue is not properly before the Court. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (noting that arguments that are “not presented with particularity will not be considered on appeal” (citation omitted)).³

³ We nevertheless note that in *Kaylor v. State*, 295 Md. 66, 69 (1979) the Court of Appeals recognized that “consecutive sentences do not constitute cruel and unusual punishment where the length of each sentence is within the limits prescribed by statute.”

Mr. Aaron does contend that the length of the sentence, when compared to the guidelines range, indicates that the sentencing court was “motivated by ill will or other impermissible considerations.” However, this claim is not preserved as Mr. Aaron did not raise it at the sentencing hearing. *See Reiger v. State*, 170 Md. App. 693, 702 (2006) (holding that the appellant “waived his impermissible sentencing considerations challenge by failing to object at sentencing”). Moreover, even if preserved, we would find no error. The record indicates that the court’s sentence was based largely on Mr. Aaron having been the only person who brought a weapon to the altercation and the victim having been paralyzed because of the shooting, both appropriate factors for the court to consider in fashioning its sentence. Thus, we are not persuaded that the sentences imposed by the court were unfair or excessive.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. CASE REMANDED TO
THE CIRCUIT COURT TO AMEND
THE COMMITMENT RECORD
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLANT.**