

Circuit Court for Somerset County
Case No. C-19-CR-17-000062

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 570

September Term, 2018

RODNEY CHRISTOPHER

v.

STATE OF MARYLAND

Meredith,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 30, 2019

*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.

Rodney Christopher, appellant, appeals the denial of his motion to correct illegal sentence raising three issues: (1) whether the motions judge should have recused himself; (2) whether his sentence for reckless endangerment is illegal because, he claims, it should have merged into his sentence for voluntary manslaughter; and (3) whether his consecutive sentence for unlawful possession of a regulated firearm is illegal because the circuit court did not specify “which sentence it should run consecutive to.” Because there was no basis for the motions judge to recuse himself and Mr. Christopher has not demonstrated that his sentences are illegal, we shall affirm.

Mr. Christopher first claims that the judge who denied his motion to correct illegal sentence should have recused himself because he was the same judge who imposed the original sentence. However, Mr. Christopher did not file a motion to recuse in the circuit court. And nothing in the record suggests that the motions judge was biased against Mr. Christopher or could not be impartial, such that he was required to recuse himself *sua sponte*. Therefore, recusal was not required.

Mr. Christopher also contends that his sentences for reckless endangerment and unlawful possession of a regulated firearm are illegal. However, review of these issues is constrained by the fact that Mr. Christopher has not provided a transcript of his August 28, 2017, guilty plea and sentencing hearing. *See* Md. Rule 8-411(a)(2) (requiring an appellant to provide this Court with “a transcription of any proceeding relevant to the

appeal . . .”).¹ As the party asserting error, Mr. Christopher has the burden to show “by the record, that the error occurred.” *Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993). Consequently, we reject those claims on appeal. *Id.* (“The failure to provide the court with a transcript warrants summary rejection of the claim of error.”).²

We note, however, that, based on the limited record before us, we perceive no error in the court’s denial of his motion to correct illegal sentence. Mr. Christopher first asserts that his sentence for reckless endangerment is illegal because it should have merged into his sentence for involuntary manslaughter. But the amended Criminal Information and the hearing sheet from the day of Mr. Christopher’s plea and sentencing hearing both state that those charges involved separate victims. And the record also contains a letter from defense counsel for Mr. Christopher, wherein defense counsel indicates that “as part of the plea agreement, the involuntary manslaughter [charge was] amended from first-degree murder, [and] involved [one victim]” and the “reckless endangerment charge was amended to specify [another] victim.” Thus, the existing record indicates that Mr. Christopher’s convictions for reckless endangerment and

¹ We previously issued an order to show cause why the appeal should not be dismissed for failure to provide the transcript. In response, Mr. Christopher indicated that the transcript of his sentencing hearing was not required to resolve the appeal but that he would nevertheless attempt to obtain it. Based on those representations, we discharged the order to show cause on September 18, 2018. However, we have not received any correspondence from Mr. Christopher since November 11, 2018, and nothing in the record indicates that Mr. Christopher has made any further efforts to procure the transcripts.

² We deny the State’s motion to dismiss the appeal in its entirety because Mr. Christopher’s claim that the trial judge should have recused himself can be fully addressed based on the existing record.

voluntary manslaughter involved separate victims and therefore, should not have merged for sentencing purposes.

Mr. Christopher also claims that his sentence for unlawful possession of a regulated firearm is ambiguous because “the court imposed the sentence [] ‘consecutive,’ without specifying as to which sentence it was to run consecutive to.” Notably, Mr. Christopher did not raise this claim in his motion to correct illegal sentence. Moreover, even if true, it would not render Mr. Christopher’s sentence inherently illegal because he pleaded guilty to illegal possession of a handgun and his five-year sentence for that offense was permitted by law. *See Bryant v. State*, 436 Md. 653, 662-63 (2014) (noting that the concept of an illegal sentence is limited to “those situations in which the illegality of the sentence inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it is imposed.” (internal quotation marks and citation omitted)). But, in any event, the docket entries and the hearing sheet indicate that the court ordered the sentence on the handgun count to run consecutive to the sentences imposed for both involuntary manslaughter and reckless endangerment. Therefore, we can discern no ambiguity in Mr. Christopher’s sentence.

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