Circuit Court for Montgomery County
Case No. 124345C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 661

September Term, 2019

KENNETH HINTON

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: June 12, 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 Montgomery County, Kenneth Hinton, appellant, representing himself, was convicted of theft scheme of at least $1,000 but less than $10,000 and 26 counts of perjury by affidavit. The trial court imposed consecutive sentences totaling 70 years' imprisonment. Mr. Hinton appealed, arguing, that there was insufficient evidence to sustain his convictions, that his perjury convictions should merge into his conviction for theft scheme, and that his consecutive sentences constituted cruel and unusual punishment in violation of the Eighth Amendment. This Court affirmed, holding that the evidence was sufficient to sustain his convictions, that his convictions did not merge, and that his sentence was not unconstitutionally excessive. *Hinton v. State*, No. 2119, Sept. Term 2015 (filed March 5, 2017). In 2017, Mr. Hinton filed a petition for post-conviction relief, which the post-conviction court denied. He then filed an application for leave to appeal in case number CSA-ALA-644-2019, which we denied in October 2019.

In 2018, Mr. Hinton also filed a "Motion and Request for Merger of Six Consecutive Counts Under CR 9-101(a)(5) (Counts 2, 3, 4, 6, 7 & 8) to be Merged to Run Concurrent with One Count Under CR 7-104 (Count 41) and With All Other Concurrent Counts of Sentence." In that motion, which we construe as a motion to correct illegal sentence, Mr. Hinton requested the court to merge his consecutive sentences for perjury and to run them concurrent to his theft scheme conviction, claiming that his consecutive sentences "improperly imposed constitute an illegal sentence." He further claimed that his theft scheme conviction should now be considered a misdemeanor offense because the crime of theft scheme involving less than $1,500 had been reclassified from a felony to a misdemeanor as part of the 2017 Justice Reinvestment Act. Finally, he asserted that he

should have had counsel at his sentencing hearing because it was a "critical proceeding." The circuit denied the motion on April 1, 2017. This appeal followed.

On appeal, Mr. Hinton raises numerous contentions challenging the denial of his post-conviction petition. However, he does not raise any claims regarding the denial of his motion to correct illegal sentence. For this reason, the State asks us to dismiss the appeal as not allowed by law. Although we shall deny the motion to dismiss, we note that § 7-109(a) of the Criminal Procedure Article requires a person aggrieved from an order denying post-conviction relief to apply for leave to appeal that order. A direct appeal from such an order is not allowed. Mr. Hinton has already filed an application for leave to appeal the denial of his post-conviction petition and that application was denied. Therefore, we will not consider any of his claims related to denial of his post-conviction petition.

Moreover, because Mr. Hinton does not contend in his brief that the court erred in denying his motion to correct illegal sentence, the only order that is properly before us, we need not consider that issue on appeal. *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)).[1] Consequently, we shall affirm the judgment of the circuit court.

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

[1] Even if the issue were properly before us, we would find no error in the court's denial of Mr. Hinton's motion to correct illegal sentence. On direct appeal, we rejected Mr. Hinton's claim that his perjury and theft scheme convictions should merge. Therefore that contention is barred by the law of the case doctrine. *See Holloway v. State*, 232 Md. App. 272, 279 (2017) ("The law of the case doctrine provides that, once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." (internal quotation marks and citation omitted)). The fact that his sentences were ordered to run consecutive does not render them illegal as sentencing courts have the discretion to run sentences either consecutive or concurrent to other sentences that have been imposed. The fact that Mr. Hinton did not have counsel at his sentencing hearing does not render his sentences illegal. *See Bailey v. State*, 464 Md. 685, 698 (2019) ("Maryland Rule 4-345(a) is intended to correct sentences that are "inherently illegal," not just "merely the product of procedural error."). Finally, although the Justice Reinvestment Act reclassified the crime of theft scheme involving less than $1,500 from a felony to a misdemeanor, that amendment to the theft statute did not apply retroctively. Rather, it only applied to offenses committed on or after October 1, 2017. *See* Gen. Prov. Art. § 1-205 (stating that unless "expressly provided" a repealed or amended statute shall remain in effect for the purposes of sustaining any judgment imposing a penalty pursuant to that statute).