Circuit Court for Montgomery County
Case No. 100248C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 668

September Term, 2023

WILLIAM N. KARANJA

v.

STATE OF MARYLAND

Friedman,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a 2004 bench trial in the Circuit Court for Montgomery County, William N. Karanja, was convicted of two counts of second-degree rape (counts 1 and 5), two counts of second-degree sexual offense (counts 2 and 6), and other related offenses. The rape and second-degree sexual offense counts involved two separate victims. The court sentenced appellant to twenty years' imprisonment on count 1; ten years' imprisonment on count 2, to run consecutive to count 1; twenty years' imprisonment on count 5, to run consecutive to count 1 and 2; and ten years' imprisonment on count 6, to run consecutive to counts 1, 2, and 5. When combined with the sentences imposed by the court for other offenses, appellant received a total aggregate sentence of 66 years' imprisonment.

In 2023, appellant filed a motion to correct illegal sentence claiming that the sentences imposed on counts 1 and 2, which pertained to one victim should have merged under the required evidence test because they "were a result of the same act on the same victim and because you can't have a second-degree rape without also performing a second-degree sexual offense[.]" He alternatively claimed that those sentences should have merged under the rule of lenity and principles of fundamental fairness. For the same reason, appellant also contended that the sentences imposed on counts 5 and 6, which involved a different victim should also have merged. The court denied the motion without a hearing on May 11, 2023. This appeal followed. On appeal, appellant raises the same

contentions that he raised in his motion to correct illegal sentence. For the reasons that follow, we shall affirm.[1]

Appellant first asserts that his sentences for second-degree sexual offense should have merged with his sentences for second-degree rape under the required evidence test because "the crime of second-degree sex offense has the same elements of second-degree rape[.]" We disagree. "Sentences for two convictions must be merged when: (1) the convictions are based on the same act or acts, and (2) under the required evidence test, the two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other." *Brooks v. State*, 439 Md. 698, 737 (2014). In applying the "required evidence" test, "courts look at the elements of the two offenses in the abstract. All of the elements of the lesser included offense must be included in the greater offense. Therefore, it must be impossible to commit the greater without also having committed the lesser." *Williams v. State*, 200 Md. App. 73, 87 (2011) (quotation marks and citation omitted).

Appellant was charged with two counts of second-degree rape pursuant to Section 3-304 of the Criminal Law Article, which at the time of appellant's trial, applied only to

[1] In its informal brief, the State has filed a motion to dismiss on the grounds that appellant's brief does not raise any issues related to the denial of his motion to correct illegal sentence. On July 21, 2023, appellant filed a brief in this appeal raising claims related to an order denying his motion to re-open post-conviction proceedings. Notably, appellant has filed an application for leave to appeal from that order which has been docketed in this Court as Case No. ACM-ALA-2302-2022. It appears, that appellant intended to file the July 21 brief in that case because, four days later, appellant filed a new brief in this appeal, wherein he claimed that the court had erred in denying his motion to correct illegal sentence. In light of that new brief, we shall deny the State's motion to dismiss.

vaginal intercourse. He was also charged with two counts of second-degree sexual offense by anal intercourse, pursuant to former Section 3-306 of the Criminal Law Article. And at the time of his trial, that charge specifically applied to all sexual acts other than vaginal intercourse, including anal intercourse. In other words, second-degree rape could only be committed by engaging in vaginal intercourse and second-degree sexual offense could only be committed by engaging in a sexual act other than vaginal intercourse. Thus, each offense required proof of an element that the other did not. We are persuaded, therefore, that merger is not required under the required evidence test.

Appellant alternatively contends that his sentences should merge under the rule of lenity. But, although he cites several cases that generally define the rule of lenity, he does not specifically argue why it should apply in this case. Consequently, we need not consider that issue on appeal. *See Diallo v. State*, 413 Md. 678, 692 (2010) ("Arguments not presented in a brief or not presented with particularity will not be considered on appeal") (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999)).

But, even had appellant properly raised the issue, we would find no error. If the intent of the legislature to impose separate punishments for multiple convictions arising out of the same conduct or transaction is unclear, then the rule of lenity generally precludes the imposition of separate sentences. *See e.g. Whack v. State*, 288 Md. 137, 143 (1980). Here, the court found that appellant engaged in two distinct acts with each victim, vaginal intercourse and anal intercourse. And at the time of appellant's trial, the plain language of the second-degree sexual offense statute expressly excluded vaginal intercourse as a form of "sexual act." Consequently, we discern no ambiguity in the legislature's intent to punish

the different criminal acts by imposing separate sentences for convictions for rape and second-degree sexual offense.

Appellant finally contends that his sentences should merge under the principle of fundamental fairness. However, we need not address this issue because the "failure to merge a sentence based on fundamental fairness does not render the sentence illegal." *Koushall v. State*, 479 Md. 124, 163 (2022).

Because appellant has not demonstrated that his sentences are inherently illegal, the circuit court did not err in denying his motion to correct illegal sentence.

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