

Circuit Court for Montgomery County
Case No.: 131537C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 887

September Term, 2021

GRAHAM SCHIFF

v.

STATE OF MARYLAND

Kehoe
Zic
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 27, 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.

Following trial in the Circuit Court for Montgomery County in 2017, a jury found Graham Schiff, appellant, guilty of stalking and harassment.¹ Thereafter, the court sentenced him to five years' imprisonment with all but twelve days suspended.² Appellant, who was self-represented at trial, did not take a direct appeal of his convictions. On March 5, 2021, he filed, *pro se*, a paper titled “Motion to Vacate Illegal Convictions and Sentences” pursuant to Maryland Rule 4-345, which the circuit court summarily denied. This appeal concerns the denial of that motion. For the reasons that follow, we shall affirm.

Appellant's convictions stemmed from the course of conduct he engaged in towards a former high school classmate (“N.”) over the course of several years involving sending unwanted emails and text messages. Eventually, N.'s mother (“M.”) had an attorney write to appellant to instruct him to cease contacting N., who, by that time had moved out of state and had blocked appellant from her social media and text messages. Thereafter, appellant sent numerous e-mail messages to the attorney and N. By way of example, one e-mail contained the following passage:

I don't know. I don't care. But [N.] get your tight ass over here, or I will come to Michigan and pull you pants down and spank you in front of your entire restaurant and all of its retarded hick employees until you learn to submit to me. And then I'll paralyze your boyfriend and make him watch us fuck all over your dirty sheets because you're mine and you best start getting with the program here.

Over the next few months, mysterious packages containing flowers, chocolates, and jewelry showed up on M.'s doorstep along with letters addressed to N. written in

¹ The jury acquitted appellant of attempted fourth-degree burglary.

² Appellant later violated his probation.

appellant’s handwriting. Eventually, appellant sent M. bizarre text messages containing sexual references. M. shared the messages with appellant’s mother who encouraged M. to call the police, which she did. While a police officer who responded to M.’s home was there, someone jiggled the doorknob on M.’s front door. The police officer opened the door to find appellant just steps away carrying a backpack containing, among other things, more letters addressed to N.

As indicated earlier, appellant filed, *pro se*, what amounts to a motion to correct an illegal sentence pursuant to Maryland Rule 4-345. It stated, verbatim, the following:

This motion is being filed by [appellant]. This motion asks the court to vacate the convictions and sentences in this case, from April 2017 and March 2018³ because [appellant] was convicted and sentenced for a crime not charged in the criminal information. [Appellant] was charged with stalking bodily harm element, but convicted of serious emotional distress element. He did not consent to the change, which made it illegal under Md. Rule 4-204 because by changing the element it altered the character of the offense.

Further, under Md. Rule 4-345: “Convicting and sentencing a defendant for a crime not included in the indictment constituted an inherently illegal sentence and must be vacated” and “a movant’s claim to correct an inherently illegal sentence is correctable at any time.” (see also *Johnson v. State* 2012)

Based on these facts, the convictions and sentences in this case are illegal and must be vacated under Maryland law, which the defendant asks the court to do.

The fundamental premise of appellant’s argument appears to be that the charging document charged him with one form of stalking, but he was convicted of a different,

³ This March 2018 date is an apparent reference to appellant’s violation of probation proceedings.

uncharged form.⁴ That is simply not the case. On April 6, 2017, about a week before trial began, appellant was generically charged with stalking⁵ in a criminal information, as follows:

Shelia Bagheri, Assistant State’s Attorney for Montgomery County, Maryland, duly authorized and empowered to investigate and prosecute the above-entitled case in this Court, on her official oath informs the said Court that [appellant], on or about January 31, 2017, [at M.’s address] **did unlawfully stalk [M.] in violation of Section 3-802 of the Criminal Law Article** against the peace, government, and dignity of the State.

⁴ On appeal, appellant presents a different, but related argument to the one he raised in the circuit court. In his appellate briefs he claims that he was unlawfully charged with both the “bodily harm element” and the “serious emotional distress element” because those two forms of stalking cannot be charged together. He cites to no authority for this proposition. Nevertheless, because he never raised this argument below, we decline to address it on appeal.

⁵ Section 3-802 titled “Stalking” provides, in pertinent part, as follows:

“Stalking” defined

(a) In this section, “stalking” means a malicious course of conduct that includes approaching or pursuing another where:

(1) the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear:

- (i) 1. of serious bodily injury;
2. of an assault in any degree;
3. of rape or sexual offense as defined by §§ 3-303 through 3-308 of this title or attempted rape or sexual offense in any degree;
4. of false imprisonment; or
5. of death; or

(ii) that a third person likely will suffer any of the acts listed in item (i) of this item; or

(2) the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another.

(Emphasis added).

It is obvious that the charging document did not specify which form of stalking appellant was charged with, hence he was charged with all forms. (*See Ross v. State*, 308 Md. 337, 344 (1987) Even though an offense may be proved in more than one way, “[t]here is no requirement [] that a charging document must inform the accused of the specific theory on which the State will rely.”) With appellant’s fundamental premise removed, his argument collapses under its own weight.

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.**