

Circuit Court for Prince George's County
Case No.: CT100775X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 923

September Term, 2023

ADRIAN LEWIS

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Harrell, Glenn T, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: May 17, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In the early morning hours of 10 April 2010, two individuals were shot outside a bar and restaurant in Prince George’s County. One of the victims, Walter Corey Britt, was shot five times, but survived. The other victim, Cynthia Aaron, was shot in the back of the neck and killed.

In January 2011, following a trial in the Circuit Court for Prince George’s County, the jury found Adrian Lewis, appellant, guilty of attempted second-degree murder with respect to Britt, second-degree depraved heart murder with respect to Aaron, and two handgun offenses in relation to that shooting.¹ On 6 April 2011, the court sentenced Lewis to an aggregate sentence of 80 years’ imprisonment, with 10 years suspended.²

Appellant noted a direct appeal. We affirmed the convictions. *Lewis v. State*, No. 515, Sept. Term, 2011 (filed unreported 23 February 2012). Thereafter, he was awarded post-conviction relief in the form of the right to take a second direct appeal, which he undertook. We affirmed again the convictions. *Lewis v. State*, No. 552, Sept. Term, 2021 (filed unreported 4 February 2022).

On 22 March 2023, appellant, acting *pro se*, filed a motion to correct an illegal

¹ The jury acquitted appellant of first-degree premeditated murder, and second-degree specific intent to kill murder with respect to Aaron. With respect to Britt, the jury acquitted appellant of attempted first-degree murder.

In accordance with the written instructions on the verdict sheet, and due to its guilty verdict for attempted second-degree murder, the jury did not enter a verdict on a count charging first-degree assault with respect to Britt.

² Specifically, the court imposed a sentence of 30 years for second-degree depraved heart murder; 20 years, with 10 years suspended, on each of the use of a handgun convictions, to run concurrently with one another, but consecutively to the other sentences; a consecutive term of 30 years for attempted second-degree murder; and probation upon release.

sentence. The court denied appellant’s motion in an opinion order entered on 23 June 2023. Appellant noted an appeal to this Court presenting the following question for our consideration, which we re-phrase and condense for clarity:³

1. Did the court err in denying appellant’s motion to correct an illegal sentence under the circumstances where the jury found appellant guilty of a greater offense and the trial court later purported to acquit appellant of a lesser-included offense?

For the reasons to be stated, we affirm the judgment of the circuit court.

BACKGROUND

Because the facts and circumstances of the offenses are immaterial to the question presented on this appeal, we need not recount them here. They have been set forth fully in the aforementioned opinions in appellant’s prior direct appeals of his convictions. The relevant procedural background, however, merits recounting here.

As noted earlier, with respect to victim Britt, the jury found appellant guilty of attempted second-degree murder. The verdict sheet instructed the jury that, if it found appellant guilty of that offense, to skip the next question on the jury sheet dealing with first-degree assault of Britt. The jury appeared to have followed that instruction as it did

³ Appellant worded his questions as follows:

1. Did the Circuit Court err in denying the Appellant’s Motion to Correct Illegal Sentence when the jury found the Appellant guilty of Attempted Second Degree Murder, and the trial judge then found the Appellant not guilty of the lesser-included offense of first degree assault?
2. Did the Circuit Court err in denying the Appellant’s Motion to Correct Illegal Sentence when the trial court’s verdict of not guilty of first degree assault was inconsistent with the jury’s verdict?

not enter a verdict on that count. With respect to the charges arising from the shooting of Britt, the verdict sheet read as follows:

1. How do you find the Defendant, Adrian Lewis, on the charge of Attempted First Degree Murder of Walter Corey Britt on April 10, 2010?

Not Guilty X Guilty _____

IF YOUR ANSWER TO QUESTION #1 IS GUILTY SKIP TO QUESTION NUMBER #4 OTHERWISE, PROCEED TO QUESTION #2

2. How do you find the Defendant, Adrian Lewis, on the charge of Attempted Second Degree Murder of Walter Corey Britt on April 10, 2010?

Not Guilty _____ Guilty X

IF YOUR ANSWER TO QUESTION #2 IS GUILTY SKIP TO QUESTION NUMBER #4 OTHERWISE, PROCEED TO QUESTION #3

3. How do you find the Defendant, Adrian Lewis on the charge of First Degree Assault of Walter Corey Britt on April 10, 2010?

Not Guilty _____ Guilty _____

ONLY ANSWER QUESTION #4 IF YOU HAVE FOUND THE DEFENDANT GUILTY IN EITHER QUESTION #1, #2, OR #3 ABOVE OTHERWISE, SKIP TO QUESTION #5.

4. How do you find the Defendant, Adrian Lewis, on the charge of Use of a Handgun in the Commission of a Crime of Violence against Walter Corey Britt on April 10, 2010?

Not Guilty _____ Guilty X

Several months later, at the outset of appellant’s sentencing hearing, the court began the proceedings by stating that it had been reminded that the jury did not enter a guilty or not guilty verdict on the charge of first-degree assault of Britt. The court stated then that it was “going to find the defendant not guilty based upon their findings in the other. It would

actually merge, if anything. So I’m just going to enter the verdict not guilty in deference to the jury’s determination in the other two counts.” Neither party asked the court to take this action.

DISCUSSION

Contention

Appellant argues that his sentence for attempted second-degree murder became illegal when he was acquitted by the court during the sentencing proceeding of the lesser-included offense of first-degree assault.⁴ According to appellant, the trial court was “not authorized to impose the sentence” on the greater offense because that conviction was “illegal” in light of the acquittal on the lesser-included offense which “nullified the conviction of attempted second-degree murder.”

Standard of Review

Appellant seeks relief under Maryland Rule 4-345(a), which provides that “[t]he court may correct an illegal sentence at any time.” An illegal sentence is defined as “one in which the illegality inheres in the sentence itself; *i.e.*, there has been either no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for

⁴ Offenses share the lesser-included/greater-included relationship when the two offenses are the “same” offense.

We consider whether two offenses are the “same” offense for purposes of double jeopardy and merger by asking whether each offense requires proof of a fact which the other does not. If so, the offenses are not the same. If only one offense requires proof of a fact which the other does not, the offenses are deemed the same. *Twigg v. State*, 447 Md. 1, 13 (2016). The greater offense is the offense with the greater number of elements, in this case, attempted second-degree murder. Neither party asserts that the offense of first-degree assault is not a lesser-included offense of attempted second-degree murder.

the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.” *Colvin v. State*, 450 Md. 718, 725 (2016) (cleaned up).

We review the denial of a motion to correct an illegal sentence under a non-deferential standard of review. *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

Analysis

The fundamental premise of appellant’s argument is that what the court did during the sentencing proceeding amounted to an “acquittal” within the meaning of the relevant law. We are unpersuaded that this is so.

First, in *Kendall v. State*, 429 Md. 476 (2012), after the trial judge denied a defense motion for judgment of acquittal on three charges against Kendall, the court terminated the prosecution of those charges. The court terminated the prosecution for a purely procedural reason – noncompliance with the rule on service of process. The trial court made clear that the termination was unrelated to guilt or innocence but, nevertheless, recorded its action on the docket sheet as “NG” – *i.e.*, “not guilty” – a label that denotes seemingly an acquittal. *Id.* at 480. When the State attempted to take an appeal of that decision, Kendall moved to dismiss it on double jeopardy grounds.

Under these circumstances, Maryland’s Supreme Court addressed the question of whether the protection against double jeopardy precluded the State from pursuing an appeal of that decision. The Supreme Court held that “a mis-labeled dismissal of charges for a purely procedural reason unrelated to guilt or innocence does not trigger the protection against double jeopardy.” *Id.* The Court noted that the “critical question is ‘whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of

some or all of the factual elements of the offense charged.” *Id.* at 486 (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977)). *Kendall* cited also to “numerous cases from other jurisdictions where state appellate courts . . . held that a trial court’s ‘judgment of acquittal’ or ‘not guilty’ was not in fact an acquittal for double jeopardy purposes because the trial court did not purport to be resolving any factual question relating to the offenses charged.” *Id.* at 490.

We discern no meaningful analytical distinction between what occurred in *Kendall* and what occurred in this case. It is clear from context that the sentencing court, in an attempt to clean-up the outstanding count on the verdict sheet for which there was no jury verdict imposed in accordance with the instructions given to the jury on that count, mislabelled its action as an entry of a not guilty verdict. That so-called “not guilty verdict” was not based on the evidence and “did not purport to be resolving any factual question relating to the offenses charged.” *Id.* at 490. Rather, it seems clear enough that the court entered “not guilty” “based upon [the jury’s] findings in the other [counts]” and “in deference to the jury’s determination in the other two counts.” Accordingly, the court did not render an actual verdict of not guilty of first-degree assault. Rather, the court disposed of the outstanding charge by recognizing that, if anything, the first-degree assault charge would merge. As a result, like in *Kendall*, “the label ‘acquittal’ does not fit the trial court’s action.” *Id.* at 487-88.

Second, in *Johnson v. State*, 452 Md. 702 (2017), the prosecution played accidentally portions of a recording that were supposed to have been redacted. *Id.* at 705-06. The defense moved for a mistrial. The court reserved a ruling. *Id.* at 706-07. Later that

day, the prosecution rested and defense counsel moved for a judgment of acquittal, which the court indicated it would consider “first thing” Monday morning. *Id.* at 708. “Immediately upon reassembling” on Monday morning, however, the court granted Johnson’s prior motion for a mistrial and discharged the jury, making no mention of the motion for judgment of acquittal. *Id.* at 708-09.

Weeks later, the court purported to strike the entry of the mistrial and entered a judgment of acquittal in favor of Johnson. *Id.* at 711. The State recharged Johnson. The charges were dismissed on double jeopardy grounds. *Id.* at 712-13. The State appealed that dismissal. *Id.* at 713. The Supreme Court decided that that trial court lacked the authority, under the Maryland Rules, to reserve ruling on a motion for judgment of acquittal. *Id.* at 718. In addition, the Supreme Court reasoned, in the alternative, that, even without the mistrial, the discharge of the jury foreclosed independently the trial court’s ability to acquit Johnson. *Id.* at 733-34. The Court noted that “[t]he acquittal was granted, thus, not in the context of a mere procedural irregularity but in the circumstance in which the judge was totally without authority to act.” *Id.* at 735.

We discern no meaningful analytical distinction between what occurred in *Johnson* and the present case. In neither case did the court retain the ability to enter an acquittal weeks after the jury was discharged. In this case, there is no legal authority that we are aware of that would permit a court to acquit a defendant weeks after the trial court received the jury’s verdict, polled and hearkened it, and the jury discharged.

As a result, we are persuaded that, not only did the court in this case lack the legal authority to enter a verdict, the court did not do so in fact. With appellant’s fundamental premises removed thusly, his contentions collapse of their own weight.

Conclusion

Discerning no error, we affirm the judgment of the circuit court denying appellant’s motion to correct an illegal sentence.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**