

Circuit Court for Howard County
Case No.: 13-K-13-053423

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1065

September Term, 2021

WALTER DERWIN POWERS

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 29, 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.

In 2014, a jury in the Circuit Court for Howard County found Walter Derwin Powers, appellant, guilty of armed robbery, robbery, first and second-degree assault, theft under \$1,000, use of a handgun in the commission of a felony or crime of violence, and illegal possession of a firearm. After merging certain offenses, the court sentenced Mr. Powers, as a subsequent offender of a crime of violence, to a mandatory 25 years without parole for armed robbery. The court imposed a consecutive sentence of five years without parole for use of a handgun and, consecutive thereto, five years without parole for illegal possession of a handgun—a total term of 35 years without parole. On direct appeal, Mr. Powers’ only argument was that the court had erred in failing to suppress a statement that he made to the police. This Court affirmed the judgment. *Powers v. State*, No. 1423, September Term, 2014 (filed July 31, 2015).

In 2021, Mr. Powers, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he maintained that his sentence was illegal because he was improperly sentenced to “three separate enhancements, for one incident.” He also asserted that the court had erred in basing his subsequent offender status on “two previous crimes that were 30 and 40 years old as predicates to enhance [his] sentence.” He maintained that, under the statute, the court could only consider one of his previous convictions and, therefore, he should have been sentenced as a second-time offender, not a third-time offender. Finally, he asserted that the court erred “by using invalid prior convictions that were not investigated to confirm the validity of the convictions.” In its opposition to the motion, the State responded that Mr. Powers received only one enhanced sentence for the

armed robbery and “the other two penalties [for the handgun offenses] were prescribed by statute and were not enhanced penalties.”

The circuit court denied Mr. Powers’ motion and he noted an appeal. We shall affirm the judgment because Mr. Powers’ sentences are legal.

Prior to trial, the State served notice of its intent to seek disposition under mandatory sentencing provisions and listed four previous convictions Mr. Powers had incurred: (1) a 1990 conviction for armed robbery in Prince George’s County for which he was sentenced to 20 years’ imprisonment; (2) a 1989 conviction for armed robbery in Washington, D.C. for which he was sentenced to 864 months; (3) a 1984 armed robbery conviction in Baltimore City for which he was sentenced to 18 months; and (4) a 1976 arrest and subsequent conviction for armed robbery (date of conviction and jurisdiction not indicated) for which he was sentenced to 15 years.

The transcript from the sentencing hearing reflects that, the State submitted to the court “two certified copies of convictions.” The prosecutor noted that, although its notice had listed four prior convictions, due to the “age on some of” them, he was “only able to secure certified copies” of two prior convictions—the 1984 conviction in Baltimore City for armed robbery and the 1990 conviction for armed robbery in Prince George’s County. Consequently, the State maintained that, for the armed robbery conviction, Mr. Powers was “mandatorily eligible for a sentence of 25 years without parole under Criminal Law Article 14-101.” The State further informed the court that Mr. Powers was subject to a 5-year mandatory minimum sentence without parole for the use of a handgun in the commission of a felony or crime of violence. Although the State noted that the court could run the

sentences for the handgun offenses concurrently with the armed robbery sentence, it asked that they be run consecutively. The defense did not dispute that Mr. Powers was subject to a mandatory 25 years without parole as a subsequent offender. Nor did the defense challenge the validity of the predicate convictions upon which the subsequent offender status was determined.

The court noted that Mr. Powers’ criminal record, which was also detailed in a pre-sentencing investigation report, was “arguably the worst [it had] ever seen short of a homicide.” Given his criminal history, his subsequent offender status, and the seriousness of the current crimes, the court informed Mr. Powers that it did not have “too much flexibility” in imposing a sentence. As noted, the court sentenced him to a total term of 35 years without parole, including a mandatory 25 years’ imprisonment for the armed robbery conviction.

On appeal, Mr. Powers maintains that the sentencing court based his subsequent offender status on “invalid prior convictions” because it “never investigated” them. He also asserts that the court erred in basing his subsequent offender status on “two convictions that occurred before October 1, 1994.”

We reject his contentions. First, the record reflects that the State submitted certified copies of the two prior convictions it relied upon to establish Mr. Powers’ subsequent offender status.¹ The State had no obligation to further “investigate” these convictions to

¹ The clerks of the respective circuit courts, Baltimore City and Prince George’s County, certified the documents.

confirm their validity. Moreover, the defense did not object to the admission of the certified documents or challenge the predicate convictions.

As to his second contention, Mr. Powers seems to argue that only one of the convictions that he had incurred prior to October 1, 1994 could serve as a predicate conviction to support his status as a third-time violent crime offender. We disagree. Criminal Law § 14-101, in pertinent part, provides:

(c)(1) Except as provided in subsection (f) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:

(i) has been convicted of a crime of violence on two prior separate occasions:

1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and

2. for which the convictions do not arise from a single incident; and

(ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

This subsection of the statute does not limit its application to convictions for crimes of violence committed on or after October 1, 1994. *See Williams v. State*, 220 Md. App. 27 (2014) (discussing the enhanced penalty statute for repeat offenders of violent crimes and noting that robbery and armed robbery have always been “crimes of violence” for purposes of enhanced punishment since the statute was enacted in 1975 and, thus, rejecting the appellant’s contention that his 1991 conviction for armed robbery could not serve as a predicate conviction in support of his status as a fourth time subsequent offender), *cert. denied*, 441 Md. 219 (2015).

Because the circuit court did not err in denying Mr. Powers’ motion to correct an illegal sentence, we affirm the judgment.

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