Circuit Court for Baltimore City
Case No. 111196047-62

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1093

September Term, 2019

LEON JONES

v.

STATE OF MARYLAND

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

JJ.

Opinion by Leahy, J.

Filed: April 27, 2021

In 2012, a jury in the Circuit Court for Baltimore City convicted Leon Jones, appellant, on eight counts of second-degree sexual offense against S., the teenage daughter of his former girlfriend.[1] Jones was sentenced to consecutive nine-year sentences on five counts with concurrent terms of nine years on three counts. Jones's total sentence was forty-five years with all but twenty years suspended, plus five years of supervised probation**.** This Court affirmed those judgments on direct appeal. *Jones v. State*, No. 1064, Sept. Term, 2012 (Md. App. Sept. 19, 2014).

In June 2019, Jones filed a "Motion to Correct an Illegal Sentence." The circuit court denied Jones's motion, finding that Jones's claims were without merit. Jones filed an appeal, *pro se*, and now challenges the denial of his motion. We reverse the circuit court's decision denying Jones's motion as to the conviction and sentence in Case No. 111196059, and affirm the court's order denying Jones's motion as to all remaining convictions and sentences.

BACKGROUND

The Facts Related to the Sexual Offense Charge

This Court's opinion on direct appeal summarized the trial record as follows:

> In 2011, Detective Milton Scott served with the Child Abuse Unit of the Baltimore City Police Department. In February 2011, the complainant, [S.], met with Detective Scott to report that she had been the victim of child abuse at the hands of [Jones] and her own mother, [P.], during the period from 2000 to 2002.[] [S.] was between the ages of fifteen to seventeen years old during that interval. An investigation ensued resulting in the prosecution of both [Jones] and [P.]. [P.] would eventually enter a guilty plea and testify against appellant.[]

[1] To preserve privacy, we refer to the victim and her mother by their first initials.

Jones, slip op. at 1-2. At the time of the incident, P. and S. lived in Baltimore City and P. worked at Imami Baptist Christian Church on West Pratt Street. Jones was the pastor who frequently visited P.'s home. On or around the beginning of 1999, Jones and P. began a sexual relationship that lasted until April 2002. At some point, the relationship became physically violent, but right at the beginning of the relationship, the sexual assault of S. began:

> The sexual contact with [S.] began in April, 2000, when [S.] was fifteen years old. She was summoned by [P.] to come to her mother's bedroom, where she saw [P.] performing fellatio on [Jones]. [S.] was standing close to the door and left almost immediately. After a couple of similar incidents, it was appellant who summoned [S.] to watch. On at least one occasion, he "nudged" [S.]'s head toward his chest, and placed her hand on his penis. Later, he "nudged" her head towards his penis.
>
> [P.] recalled that [Jones] "made [S.] watch [them] have sex," and "[t]hen told her she could leave." [P.] testified that she permitted [Jones] to subject her daughter to this "out of fear."
>
> [P.] recounted an instance when [Jones] "would call [S.] into the room, and then he would tell her what to do and she would do it." [P.] explained why there was no denying [Jones], and she described one scene when [Jones] ordered [S.] to enter the bedroom and watch:
>
> > [STATE:] Did there come another time when, did there come another time when he called her into the room?
> >
> > [P.:] Yeah.
> >
> > [STATE:] Can you tell the jury about that?
> >
> > [P.:] He called her into the room and he was sitting on the edge of the bed. He had no clothing on at all, and her told, he told me to show her how to perform oral sex on him. And she, you know, you just, you just, at that point you, there's no saying no. Just, I mean, because if you say no to him, it's, it's going to come back. It's going to come back on you in some kind of way. He's going to do something.

She described what appellant might do:

> [STATE:] M[s.] [P.], I will simply ask you why did you allow your daughter to be subjected to that?
>
> [P.:] Out of fear.
>
> [STATE:] I didn't hear you.
>
> [P.:] Out of fear.
>
> [STATE:] Out of fear of what?
>
> [P.:] Of what he might, [Jones], might possibly do outside of that.
>
> [STATE:] Explain what you mean by that.
>
> [P.:] What I mean by that is that the, you know, grabbing me by my throat or, or the grabbing me by my breast and my groin until I submitted or to punching me in my face. You know, it just, I mean, at that point in time, that was just minute in comparison to what his temper really was like. That was minute. So, you know, he's not the person that you see today. He's not that frail person. That was not who he was. He was much bigger than what you see him right now, and I was much smaller and so was my daughter. So it's not, like, you know, you just don't, you just don't say no to him. You just don't say no.

This incident would be repeated over the next several days in 2000. Soon, [S.] was asked to participate by "do[ing] the same thing that [her mother] was doing." [Jones] at another time prompted [S.] to kiss her mother's breast. [S.] complied with these requests, but emphasized that at no time did she want to perform these acts.[] [S.] recounted at least thirty similar encounters, involving masturbation or fellatio, and which occurred during the remainder of the year 2000, although the incidence of the activity began to decrease. [S.] said she managed at times to avoid contact with appellant by leaving the house or feigning sleep.

[S.] testified about when these incidents took place, and was specifically asked to differentiate specific time periods. She would describe various acts, typically "masturbation and oral sex," during various three-month periods starting in May 2000 up to and including March 31, 2002.

> She emphasized that she participated in these acts because she feared appellant. She referred to a rape that had taken place in May, 2000. [S.] was also intimidated by [Jones]'s size — she was "small" and [Jones] is over six feet tall, and she feared that she would be unable to protect herself.[2]

Jones, slip op. at 3-5. Eventually, after Jones began seeing someone else, the mother, P., severed her relationship with Jones and then had to obtain a protective order:

> Things had gotten to the point, well, he started seeing somebody else. After I realized that he started seeing somebody else and he found out who, that I knew, [Jones] found out that I knew who the person was and went to the person's house and what have you. After I stopped all that and I realized that this was a way to keep him away from us and I stopped having any contact with him, he then started showing up in front of my house. He would sit there and park there for hours. He'd show up at my job. So it got to the point where I had to take a protective order against him. I changed all the locks in my house, just try to keep him away from us. He would call. That's the only way I could try to keep him away from us.

> Although [P.] had sought a protective order, she did not do so in connection with any incidents involving [S.].

Jones, slip op. at 6.

Conviction and Sentencing in the Circuit Court for Baltimore City

Before the circuit court, Jones was charged with multiple counts of second-degree sexual offense,[3] with each count corresponding to a three-month period during the two years over which the abuse occurred. There were separate indictments filed for each

[2] Jones was not charged with rape in connection with this case.

[3] Under former Md. Code (2001), Art. 27, § 464A(a)(1), "a[] person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person . . . [b]y force or threat of force against the will and without the consent of the other person[.]"

individual three-month period. Each indictment charged Jones with one count of sexual offense in the second degree, one count of sexual offense in the third degree, one count of sexual offense in the fourth degree, and one count of assault in the second degree. On April 11, 2012, the circuit court dismissed all fourth-degree sex offense and second-degree assault charges on statute of limitations grounds.

A jury trial was held in April 2012 based on the remaining charges. Before the jury deliberated, the court provided the jurors with jury instructions. The jury instruction stated, in pertinent part, "[Jones] is charged with committing a sexual offense in the second and third degree. You must consider each charge separately and return a separate verdict as to each charge. The specific charges are listed on the verdict sheets and you must return a verdict as to each charge." At the conclusion of trial, the jury found Jones guilty of second-degree sexual offense for each specific time period reflected in the chart below.

The circuit court separated each of the charges when it posed the questions to the foreperson representing the jury. For example, the clerk asked questions including the proposed time period for each charge:

> THE CLERK: As to case number 111196053, Count I, as to the charge of sexual offense in the second degree, **July 1st, 2000 to September 30th, 2000,** how do you find the Defendant, Leon Jones, not guilty or guilty?
>
> [FOREPERSON]: Guilty.
>
> THE CLERK: As to case number 111196054, Count I, as to the charge of sexual offense in the second degree, **October [] lst, 2000 to December 3lst, 2000**, how do you find the Defendant, Leon Jones, not guilty or guilty?
>
> [FOREPERSON]: Guilty.

(Emphasis added). After receiving the responses from the foreperson, the circuit court conducted a poll of the jury. Each of the twelve jurors responded "yes" to the question "you've heard the verdict of your Foreperson. Is your verdict the same?"

Based on the jury's determination, Jones was convicted and sentenced as follows:

Case No.	**Charge**	**When Offense Occurred**	**Sentence**
111196052	2nd Degree Sex Offense	April 1, 2000 - June 30, 2000	9 years
111196053	2nd Degree Sex Offense	July 1, 2000 - September 30, 2000	9 years, consecutive
111196054	2nd Degree Sex Offense	October 1, 2000 – December 31, 2000	9 years, consecutive
111196055	2nd Degree Sex Offense	January 1, 2001 – March 31, 2001	9 years, consecutive
111196056	2nd Degree Sex Offense	April 1, 2001 – June 30, 2001	9 years, consecutive
111196057	2nd Degree Sex Offense	July 1, 2001 – September 30, 2001	9 years, concurrent
111196058	2nd Degree Sex Offense	October 1, 2001 – December 31, 2001	9 years, concurrent
111196059	2nd Degree Sex Offense	October 1, 2001 – December 31, 2001	9 years, concurrent

Total Sentence			**45 years, with all but 20 years suspended, and five years. supervised release.**

Although the indictments all reflected the correct dates, the State points out, commendably, that the verdict sheet mistakenly ascribed the same three-month time period in Case No. 111196059 that was ascribed to Case No. 111196058. In other words, rather than reflecting the period January 1, 2002 – March 31, 2002, as shown on the indictment, the verdict sheet repeats the October 1, 2000 – December 31, 2000 in Case No. 111196059. The transcript also reflects the clerk asked the foreperson the following:

> THE CLERK: As to case number 111196058, Count I, as to the charge of sexual offense in the second degree, October 1st, 2001 to December 3lst, 2001, how do you find the Defendant, Leon Jones, not guilty or guilty?
>
> [FOREPERSON]: Guilty.
>
> THE CLERK: As to case number 111196059, Count I, as to the charge of sexual offense in the second degree, October lst, 2001 to December 3lst, 2001, how do you find the Defendant, Leon Jones, not guilty or guilty?
>
> [FOREPERSON]: Guilty.

The same mistake was reiterated when the following questions were hearkened to the jury:

> THE CLERK: Harken to the verdict as it has been recorded in the State of Maryland versus Leon Jones, case number 111196052 in the Circuit Court for Baltimore City, Count I, as to the charge of sexual offense in the second degree April 1st, 2000 to June 30th, 2000, how do you find the Defendant, Leon Jones? Guilty.

As to case number 111196053, Count I, as to the charge of sexual offense in the second degree, July lst, 2000, to September 30th, 2000, how do you find the Defendant, Leon Jones? Guilty.

* * *

THE CLERK: As to case number 111196058, Count I, as to the charge of sexual offense in the second degree, October lst, 2001 to December 31st, 2001, how do you find the Defendant, Leon Jones? Guilty.

As to case number 111196059, Count I, as to the charge of sexual offense in the second degree, October lst, 2001 to December 31st, 2001, how do you find the Defendant, Leon Jones? Guilty. And so say you all.

THE JURY: Yes.

Jones's Challenge to the Sentencing Verdict

In June 2019, nearly seven years after sentencing, Jones moved to correct his sentences for second-degree sexual offense, claiming they were illegal when issued. In the *pro se* motion, Jones argued that the sentences rendered were illegal because they were all based on a "duplici[t]ous" charging document. He alleged, "the charging document is not simply duplici[t]ous, but is multiplicious [sic] because when a single set of facts is relied on to a single-act crime, only one sentence should be imposed." He further argued that sexual offense convictions should have been merged into "one count of 2nd Degree Sexual Offense." Jones did not challenge the fact that the verdict sheet ascribed the same three-month time period in Case No. 111196059 as in Case No. 111196058.

On June 28, 2019, the circuit court entered its order denying Jones's Motion to Correct an Illegal Sentence, finding that Jones's claims were without merit and that the "indictments charged separate and distinct date ranges for the offenses[.]" On July 31,

2019, Jones timely appealed to this Court within the extended time period granted by the court.[4]

DISCUSSION

Standards Governing Review of Motion to Correct Illegal Sentence

We review the denial of a motion to correct an allegedly illegal sentence de novo. *Bailey v. State*, 464 Md. 685, 696 (2019). Maryland Rule 4-345(a) provides that "[t]he court may correct an illegal sentence at any time." As the Court of Appeals has emphasized, this rule "is intended to correct sentences that are 'inherently illegal', not just

[4] On July 31, 2019, more than thirty days after entry of the court's judgment, Jones applied for leave to appeal to this Court. On August 6, 2019, the circuit court entered a show cause order denoting that "the notice of appeal [was] not [] filed within the time prescribed by [Maryland] Rules 8-202 or 8-204." The court further requested that Jones "show cause ***in writing*** within fifteen (15) days after service of this notice why the notice of appeal should not be stricken."

On August 28, 2019, within the fifteen-day period, Jones filed a Motion for Delay Not Warranting Dismissal asserting that his appeal to the circuit court was filed before the deadline pursuant to Md. Rule 1-321. Jones argued that he filled his "Application for Leave to Appeal" timely in the "Roxbury Correctional Institution's mailbox." Jones further asserted that:

> The Court of Appeals of Maryland adopts the prison "mailbox rule" in Maryland for unrepresented prisoners. The prisoner is deemed to have filed at the moment the prisoner formally delivers it to prison authorities for forwarding to the circuit court. This result not only is reasonably grounded in the language of Md. Rule 1-322[], it also is equitable in light of the unique circumstances faced by prisoners unaided by counsel.

On October 30, 2019 the circuit court issued an order granting "permission for a belated application for leave to appeal" pursuant to Md. Rule 1-321. Jones was given thirty days from October 30 to file. The State notes that it "does not contest the timeliness of Jones's notice of appeal."

'merely the product of procedural error.'" *Bailey*, 464 Md. at 696 (citation omitted). The Court of Appeals has instructed that,

> [Maryland courts have] consistently defined this category of 'illegal sentence' as limited to those situations in which the illegality inheres in the sentence itself; i.e., there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.
>
> The distinction between those sentences that are "illegal" in the commonly understood sense, subject to ordinary review and procedural limitations, and those that are "inherently" illegal, subject to correction "at any time" under Rule 4-345(a), has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings. As aptly stated by Judge Charles E. Moylan, Jr., speaking for the Court of Special Appeals in . . . *Carlini v. State*, 215 Md. App. 415, 419-20 (2013), '[t]here are countless illegal sentences in the simple sense . . . [and] [t]here are, by contrast, illegal sentences in the pluperfect sense . . . there is a critically dispositive difference between a procedurally illegal sentencing process and an inherently illegal sentence itself,' and 'only the latter [ ] is grist for the mill of Maryland Rule 4–345(a)[.]'

Bryant v. State, 436 Md. 653, 662-64 (2014) (citations omitted). This narrow review, of only inherently illegal sentences, is intended to prevent the improper use of a motion to correct an illegal sentence as "an alternative method of obtaining belated appellate review of the proceedings[.]" *State v. Wilkins*, 393 Md. 269, 273 (2006).

Jones's Challenge

There is no dispute that the sentences imposed on Jones were within the statutorily permissible range. As detailed above, Jones was convicted and sentenced on eight counts

of second-degree sex offense. Under former Md. Code (2001), Art. 27, § 464A(b),[5] the maximum sentence for each conviction was twenty years. Each of Jones's sentences was within that range. Jones received a nine-year sentence for each count; five of those sentences are to be served consecutively and three are to be served concurrently. As imposed, these sentences add up to 45 years, with all but twenty years suspended.

Nevertheless, Jones asserts a number of alternative arguments and authorities in challenging his sentences. Ultimately, he contends, "[t]he sexual offense convictions should have merged into one (1) count of 2nd Degree Sexual Offense and **no separate sentence** should have been imposed." We address his arguments, as we understand them in the context of the record and the law.

Jones does not address the fact that the verdict sheet ascribed the same three-month time period in Case No. 111196059 that was ascribed to Case No. 111196058. Nevertheless, we will consider the issue *sua sponte* pursuant to Md. Rule 4-345(a) which provides that "[t]he court may correct an illegal sentence at any time." *See Jones v. State,* 384 Md. 669 (2005) (stating "[a]s we have oftentimes stated, a sentence may be corrected even on appeal.").

Merger Under Blockburger and the Required Evidence Test

Jones argues that, based on the jury instructions, the court should have utilized the "merger doctrine" established by *Blockburger*, because the alleged acts constituted a

[5] This statute was repealed and re-codified in 2002 as former Md. Code (2002), § 3-304 of the Criminal Law Article, which in turn was repealed and re-codified in 2017 as Md. Code (2002, 2012 Repl. Vol., 2017 Cum. Supp.), § 3-306 of the Criminal Law Article.

"continuing offense[.]" *See Blockburger v. U.S.*, 284 U.S. 299 (1932). Jones also asserts that the Court should utilize "the test for determining the identity of offenses" under "the required evidence test." The State disagrees. The State contends that each of Jones's sentences were "lawful" and that a judge has the right to impose consecutive sentences without violating the law.

To be sure, a claim that a defendant received multiple sentences for the same criminal act is a valid ground to seek merger of sentences under Rule 4-345(a). *Randall Book Corp. v. State*, 316 Md. 315, 322 (1989); *Britton v. State*, 201 Md. App. 589, 597 (2011). The guarantee against double jeopardy in the Fifth Amendment and Maryland common law prohibits a defendant from being "'in jeopardy of being twice convicted and punished for the same crime.'" *State v. Griffiths*, 338 Md. 485, 489 (1995) (quoting *Gianiny v. State*, 320 Md. 337, 347 (1990)).

The Supreme Court explained that "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Blockburger*, 284 U.S. at 304 (1932).

Recently, the Court of Appeals reinforced the principles requiring merger under Maryland law:

> Merger is the common law principle that derives from the protections afforded by the Double Jeopardy Clause. It is the mechanism used to 'protect[ ] a convicted defendant from multiple punishments for the same offense.' **This Court has required merger '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.' <u>Both elements must be satisfied before merger is required</u>.**

State v. Frazier 469 Md. 627, 641 (2020) (citing *Brooks v. State*, 439 Md. 698, 737 (2014)) (emphasis added).

Here, with the exception of the sentence in Case No. 111196059, we do not get past the first step in the merger analysis because Jones's convictions are not "based on the same act or acts." *See Britton*, 201 Md. App. 589, 599, 602 (2011); *Frazier*, 496 Md. at 641. The State filed separate indictments for each consecutive three-month period. Each of the indictments represent different intervals over the twenty-four months that Jones committed sexual offenses against S. In each distinct time period, the State charged Jones with second-degree sexual offense committed "by force, or the threat of force, without the consent of the other[.]" Maryland Code (2002, 2012 Repl. Vol.) Criminal Law Article ("CL") § 3-306(a)(1). Those indictments were sufficient to charge Jones with separate counts of second-degree sexual offense. *See* CL § 3-317(a) ("An indictment . . . for a crime under . . . [§ 3-306 Second Degree Sexual Offense] . . . is sufficient if it substantially states: '(name of defendant) on (date) in (county) committed a . . . sexual offense on (name of victim) in violation of (section violated)'"). Furthermore, there was *no ambiguity* regarding what crimes the jury convicted Jones of in cases No. 111196052 through No.111196058.

Even though the State presented evidence that Jones may have committed more than one second-degree sexual offense during some or all of the three-month periods specified in the indictments, Jones was charged with and convicted of *only one* count of second-

degree sexual offense for each of those distinct periods. Consequently, each conviction represents proof of a distinct crime that was committed at a different time than the other six second-degree sexual offenses for which Jones was convicted and subsequently sentenced.

Moreover, Jones was not convicted of any modality of sexual offense involving a minor, such as sexual abuse of a minor in violation of CL § 3-602(b)(2), continuing sexual abuse of a minor in violation of CL § 3-315, or sexual abuse of a person under 14 years of age in violation of CL § 3-306(a)(3) (former Art. 27, § 464A(3)). Therefore, Jones's seven convictions correspond to separate and distinct acts which do not require merger. Consequently, merger is not required because Jones's convictions were not based on the same act or acts because they correspond to separate and distinct crimes committed on separate and distinct dates.

As discussed below, the reason the conviction and sentence in Case No. 111196059 must be vacated is because the verdict sheet mistakenly ascribed the same three-month time period as Case No. 111196058. The clerk also repeated this mistake when it asked the foreperson their verdict and when the entire jury was polled.

Duplicitous Charging Documents

Jones argues that "[t]he charging document [was] not simply duplicitous[] but is multiplicitous [sic] when a single set of facts is relied on to a single-act crime; 'only' one sentence should be imposed." Invoking much of the Court of Appeals's discussion in *Cooksey v. State*, 359 Md. 1 (2000), Jones contends, "[t]he prohibition against duplicity in both civil and criminal cases began as and remains a rule of pleading." *Id.* at 8. The State

argues that Jones's argument fails, and that in the alternative, because the claim was not raised prior to trial, it is waived.

In *Cooksey*, the Court of Appeals discussed the "Rule Against Duplicitous Pleading[.]" *Cooksey*, 359 Md. at 7. The Court of Appeals explained that the prohibition against duplicity exists in both civil and criminal cases. *Id.* at 8. In reference to criminal cases, the Court highlighted that Md. Rule 4–203(a) governs. *Id.* The Rule states, in relevant part:

> (a) Multiple Offenses. Two or more offenses, whether felonies or misdemeanors or any combination thereof, may be charged in separate counts of the same charging document if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Md. Rule 4-203(a). The Court instructed that although the prohibition against duplicity is a procedural rule, its application in criminal cases is substantive because it serves to protect several basic rights that may be jeopardized by the charging of separate offenses *in a single count*. *Id*. at 8. The Court of Appeals in *Cooksey* also reasoned that a mere pleading defect does not render the sentence imposed on that charge "illegal" for purposes of Md. Rule 4-345(a).

Here, each indictment contained a separately numbered count charging a single second-degree sexual offense that was committed during a specific three-month period. There is nothing duplicitous about the indictments. Even if there were duplicity in any of the indictments, it would not render the sentences imposed "illegal." Md. Rule 4-345(a). Because duplicity is a pleading defect that is waived if not raised before trial, Rule 4-345(a)

does not provide a remedy for that "procedural irregularity or trial court error prior to the imposition of sentence[.]" *See* Md. Rule 4-252(a)(2) (among the mandatory motions that "are waived" if not raised in circuit court are those challenging "[a] defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense"); *Shannon v. State*, 468 Md. 322, 337 n.13 (2020) ("The failure to file a timely motion challenging such a defect waives such a challenge.").

Consecutive Sentences and Impermissible Sentencing Considerations

Jones also contends that the sentencing court's "impositions of concurrent and 'consecutive' sentences were improper . . . based on the prohibition against cumulative punishments and prohibition against 'double jeopardy.'" In support of his argument, Jones maintains that he was charged under a "continuing offense theory," as discussed in *Cooksey*. Jones further asserts that he "left the courtroom with an[] increased sentence . . . in violation of Md. Rules 4-345(a), 4-345(b) and 4-345(c)," and quotes sources discussing "impermissible considerations" and "the appearance or inference of bias" in sentencing.

The State avers that Jones did not receive cumulative punishments or multiple punishments for the same offense. Rather, Jones was charged with eight separate sex offenses occurring within distinct three-month periods.

We agree with the State. In contrast to *Cooksey*, Jones was not charged under a continuing offense theory. Instead, each of his eight convictions corresponded to a separate crime committed during a distinct, non-overlapping time period. Consequently, each of Jones's sentences, except in Case No. 111196059, constituted a separate punishment for a separate crime. Additionally, Jones presents no supporting argument or record citation, he

is not entitled to appellate relief based on this contention. *See, e.g., Klauenberg v. State*, 355 Md. 528, 552 (1999) ("arguments not presented in a brief or presented with particularity will not be considered on appeal"); *Reiger v. State*, 170 Md. App. 693, 700 (2006) ("a claim that 'a sentencing judge was motivated by impermissible considerations . . . does not render the sentence illegal within the meaning of Rule 4-345'") (quoting *Randall Book Corp. v. State*, 316 Md. 315, 322-23 (1989)). Therefore, we find, contrary to Jones's contentions, the sentencing court's "impositions of concurrent and 'consecutive' sentences" were not improper and there was no evidence presented before this Court that shows "the appearance or inference of bias."

Rule of Lenity and Fundamental Fairness

Finally, Jones invokes the rule of lenity and concepts of "fundamental fairness" as grounds that he was not informed "clearly [of] what debt he must pay to society for his transgressions." The rule of lenity is a principle of statutory construction which applies only when "there is no indication that the legislature intended multiple punishments for the same act." *McGrath v. State*, 356 Md. 20, 25 (1999) (citing *Miles v. State*, 349 Md. 215, 227 (1998)). Here, as we have explained, there is no multiple punishment and no uncertainty, because there was only one sentence for each separate criminal act for which Jones was convicted.

The evidence established beyond a reasonable doubt that for two years, Jones sexually preyed on the teenage daughter of a parishioner, co-worker, and paramour. For each consecutive three-month period during which Jones was committing those second-degree sexual offenses – a total of eight intervals over the twenty-four-months Jones

committed those crimes – the State charged Jones with one count of second-degree sexual offense. Seven sentences of nine years, one for each conviction, with twenty of those years to be served in the Division of Corrections, is well within the range of permissible punishments authorized by law. *See* former Art. 27, § 464A(b) (felony conviction subject to imprisonment up to 20 years).

Case No. 111196059

What is considered an illegal sentence for purposes of Md. Rule 4-345(a) depends on whether the flawed sentence, in question, derives from a "procedurally illegal sentencing process" or whether the sentence was an "inherently illegal sentence itself." *Carlini v. State*, 215 Md. App. 415, 419-20 (2013). Only inherently illegal sentences are those that may be corrected by a court at any time. *Id.* at 420. "Although an illegal sentence may, of course, be challenged on direct appeal, some illegal sentences (as distinguished from all) may be challenged long after the time for noting an appeal has run out and notwithstanding the fact that the defendant 1) failed to object to the sentence at the trial level, 2) purportedly consented to the sentence, or 3) failed to challenge the sentence by way of direct appeal." *Id.* at 423. There are generally two types of inherently illegal sentences: (1) a sentence that exceeds the sentencing cap, and (2) a sentence that should have never been imposed. *Id.* at 432-34. In the instant case, the second type of inherently illegal sentence is present.

The Court of Appeals's decision in *Jones v. State*, 384 Md. 669, 675-76 (2005) is instructive. There, the Court held that the defendant should never have been sentenced on one of four apparent convictions where, with respect to one conviction, the verdict

(although recorded on the verdict sheet) was not orally announced in court when the clerk asked for the jury's verdict and also again when the jury was polled. *Id.* The trial court then excused the jury, and without acknowledging the discrepancy between the verdict sheet and the counts submitted orally by the jury, the court sentenced the defendant on all four counts. *Id.* at 677. Upon review, the Court of Appeals "conclude[d] a sentence is illegal if based upon a verdict of guilt that is not orally announced in open court in order to permit the jury to be polled and hearkened to the verdict." *Id.* at 672. Based on this conclusion the Court held "Jones's sentence of five years imprisonment for the possession of a firearm by a person previously convicted of a felony or crime of violence is an illegal sentence" "because the jury was not polled and hearkened to that Count in absence of its oral announcement, the verdict of guilt cannot stand and any sentence apportioned thereto must be vacated." *Id.* at 686.

Here, the conviction and sentence in Case No. 111196059 must be vacated because the verdict sheet mistakenly ascribed the same three-month time period as Case No. 111196058. The clerk also repeated this mistake when it asked the foreperson their verdict and when the entire jury was polled. Accordingly, based on the record, the jury convicted Jones in Case No. 111196059 for the same time period—and therefore, the same act(s)—for which he was convicted in Case No. 111196058. Because "the jury was not polled and hearkened to" Case No. 111196059, "the verdict of guilt cannot stand and any sentence apportioned thereto must be vacated." *Id.* at 686.

Conclusion

Because the sentence issued in Case No. 111196059 was inherently illegal as a matter of law, we reverse the circuit court's decision denying Jones's motion to correct illegal sentence, in part, and remand the case so that the conviction and sentence in Case No. 111196059 can be vacated. We affirm the court's order denying the motion in Case No. 111196052 through No. 111196058.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AS TO CASE NO. 111196059, AND AFFIRMED AS TO ALL REMAINING CONVICTIONS AND SENTENCES. CASE REMANDED TO CIRCUIT COURT WITH DIRECTIONS TO VACATE THE CONVICTION AND SENTENCE IN CASE NO. 111196059. COSTS TO BE PAID TWO–THIRDS BY APPELLANT AND ONE–THIRD BY MAYOR AND CITY COUNCIL OF BALTIMORE.