

Circuit Court for Baltimore City  
Case Nos. 105021018; 105021021;  
105021024; 105021027

UNREPORTED\*

IN THE APPELLATE COURT\*\*

OF MARYLAND

No. 1287

September Term, 2022

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JASON SINCLAIR

v.

STATE OF MARYLAND

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Ripken,  
Shaw,  
Raker, Irma S.,  
(Senior Judge, Specially Assigned),

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Opinion by Raker, J.

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Filed: August 8, 2023

\* 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 Rule 1-104(a)(2)(B).

\*\* 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.

I.

In this appeal from the Circuit Court for Baltimore City’s denial of appellant’s motion to Reopen his post-conviction relief petition in the Interests of Justice, appellant asks this Court to vacate his conviction of 2006 on the grounds that the circuit court lacked fundamental jurisdiction to try and sentence him when he was charged with underlying felony first-degree assault, a crime not cognizable today in Maryland. Following a direct appeal, post-conviction petition and leave to appeal, all which were denied, appellant filed a Motion to Reopen in the Interests of Justice on February 4, 2022, which was denied without a hearing. This Court granted appellants’ application for leave to appeal from the denial of that motion, presenting the following questions for our review:

“1. Did the trial court lack fundamental jurisdiction to try and sentence Mr. Sinclair for a non-cognizable offense?

2. Because second-degree felony murder, when the underlying felony is first-degree assault, is not a cognizable crime in Maryland, is Mr. Sinclair’s conviction and sentence for that offense illegal and thus, must be vacated?”

We shall hold that the circuit court did not lack jurisdiction to try appellant for second-degree felony murder and that the conviction and sentence are not illegal. Accordingly, we shall affirm.

II.

This case, which began in 2005, has a long procedural history. In January 2005, appellant was indicted by the Grand Jury for Baltimore City with first-degree murder, second-degree murder, conspiracy to commit robbery with a deadly weapon, conspiracy to commit robbery, use

of a handgun in the commission of a crime of violence, wearing and carrying a handgun, robbery, and theft. Appellant proceeded to trial by jury before the Circuit Court for Baltimore City on August 31, 2006. The jury convicted appellant on the charges of second-degree felony murder, conspiracy to commit robbery with a deadly weapon, and conspiracy to commit robbery. On November 22, 2006, the court sentenced appellant to a term of incarceration of 30 years for second-degree felony murder, and 20 years for conspiracy to commit robbery with a deadly weapon, to be served consecutively. Following his 2006 conviction, appellant filed a timely appeal. The Court of Special Appeals, now the Appellate Court of Maryland, affirmed his conviction in 2010. In 2016, appellant filed a Petition for Post-Conviction Relief. In 2017, appellant's petition was denied. Subsequently, appellant filed an Application for Leave to Appeal, which was denied by the Appellate Court of Maryland on May 31, 2018. On February 4, 2022, appellant filed a Motion to Reopen in the Interests of Justice pursuant to Maryland Rule 4-331.

In his petition to Reopen in the Interests of Justice, appellant asserted that the circuit court lacked fundamental jurisdiction to try and sentence him for second-degree felony murder based upon the subsequent change in Maryland law making, in his view, his conviction and sentence illegal and, hence, must be vacated. On March 22, 2022, the circuit court denied appellant's motion to reopen, concluding it would not be in the interests of justice to reopen the proceedings, ruling as follows:

“The court has considered the Petitioner's Motion to Reopen Postconviction. It would not be in the interest of justice to reopen the postconviction petition on any of the grounds presented. Accordingly, it is this 2<sup>nd</sup> day of March 2022, hereby ORDERED that:

The Motion to Reopen Postconviction is DENIED.”

Appellant noted a timely appeal from the denial of his motion to reopen.

### III.

The underlying facts of appellant's conviction are as follows. On October 31, 2004, appellant met with Albert Myers, John Carlton, and Donald Ford to consummate a drug deal. All four rode together in John Carlton's vehicle, with appellant and Donald Ford in the backseat. Albert Myers intended to purchase cocaine from Donald Ford and then give some to John Carlton in exchange for a tattoo. After Mr. Myers paid Ford for the cocaine, Mr. Ford began to demand repayment from Mr. Carlton for an earlier debt. During the argument, appellant pulled out a gun and demanded that Mr. Ford repay him. A scuffle ensued and at some point, while the gun was in appellant's possession, a shot was fired which killed Mr. Ford.

Appellant was convicted of second-degree felony murder, conspiracy to commit robbery with a deadly weapon and conspiracy to commit robbery. The underlying felony to support the felony murder conviction was assault in the first degree.

### IV.

The underlying issue in this case is the "jurisdiction" of the circuit court to try, convict and sentence appellant in 2006 for the offense of second-degree felony murder based upon the predicate felony of first-degree assault, and ultimately, whether the circuit court erred in denying appellant's motion to reopen his postconviction proceedings. As context for appellant's argument, we look first at two cases: *Roary v. State*, 385 Md. 217 (2005) and *State v. Jones*, 451 Md. 680

(2017). Those two cases addressed the crime of common law felony murder and whether first-degree assault qualified as an underlying predicate felony.

At common law, homicide is the killing of a human being by another human being; *criminal* homicide is homicide when committed without lawful justification, excuse, or mitigation. At common law, homicide committed in the perpetration of a felony is murder, whether death was intended or not. This doctrine, known as the felony murder doctrine, is recognized in Maryland. By statute, certain enumerated felonies have been elevated from second-degree murder to first-degree murder. Md. Code Ann., Crim. Law § 2-201. In *Fisher v. State*, 367 Md. 218 (2001), the Supreme Court of Maryland limited the common law felony murder doctrine to those felonies considered to be inherently dangerous to human life.

In *Roary v. State*, the Maryland Supreme Court held “that an assault in the first-degree, when committed in a manner inherently dangerous to human life, as in this case, may be a predicate felony for second-degree felony-murder.” *Roary*, 385 Md. at 236. In *State v. Jones*, 451 Md. 680, 685 (2017), the Maryland Supreme Court overruled *Roary*, holding that first-degree assault may not serve as a predicate for second-degree felony murder when that assault is not collateral to the lethal act. The Court explained as follows:

“With these considerations in mind, we find good and sufficient cause in favor of overruling *Roary v. State*, which held that first-degree assault was a viable predicate for second-degree felony murder. *Roary*, 385 Md. at 222, 867 A.2d at 1098. The holding of *Roary v. State*, that assault in the first-degree may serve as a predicate for second-degree felony murder is wrong in that it expands unwisely felony murder and elevates practically all shooting deaths in Maryland to second-degree felony murder, thereby effectively eliminating the crime of manslaughter. The instrumentality of death in *Roary* was a boulder. *The instrumentality here is a gun*. Hence, we overrule it before that case creates more undesirable consequences for the criminal law in Maryland,

as pointed out in the dissent in *Roary*. *Id.* at 255, 867 A.2d at 1117 (Raker, J., dissent). We join the large majority of our sister states and conclude that the better and more legally sound approach is to adopt the ‘merger rule’ and require that for second-degree felony murder, the inherently dangerous predicate felony must be one that is independent of the homicide.”

*Id.* at 706.

Significantly, however, the Supreme Court in *Jones* stated expressly that the “rule of law we announce today in this case regarding the use of willful injury as a predicate felony for felony-murder purposes shall be prospective only and applicable to this case and those cases not resolved finally on direct appeal.” *Id.* at 696.

#### V.

Appellant argues that the trial court lacked fundamental subject matter jurisdiction to try and sentence him because the second-degree felony murder conviction was based upon the underlying felony of first-degree assault, a crime no longer cognizable in Maryland. He recognizes that the Maryland Supreme Court, in overruling *Roary*, stated that the decision was prospective only, but argues that because subject matter jurisdiction may be challenged at any time, that “when the jurisdictional deficiency comes to light in either an appeal or a collateral attack on the judgment, ought to be declared so.” He also concedes that appellant’s motion was not filed while any direct appeal was pending.

Appellant argues also that the sentence is illegal and should be vacated, asserting that a court may correct an illegal sentence at any time. Appellant states that because the jury convicted

him of second-degree felony murder based on the first-degree assault charge, the sentence is illegal, and in the interest of justice, it should be vacated.

The State responds as follows. The motion to reopen was denied properly because the holding in *Jones* was prospective only and in no way applied to appellant’s conviction and sentence. In addition, the State argues waiver, explaining that appellant’s postconviction proceedings were pending when *Jones* was filed, and appellant failed to raise this issue. His failure to raise this issue does not fall within any exception or excuse under the Uniform Post Conviction Procedure Act Maryland Code Criminal Procedure §7-101 (2022)<sup>1</sup>. On the merits, the State argues that appellant’s conviction and sentence are not illegal by the Supreme Court’s decision in *Jones*.

## VI.

The word “jurisdiction” has different meanings, depending upon the context in which it is used. Often, when referring to a judicial action, the term refers to a concept noted as “fundamental jurisdiction” of a court, *i.e.*, “the power residing in [a] court to determine judicially a given action, controversy, or question presented to it for decision.” *Fooks’ Ex’rs v. Ghingher*, 172 Md. 612, 621, (1937) cert. denied subnom, *Phillips v. Ghingher*, 302 U.S. 726 (1937); *accord*, *Urciolo v. State*, 272 Md. 607, 616 (1974) (“the power to inquire into the facts, to apply the law and to declare the punishment for an offense”); *Moore v. McAllister*, 216 Md. 497, 507 (1958) (“power of a court

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<sup>1</sup> When referencing the Uniform Post Conviction Procedure Act as a whole we will use UPPA, when referencing specific sections, we will use C.P. § 7-101.

to render a valid decree”). Fundamental jurisdiction of a court means the “power to act with regard to a subject matter which ‘is conferred by the sovereign authority which organizes the court.’” *Pulley v. State*, 287 Md. 406, 416 (1980). “If by that law which defines the authority of the court, a judicial body is given the power to render a judgment over that class of cases within which a particular one falls, then its action cannot be assailed for want of subject matter jurisdiction.” *First Federated Com. Tr. v. Comm'r.*, 272 Md. 329, 335 (1974). Any action by a court lacking “fundamental jurisdiction” is void; it is a nullity. *See, e.g., Fisher, Admr. v. Demarr*, 226 Md. 509, 515 (1961); *Fooks’ Executor* at 619; *Pulley* at 415-416.

“Subject matter jurisdiction refers to whether the court is the proper forum to entertain cases of a particular class” and is the statutory or constitutional power of a court to hear and decide the merits of a particular class of cases. *Pulley*, 287 Md. at 415. A court’s judgment may be deemed void for lack of subject matter jurisdiction only if the case does not fall within a class of cases in which that court was authorized to act upon. *See First Federated Com. Tr.* 272 Md. at 334. A claim that the court lacked subject matter jurisdiction can be raised at any time. *See Gardner v. Bd. of Cnty. Comm’rs*, 320 Md. 63, 71 (1990).

The Maryland Constitution authorizes circuit courts of this State, as courts of original jurisdiction, to hear and decide all cases at law and in equity other than those reserved by specific laws for the exclusive jurisdiction of some other forum. *See Md. Const. Art. IV, §§ 1, 19, 20.* The circuit courts of Maryland are courts of original jurisdiction, and this criminal case falls within the scope of the circuit court’s fundamental jurisdiction and subject matter jurisdiction.



Appellant's argument fails because at the time of his trial, conviction, and sentencing, the law in Maryland was clear. First-degree assault was a predicate for common law felony murder. *See Roary v. State. State v. Jones*, issued by the Supreme Court of Maryland over 10 years later, to be applied prospectively only, held that first-degree assault *prospectively* may no longer serve as a predicate for felony murder. *Jones*, 279 Md. at 708. *Jones* could not deprive the circuit court of fundamental, subject matter jurisdiction to convict and sentence appellant for an offense that was clearly a crime at the time. The circuit court had the power to determine judicially the criminal action presented to it for decision.

We address appellant's argument that his second-degree felony murder conviction is illegal because it was based on a first-degree assault, which was disallowed prospectively by *State v. Jones*, 451 Md. 680 (2017). Appellant's motion to Reopen in the Interests of Justice was denied by the Circuit Court for Baltimore City. We review a denial of a motion to reopen for an abuse of discretion. *Gray v. State*, 388 Md. 366, 383 (2005). To ascertain whether the trial court abused its discretion, we analyze the appropriate Maryland postconviction law.

Before reaching the merits of appellant's contention, we address the State's argument that his argument is waived. The State argues that appellant's argument is waived because his postconviction petition was pending before the circuit court when the Maryland Supreme Court overruled *Roary v. State*. Appellant did not raise the change of law issue during that proceeding or in his application for leave to appeal following the circuit court's denial of his petition.

The Uniform Post Conviction Procedure Act Maryland Code Criminal Procedure §7-101 (2022) recognizes that an allegation of error may be waived and is not cognizable unless the

petitioner establishes special circumstances existed to excuse the waiver. C.P. § 7-106(b). Under the statute, an allegation of error is waived “when a petitioner could have made but intelligently and knowingly failed to make the allegation” in a prior petition under the statute or in any other proceedings that the petitioner began. C.P. § 7-106(b)(1)(i). Petitioner shoulders the burden of proving special circumstances, C.P. § 7-106(b)(1)(i), and there is a rebuttable presumption that the petitioner intelligently and knowingly failed to make the allegation if he could have made it in a prior proceeding but did not raise it. C.P. § 7-106(b)(2). Appellant did not raise the change in law while in his post-conviction petition. Consequently, this argument is waived.

Assuming we were to reach the merits of appellant’s argument, we would hold that the circuit court did not abuse its discretion. Appellant filed his motion to reopen post-conviction proceedings pursuant to C.P. § 7-101. Pursuant to the statute, a person may file one petition only for postconviction relief. C.P. § 7-103(a). A petition may not be filed more than 10 years after sentence is imposed. C.P. § 7-103(b). The rules provide that an amendment to a petition for postconviction relief “shall be freely allowed in order to do substantial justice.” Md. Rule 4-402(c). A court may reopen a postconviction proceeding that was concluded previously if the court determines that the action is in the interest of justice. C.P. § 7-104.

Highly relevant here, the UPPA addresses potential changes in the law. The Act provides as follows:

“(c)(1) This subsection applies after a decision on the merits of an allegation or error or after a proceeding in which an allegation of error may have been waived.

(2) Notwithstanding any other provision of this title, an allegation of error may not be considered to have been finally litigated or waived under

this title if a court whose decisions are binding on the lower courts of the State holds that:

(i) the Constitution of the United States or the Maryland Constitution imposes on State criminal proceedings a procedural or substantive standard not previously recognized; and

(ii) the standard is intended to be applied retrospectively and would thereby affect the validity of the petitioner’s conviction or sentence.”

C.P. § 7-106(c).

We reiterate that appellant’s principal basis for the motion was that the Supreme Court of Maryland changed the law regarding the predicate felony for second-degree murder (approximately 10 years after appellant’s conviction). The *Jones* court held that it “shall be prospective only and applicable to [Jones’s] case and those cases not resolved finally on direct appeal.” *Jones*, 451 Md. at 696. When appellant was tried, convicted and sentenced, the law as explicated by *Roary* applied. When the Supreme Court issued *Jones*, appellant’s convictions had long since become final (around 2010). Maryland law is clear that a change in the law must be intended to apply retroactively or including those cases currently on appeal to meet the “interest of justice” standard for reopening a petition for postconviction relief. *See State v. Waine*, 444 Md. 692 (2015); C.P. § 7-106(c)(2).

Rule 4-345(a) addresses illegal sentences. That Rule is limited to instances where “there either has been no conviction warranting any sentence for the particular offense or the sentences is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.” *Chaney v. State*, 397 Md. 460, 466 (2007). In this instance, we have a lawful conviction derived from a jury of appellant’s peers, and the sentence

was permitted. Moreover, the Supreme Court was clear that *Jones* should be applied prospectively. Consequently, appellant's sentence is not illegal.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1287s22cn.pdf>