

Circuit Court for Dorchester County  
Case No. 09-K-08-013040

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1329

September Term, 2022

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JACQUON LAKEEM COLLINS

v.

STATE OF MARYLAND

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Wells, C.J.,  
Shaw,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: February 27, 2023

\*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.

\*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 a 2008 jury trial in the Circuit Court for Dorchester County, Jacquon Lakeem Collins, appellant, was convicted of attempted second-degree murder; first-degree burglary; first-degree assault; second-degree assault; reckless endangerment; and wearing or carrying a dangerous weapon. The court sentenced appellant to a total term of 40 years' imprisonment.

In 2022, appellant filed a motion to correct illegal sentence, claiming that: (1) there was insufficient evidence to sustain his convictions for attempted second-degree murder and first-degree burglary, and (2) even if the evidence was sufficient, the court should have merged his sentences for those offenses under either the required evidence test or principles of fundamental fairness. The circuit court denied his motion without a hearing. On appeal, appellant raises the same contentions that he raised in his motion to correct illegal sentence. For the reasons that follow, we shall affirm.

As an initial matter, appellant's challenges to the sufficiency of the evidence are not cognizable in a motion to correct illegal sentence. *See Bryant v. State*, 436 Md. 653, 665-66 (2014) (holding that, where appellant's "complaint relate[d] to the sufficiency of the evidence" to prove that he had been convicted of predicate crimes, his appellate challenge to enhanced sentence was not cognizable under Rule 4-345(a)); *see also State v. Wilkins*, 393 Md. 269, 273 (2006) (observing that "a motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case"). Therefore, we only consider his contention that his conviction for first-degree burglary should have merged with his conviction for attempted second-degree murder.

As to that claim, appellant first asserts that his convictions for those offenses should have merged under the required evidence test. Specifically, he contends that, at the time of his trial, the offense of first-degree burglary required the breaking and entering of someone’s home with the intent to commit a theft or crime of violence, and that the jury could have found him guilty of first-degree burglary based on him having committed the violent crime of attempted second-degree murder. We disagree. “Sentences for two convictions must be merged 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.” *Brooks v. State*, 439 Md. 698, 737 (2014). In applying the “required evidence” test, “courts look at the elements of the two offenses in the abstract. All of the elements of the lesser included offense must be included in the greater offense. Therefore, it must be impossible to commit the greater without also having committed the lesser.” *Williams v. State*, 200 Md. App. 73, 87 (2011) (quotation marks and citation omitted).

However, even if we assume that the jury convicted appellant of first-degree burglary by finding that he had the intent to commit attempted murder when he entered the victim’s residence, merger would not be required because attempted second-degree murder is not a lesser included offense of first-degree burglary under the required evidence test. The offense of first-degree burglary is committed when a person breaks and enters the home of another with the intent to commit a felony. Even if the intended felony is murder, proof of a completed or an attempted murder is not required to prove the offense. Thus, it is possible to commit first-degree burglary without also committing the offense of

attempted second-degree murder. Similarly, a person may commit the offense of attempted second-degree murder without breaking or entering the home of another person.

Appellant alternatively contends that his convictions should merge under the principle of fundamental fairness. However, we need not address this issue because the “failure to merge a sentence based on fundamental fairness does not render the sentence illegal.” *Koushall v. State*, 479 Md. 124, 163 (2022).

Because appellant has not demonstrated that his sentences are inherently illegal, the circuit court did not err in denying his motion to correct illegal sentence.

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