

Circuit Court for Baltimore County
Case No.: 03-K-03-001163

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1508

September Term, 2021

JAMES DAVIS

v.

STATE OF MARYLAND

Arthur,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 3, 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 2003, a jury in the Circuit Court for Baltimore County found appellant, James Davis, guilty of the first-degree assault of Adolf Cloud, robbery with a dangerous weapon of Adolf Cloud, use of a handgun in the commission of a crime of violence against Adolf Cloud, and guilty of other offenses involving other victims. As to the crimes against Mr. Cloud, the court sentenced Davis to 15 years' imprisonment for robbery with a dangerous weapon, a consecutive 15 years for first-degree assault, and a consecutive five years for the handgun offense. (Other sentences for the crimes against the other victims were run concurrently with the aforementioned sentences.) On direct appeal, Davis, among other things, argued that the court erred by not merging his conviction or sentence for first-degree assault of Mr. Cloud into his conviction or sentence for robbery with a dangerous weapon of Mr. Cloud. This Court found no merit to the contention and affirmed the judgments. *Davis v. State*, No. 2509, September Term, 2003 (filed March 4, 2005). Years later, Davis filed a motion to correct an illegal sentence in which he again argued that the convictions and sentences for first-degree assault and armed robbery of Mr. Cloud should have merged. The circuit court denied relief. On appeal, this Court held that the law of the case doctrine precluded our review of the issue and affirmed the judgment. *Davis v. State*, No. 1109, September Term, 2011 (filed April 6, 2016).

In 2021, Davis filed another motion to correct an illegal sentence in which he once again asserted that the aforementioned sentences should have merged. As grounds, he claimed that the trial court had failed to instruct the jury “as to how the charges actually relate, and differ” and, therefore, “there is no way to determine how the jury in [his] case came to the verdict[.]” The circuit court summarily denied relief. Davis appeals that ruling.

Upon direct appeal, this Court addressed Davis’s allegation that, “because the trial court did not instruct the jury that the acts constituting robbery and the acts constituting first-degree assault were separate and distinct, it is not clear whether the jury based the convictions on the same predicate acts.” *Davis v. State*, No. 2509, September Term, 2003, slip op. at 7. After reviewing the record, we concluded it was “clear to the jurors” from the court’s preliminary instructions, the verdict sheet, and the prosecutor’s closing argument, “that the charges of robbery with a dangerous weapon and first-degree assault against Cloud were based on separate acts by the appellant -- holding at gunpoint (robbery) and stabbing (first-degree assault) -- that caused separate insults.” *Id.* at 11-12. Because the “convictions were based on separate insults,” we held that merger of the sentences was not required. *Id.* at 12.

Because the issue Davis raised in his motion to correct his sentence was addressed by this Court in his direct appeal, the issue is barred by the law of the case doctrine and, accordingly, the circuit court did not err in denying relief. *See MAS Associates, LLC v. Korotki*, 475 Md. 325, 382 (2021) (“The ‘law of the case doctrine is one of appellate procedure’ that stands for the principle that ‘[o]nce an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.’” (quoting *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 55 (2008))).

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