Circuit Court for Worcester County
Case No.: C-23-CR-17-000572

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1548

September Term, 2021

SHARIF JADALLAH TALIB

v.

STATE OF MARYLAND

Berger,
Reed,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: June 30, 2022

On May 3, 2018, in the Circuit Court for Worcester County, Sharif Jadallah Talib, appellant, pleaded guilty to distribution of heroin (count 1), distribution of cocaine (count 2), and possession with intent to distribute heroin (count 8). That same day, the court sentenced him to 15 years' imprisonment for distribution of heroin, a concurrent term of 15 years' imprisonment for distribution of cocaine, and a consecutive term of 15 years' imprisonment for possession with intent to distribute heroin.

On October 15, 2021, appellant, acting *pro se*, filed a motion to correct an illegal sentence. On November 18, 2021, the circuit court signed an order summarily denying appellant's motion without holding a hearing. Appellant noted a timely appeal to this Court contending that the circuit court erred in denying his motion. We disagree and shall affirm.

BACKGROUND

During the guilty plea proceedings, the State proffered a statement of facts in support of the guilty plea which revealed, among other things, the following sequence of events leading to the prosecution of appellant.

In November, 2017, Detective Jeffrey Johns of the Ocean City Police Department initiated a controlled dangerous substance investigation on appellant. On November 9, 2017, Detective Johns made a pre-arranged purchase of $1,200 worth of crack cocaine and $800 worth of heroin from appellant. That sale of drugs reflected the offenses charged in counts 1 & 2 in the indictment against appellant.

Later that month, on November 30, 2017, Detective Johns arranged to purchase $15,000 worth of heroin from appellant. That sale was scheduled to occur the next day, December 1, 2017. That sale did not occur as scheduled because, after an arrest team

attempted to arrest appellant, he struck two police vehicles with his vehicle and drove away. As the police gave chase, they observed appellant throwing objects from the passenger window of his car. One police officer observed appellant throw a clear baggie containing a roughly softball-sized object out of his car which burst into a powdery white cloud after striking a fence. Soon thereafter, appellant crashed his car and was arrested. A search of his car revealed over 10 grams of heroin. Those events gave rise to the offense charged in count 8 of the indictment.

At the outset of the 2018 guilty plea proceeding, the following exchange took place on the record outlining the guilty plea agreement:

> [STATE]: Yes, Your Honor. Your Honor, it's my understanding that [appellant] is going to enter a plea of guilt to three separate counts today of which he's facing.
>
> Your Honor, the first count would be Count 1 which is distribution of heroin which is alleged to have occurred on November 9th of 2017; Count 2 which is distribution of cocaine which is also alleged to have occurred on November 9th 2017; and also Count 8 which is possession with intent to distribute heroin which is alleged to have occurred on December 1st of 2017.
>
> The State is going to enter a nolle pros to the remaining counts in this matter, Your Honor.
>
> [Appellant] is facing a guideline range for each of those three counts as the State has read into the record of 12 years to 20 years, Your Honor. The maximum penalty being for each of those counts 20 years respectively.
>
> Your Honor, because Counts 1 and 2 happened on the same day as opposed to Count 8, there would be a stacking requirement of the guidelines meaning that [appellant]'s overall guideline range would fall between 24 years and 40 years.
>
> The State is asking for 15 years on Count 1 and 2 to run concurrent to each other, however, that 15 years to be run consecutive to a 15-year active incarceration on Count 8. The State is not seeking probation. We don't

believe it's warranted in this matter, leaving no suspended time over [appellant]'s head.

[COURT]: Is that your understanding of the plea agreement?

[DEFENSE COUNSEL]: It is. And we're certainly free to argue for less.

[STATE]: That's correct. Your Honor.

As noted above, appellant later filed a *pro se* motion to correct an illegal sentence which the court summarily denied without a hearing. As far as can be discerned from appellant's motion,[1] he first claimed that his sentence is illegal because he was unlawfully sentenced in violation of the Ex Post Facto clause of the United States Constitution. He next argued that his sentence for possession with intent to distribute heroin (count 8) should have merged for sentencing into his sentence for distribution of heroin (count 1).

On appeal, appellant argues that his sentence is illegal because (1) the court impermissibly sentenced him as a subsequent offender, (2) the evidence is insufficient to support his conviction for possession with intent to distribute heroin, and (3) he was entitled to merger of his sentences.[2]

[1] We have liberally construed appellant's *pro se* filed papers in order to do substantial justice. *See Simms v. Shearin*, 221 Md. App. 460, 480 (2015) (noting that we generally liberally construe papers filed by *pro se* litigants).

[2] On appeal, appellant does not address his claim that his sentences violate the Ex Post Facto clause of the United States Constitution. He has therefore abandoned that claim and we shall not address it.

Appellant had premised that argument on the asserted fact that, at the time he committed his offenses, the maximum penalty for each of his offenses was 10 years' imprisonment, yet the court imposed 15-year sentences for each offense. Our review of the relevant statutes demonstrates that, at all relevant times, the maximum penalty of imprisonment for each of the offenses appellant pleaded guilty to was 20 years. Thus, even if we were to have addressed the claim, we would have found it lacking merit.

DISCUSSION

We review the denial of a motion to correct an illegal sentence *de novo*. *Rainey v. State*, 236 Md. App. 368, 374, *cert. denied*, 460 Md. 23 (2018). In so doing, "we 'defer to the trial court's findings of fact, and will not disturb those findings unless they are clearly erroneous.'" *Id*. (quoting *Kunda v. Morse*, 229 Md. App. 295, 303 (2016)). Maryland Rule 4-345(a)'s authorization for a trial court to correct an illegal sentence "at any time," "creates a limited exception to the general rule of finality, and sanctions a method of opening a judgment otherwise final and beyond the reach of the court." *State v. Griffiths*, 338 Md. 485, 496 (1995).

Under Rule 4-345(a), an illegal sentence "is one 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." *Colvin v. State*, 450 Md. 718, 725 (2016) (cleaned up). Notably, 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.'" *Id.* (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)).

I.

Appellant claims that his sentence is illegal because he was somehow subjected to impermissible "stacking" of enhanced penalties for subsequent offenders. He also claims that he was impermissibly sentenced as a subsequent offender under both section 5-608

and section 5-905 of the Criminal Law Article (CL).[3] He also asserts that the State delayed charging appellant "so to as ensure that the mandatory penalty … would apply[.]"

All three of the offenses to which appellant pleaded guilty in this case were for violating CL 5-602 which prohibits both distributing, and possessing with intent to distribute, controlled dangerous substances. The penalty for a violation of CL 5-602 is found in CL 5-608, which authorizes a penalty up to 20 years' imprisonment and a $15,000 fine. We are unaware of any authority that would prohibit a court from imposing sentences for multiple violations of those offenses consecutively. As such, because appellant pleaded guilty to three separate violations of CL 5-602, he faced a maximum sentence of 60 years' imprisonment. Ultimately, the court sentenced appellant to an aggregate of 30 years' imprisonment and there is no suggestion in the record of the guilty plea or sentencing proceedings that the court imposed any enhanced sentences pursuant to any subsequent offender provisions of the Maryland code. Hence the record does not support a fundamental premise of appellant's argument, *i.e*. that he was sentenced as a subsequent offender. With that premise removed, all of his arguments relying on it collapse under their own weight.

II.

Appellant next contends that the sentence for count 8 is illegal because the evidence

[3] Section 5-608 is the penalty provision for the substantive narcotics offenses to which appellant pleaded guilty. It also outlines the penalties for certain subsequent offenders. At one time, it provided for certain mandatory minimum sentences for subsequent offenders. Section 5-905 provides, for subsequent offenders, a maximum potential sentence twice that otherwise authorized for the offense. In *Gardner v. State*, 344 Md. 642 (1997), the Court of Appeals held that a sentence could not be enhanced under both provisions at the same time.

is legally insufficient to support it. The underlying basis of this claim appears to be that, while he does not dispute that the evidence is sufficient to support the offense of possession of heroin, he contends that the evidence is insufficient to show that he possessed it in a manner sufficient to support his intention to distribute it.

With the principles in mind outlined earlier in this opinion describing the sort of contentions that constitute an illegal sentence pursuant to Maryland Rule 4-345, we conclude that, even if true, appellant's claim would not render his sentence inherently illegal.[4]

[4] Moreover, we are persuaded that the factual basis supporting appellant's guilty plea to count 8 was legally sufficient. Appellant's guilty plea included, *inter alia*, the following proffer of evidence supporting that count:

> On December 1st, Your Honor, the substances that were found in the vehicle; one bag containing a brown compressed substance with loose substances as well in there, the total net weight of that was 10.324 grams, and that contained - or that came back positive for Schedule I, heroin, as well. There were other smaller amounts of heroin, Your Honor, that were found inside of the vehicle as well. Another net weight specimen of the ten bags that were separately found to be .23 positive for Schedule I, heroin.
>
> Your Honor, if this matter had gone to trial today, the State would have called Detective Lieutenant Nathaniel Passwaters of the Worcester County Criminal Enforcement Team as an expert in the evaluation and identification of controlled dangerous substances, specifically heroin. He would have opined that the defendant, possessed the heroin with the intent to distribute it to Detective Johns on December 1st of 2017. Obviously based upon the conversations with Detective Johns, Your Honor, but also taking into account factors such as the actions the defendant took by fleeing the scene, the amount of heroin actually found in the vehicle referring to that ten gram amount, Your Honor, being considerably more than a user would possess in Worcester County, and the fact that it was possessed in a one lump sum as opposed to being in scramble -- capsules and/or wax paper folds which are commonly found on users, not only in the Worcester County area, but also along the Eastern Shore of Delmarva and also across the bridge in Baltimore.

III.

Appellant's final appellate claim is that his sentences should have merged. In his motion to correct an illegal sentence filed in the circuit court, appellant claimed that his sentence for possession of heroin with the intent to distribute it (count 8) should have merged, under the *Blockberger*[5] required evidence test, into his sentence for distribution of heroin (count 1).[6] In his briefs[7] before this Court, appellant's merger argument is reduced to an allegation, without any elaboration, that some, or all, of his sentences should have merged under the required evidence test, the rule of lenity, and/or fundamental fairness.

We are persuaded that, given the factual scenario giving rise to the offenses to which appellant pleaded guilty in this case, that merger, under any legal theory, is not required for any of appellant's sentences.

Consequently, we shall affirm the judgment of the circuit court.

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

[5] *Blockburger v. United States*, 284 U.S. 299 (1932).

[6] The Court of Appeals has described the required evidence test as follows:

> "If each offense requires proof of a fact which the other does not, the offenses are not the same and do not merge. However, if only one offense requires proof of a fact which the other does not, the offenses are deemed the same, and separate sentences for each offense are prohibited."

Twigg v. State, 447 Md. 1, 13 (2016) (quoting *Nightingale v. State*, 312 Md. 699, 703 (1988), abrogated by statute). An additional requirement for two offenses to be deemed the "same" under the required evidence test is that the offenses arise from the same act or transaction. *State v. Johnson*, 442 Md. 211, 218 (2015) (citation and quotation omitted).

[7] Appellant filed two separate *pro se* briefs in this Court.