

Circuit Court for Montgomery County
Case Nos.: C-15-CV-21-000515 & C-15-CV-22-000625

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1797

September Term, 2022

DAQUAN TYLER

v.

SECRETARY, DEPARTMENT OF PUBLIC
SAFETY & CORRECTIONAL SERVICES

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: December 4, 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).

Daquan Tyler appeals from the denial, by the Circuit Court for Montgomery County, of two petitions he filed seeking a writ of habeas corpus. In those petitions, which he filed as a self-represented litigant, Mr. Tyler claimed that certain sentences he is serving are illegal and ambiguous and that Appellee, the Department of Public Safety and Correctional Services (“DPSCS”), failed to follow its policy manual when calculating his terms of confinement. In short, he asserts that the “maximum expiration date” for his total term of confinement should be significantly sooner than that calculated by DPSCS. For reasons discussed below, we shall affirm the judgments.

BACKGROUND

In 2013, a jury in the Circuit Court for Montgomery County found Mr. Tyler guilty of three counts of armed robbery, three counts of first-degree assault, and three counts of use of a handgun in the commission of a crime of violence (Case No. 122557-C). The jury also found him guilty of solicitation to intimidate a witness (Case No. 123131-C). In 2020, Mr. Tyler, representing himself, filed a motion to correct an illegal sentence in these cases, claiming that the court’s pronouncement of the sentence for each count was ambiguous as to how they were to run, *i.e.* concurrent or consecutive with each other. After the circuit court denied his motions, Mr. Tyler appealed. In an unreported opinion this Court determined that his sentences were not illegal, and that the court’s pronouncement of the sentences were not ambiguous. For reasons explained in the opinion, we remanded Case No. 122557-C to the circuit court with instructions to amend the Commitment Record to reflect a total sentence in that case of forty-eight years’ imprisonment, with all but twenty-four years (not twenty-nine) suspended, with a start date of February 15, 2013. *Tyler v.*

State, No. 202, Sept. Term, 2021 (filed March 9, 2023) (“*Tyler I*”), slip op. at 8.¹ We also concluded that his three-year sentence for the solicitation offense in Case No. 123131-C runs consecutive to the sentences in Case No. 122557-C for a total aggregate term of twenty-seven years of executed time in these two cases. *Id.* at 9.

While the appeal of the denial of his motion to correct an illegal sentence was pending, it appears that Mr. Tyler filed multiple petitions for habeas corpus relief in which he raised essentially the same challenges to his sentences—at least with respect to the sentences in Case Nos. 122557-C and 123131-C. On April 15, 2022, after our initial opinion in *Tyler I* was filed, the circuit court convened a hearing on two of the petitions that are the subject of this appeal. Mr. Tyler stated his position that he is “being illegally confined” because his Commitment Records “were incorrect and ambiguous” and that the Division of Correction (“DOC”) did not “follow the procedures in their commitment manual to correct” his commitment. He asserted his belief that, “instead of an executed sentence of 32 years, [for] all of the sentences in all the different cases [he] was sentenced to [in] the Circuit Court for Montgomery County, [he] should only be serving a sentence of 16 years, if [his] commitment was corrected properly with the rules in the DOC’s commitment manual.”

¹ Our opinion was originally filed on January 25, 2022. On February 22, 2022, Mr. Tyler filed a motion for reconsideration, asserting, among other grounds, that this Court had failed to consider arguments presented in his reply brief, which was received in this Court after our opinion was filed. We granted the motion for reconsideration in part and accepted and considered Mr. Tyler’s reply brief, withdrew the opinion, and filed a new opinion on March 9, 2023.

Counsel for the DPSCS, pointed out that this Court had addressed Mr. Tyler’s claims when affirming the denial of his motion to correct an illegal sentence and, therefore, argued that his issues were moot. Mr. Tyler, however, asserted that in his appeal, he “was arguing about [his] legal sentence, not [his] legal confinement in those cases[,]” which he claimed are “two different things.” He explained that “the illegal confinement is based on DOC [not] complying with their commitment [manual], whereas the illegal sentence is based on basically the court proceedings when [he] was sentenced[.]”²

When pressed by the court to identify any issue not addressed by this Court in *Tyler I*, Mr. Tyler asserted that, with regard to Case No. 122557-C, the running of the sentence imposed for Count seven (armed robbery of victim three) was ambiguous. Specifically, he explained:

Okay, well, as far as case 122557, that’s Count 7 being consecutive to Count 1 and 4, was arguing about the ambiguity in that. I’m saying that’s ambiguous. Count 7 can’t be ranked consecutive to Count 1 and then Count 4. If it was Count 7 was to be ranked consecutive to Count 1, it would end up being concurrent to Count 4, and then for it to be ranked consecutive to Count 4 afterward, I would be sentenced twice for the same count.

² In his reply to the State’s answer to one of his habeas petitions, Mr. Tyler further explained his position:

While orders and amendments can be sent to D.O.C. from a sentencing judge/court[,] [i]t is up to D.O.C./DPSCS to make sure these order and amendments are correct and apply their decision to the rules and procedures in their commitment manual. D.O.C./DPSCS officials have the final decision with regards to an inmate[’]s term of confinement and its lawfulness as D.O.C./DPSCS officials have custody of the inmate. No matter what ruling a court sends out. If the D.O.C./DPSCS does not comply the guidelines/terms of its commitment manual[,] Petitioner/inmate confinement will never be in order and lawful.

And that was ambiguous. I felt that that was something that should have been corrected in DOC. When they received the commitment they should have been on top of that to correct that. That’s something that wasn’t even brought up. It wasn’t even before the [Appellate Court of Maryland], so they were not even in a position to address that. And that was the ambiguity that I was bringing before [the habeas court] today, that’s before you to correct, if you could.

We need not fully recount our opinion in *Tyler I*. We pause here to point out that in pronouncing the sentence in Case No. 122557-C, the court stated, in relevant part: “Count seven, ... the third armed robbery victim, 16 years, suspend eight, consecutive to counts one and four.” See *Tyler I*, at 2. In *Tyler I*, we determined that the court’s sentencing on all counts was not ambiguous. We noted that Count four was run consecutive to Count one, and Count seven was run consecutive thereto, that is, eight years executed time (Count one) + eight years executed (Count four) + eight years executed (Count seven) = twenty-four years executed time. *Tyler I*, slip op. at 3-4. We also concluded that the sentence in Case No. 122557-C began to run on February 15, 2013. *Id.* at 8. A DPSCS “Sentence Calculation Worksheet” in the record before us, which is appended hereto, reflects that it has determined that Count seven runs consecutive to Count four and the “maximum expiration date” for the Count seven sentence is February 15, 2037. Apx. A. Thus, we see no error in the DPSCS’s worksheet with respect to Count seven.

Mr. Tyler also appeared to challenge how the DPSCS calculated the running (and consequently the maximum expiration date) of certain other sentences he is serving.³

³ See the DPSCS Sentence Calculation Worksheet, which appears to list all the sentences Mr. Tyler is serving and the order in which they are being served.

Specifically, at the hearing before the habeas court, Mr. Tyler claimed that, when the circuit court revoked his probation on August 29, 2013, in Case No. 117564-C (after he was sentenced in Case Nos. 122557-C and 123131-C), the court ordered him to serve two years and six months of his sentence and announced that it would run *concurrently* with any sentence he was then serving. The Commitment Record in Case No. 117564-C, however, reflected both that the sentence was “consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences” and “consecutive to any sentence defendant is now serving.”

Recognizing the discrepancy in the Commitment Record, a DPSCS Commitment Records Specialist wrote to the sentencing judge for clarification.⁴ In response, on May 12, 2014, the circuit court issued an order directing the clerk of the circuit court to “correct the sentence imposed on August 29, 2013 at Docket Entry #66” and the Commitment Record filed on September 4, 2013, to reflect that the sentence is “to run consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences.” The DPSCS’s Sentence Calculation Worksheet reflects that the sentence in Case No. 117564-C runs consecutive to the last sentence to expire in Case Nos. 122557-C and 123131-C—which comports with the circuit court’s May 12, 2014 order.⁵

⁴ The difference is important. If the court ordered the sentence to run consecutive to any sentence Mr. Tyler was “now serving,” that would mean it would have run consecutively only to the sentence he was at serving at that moment and not consecutively to the aggregate of all the outstanding sentences. *See Robinson v. Lee*, 317 Md. 371 (1989).

⁵ The transcript from the violation of probation disposition in Case No. 117564-C does not appear to be in the appellate record before us. We note, however, that the general rule is
(continued)

After a follow-up hearing, the habeas court, by order entered on August 8, 2022, denied Mr. Tyler’s request for habeas relief noting that “all issues” he raised had previously been addressed by the circuit court and this Court.

DISCUSSION

On appeal, Mr. Tyler asserts that “[s]ome, but certainly not all of the issues” he raised in his habeas petitions had been “presented and resolved by the appellate courts” and, therefore, the habeas court erred in ruling that they had been. In support, he simply refers us to his reply filed in the circuit court to the State’s answer opposing one of his

that, where there is a conflict between a sentencing transcript and either a docket entry or a commitment record, the transcript controls unless it is shown to be in error. *See, e.g., Gatewood v. State*, 158 Md. App. 458, 481-82 (2004) (transcript generally prevails over docket entry), *aff’d*, 388 Md. 526 (2005); *Dutton v. State*, 160 Md. App. 180, 191-92 (2004) (transcript generally prevails over commitment record). Given that Mr. Tyler has not provided us with the transcript, we shall not comment on the court’s May 12, 2014 order. But in any event, he did not provide the habeas court with any evidence to support his claim that the court had run the sentence in this case *concurrently* with the sentence he was then serving. And in this appeal, he seems to have abandoned that argument and instead, now maintains that the V.O.P. sentence in Case No. 117564-C should run consecutive to an earlier sentence (imposed on April 22, 2013 in Case No. 0D00292642) which he completely served years ago.

petitions.^{6,7} Without further explanation or argument, he requests that this Court remand the case to the circuit court with instructions to “provide[] [him] with all relief he requested” in his reply to the State’s answer filed in the circuit court, including “running the V.O.P. sentence in case # 117564-C consecutive to case # 0D00292642 instead of case # 122557-C.”⁸

⁶ Mr. Tyler also points out that the order of the habeas court denying his petitions mistakenly confused the provenance of the two cases before it and misstated the dates the petitions were transferred to the Circuit Court for Montgomery County. The Appellee agrees, pointing out that Case No. C-08-CV-21-000435 originated in the Circuit Court for Charles County on September 28, 2021 (where Mr. Tyler had filed a habeas petition) and was transferred to the Circuit Court for Montgomery County on December 3, 2021, as Case No. C-15-CV-21-000515 and docketed there on December 18, 2021. Case No. C-13-CV-21-000692 originated in the Circuit Court for Howard County (where Mr. Tyler had filed another habeas petition) on October 8, 2021, and was transferred to the Circuit Court for Montgomery County on January 27, 2022, as Case No. C-15-CV-22-000625 and docketed there on February 7, 2022. The Appellee maintains that the “misstatements were clerical and did not affect the [habeas court’s] ruling[.]” We agree.

⁷ Mr. Tyler also baldly claims that the transcripts of the April 15, 2022, and June 22, 2022, hearings before the habeas court “are extremely inaccurate.” He does not, however, explain why he believes that to be so, nor does he point to any specific alleged discrepancy. We note that the transcriber certified that the transcriptions are “an accurate transcript of the electronic sound recording of the proceedings[.]” Accordingly, we deny Mr. Tyler’s request made, in his brief, that he be allowed to “submit audio transcripts” of the hearings.

⁸ The DPSCS’s Sentencing Calculation Worksheet indicates that Mr. Tyler was sentenced on April 22, 2013, in Case No. 0D00292642 to a total term of two years, with a sentence start date of February 14, 2013. If the two and one-half (2½) year V.O.P. sentence in Case No. 117564-C were run consecutive thereto, as Mr. Tyler suggests, that V.O.P. sentence would now be completely served. Instead, the Sentencing Calculation Worksheet reflects that the V.O.P. sentence runs consecutive to the last sentence to expire in Case Nos. 122557-C and 117564-C, which as mentioned previously, comports with the circuit court’s May 12, 2014 order in Case No. 117564-C.

In response, DPSCS reiterates the arguments it made before the habeas court, namely, (1) the issues Mr. Tyler’s raised have already been judicially decided; (2) the subject habeas petitions were subject to dismissal for failing to mention other habeas petitions he had filed; (3) Mr. Tyler failed to “cognizably claim that he was entitled to immediate release from incarceration” and, therefore, he is not entitled to habeas relief; and (4) Mr. Tyler’s habeas petitions required denial because he failed to exhaust administrative remedies through the Inmate Grievance process regarding his dispute with the DPSCS’s calculation of his sentence.

We agree with DPSCS that the challenges Mr. Tyler raised regarding the sentences imposed in Case Nos. 122557-C and 123131-C were addressed by this Court in *Tyler I* and, as noted, the DPSCS’s Sentence Calculation Worksheet correctly reflects how those sentences shall run. *Tyler I* did not address, however, the only other sentence Mr. Tyler has clearly challenged in this appeal – that is, the running of the two and one-half year V.O.P. sentence in Case No. 117564-C. But as previously noted, the circuit court’s May 12, 2014 order in that case, issued in response to the specific inquiry made by a DPSCS Commitment Records Specialist, clarified that the V.O.P. sentence was to run consecutive to the “last sentence to expire of all outstanding and unserved Maryland sentences” that Mr. Tyler was subject to on the day of the VOP disposition. The Sentence Calculation Worksheet correctly reflects the circuit court’s instructions. Accordingly, based on the record before us we discern no error in the habeas court’s denial of Mr. Tyler’s habeas petitions and, therefore, we shall affirm the judgments. *See Yaffe v. Scarlet Place Residential Condo, Inc.*, 205 Md. App. 429, 440 (2012) (“an appellate court can affirm

when ‘the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties.’” (quoting *Robeson v. State*, 285 Md. 498, 502 (1979)). Accordingly, we need not address the other contentions raised by DPSCS.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

APPENDIX A: DPSCS Sentence Calculation Worksheet

Printed 4/9/2019

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**Department of Public Safety and Correctional Services
Sentence Calculation Worksheet**

Inmate Name: Daquan L Tyler

SID Number: 2803883

Control Number: 00413403

Date Printed: 4/9/2019

Facility Location: Roxbury Correctional Institution

Maximum Expiration Date: 02/06/2045

Current Release Date: 02/18/2039

Seq #	Type	Dates	Case Information	Sentencing, Release, & Return Information		SPC-H	GCC Rate	Expiration Dates
01	Sentence Type : Concurrent	Sentence Imposition Date : 04/22/2013	Case # : 0D00292642	Date of offense : 02/10/2013	Offense : ATT-THEFT: \$1K TO UNDER \$10K	No	10	Max. Exp. Date : 02/14/2014
		Original Sentence Imposition Date :	Count # : 1	Sentence length : Year: 1 Months : 0 Days : 0	Sentence Start Date : 02/14/2013			
		VOP Date :	Consecutive With :					
02	Sentence Type : Consecutive	Sentence Imposition Date : 04/22/2013	Case # : 0D00292642	Date of offense : 02/10/2013	Offense : MAL DESTR PROP VALUE + \$500	No	10	Max. Exp. Date : 02/14/2015
		Original Sentence Imposition Date :	Count # : 11	Sentence length : Year: 1 Months : 0 Days : 0	Sentence Start Date : 02/14/2014			
		VOP Date :	Consecutive With : 01					
03	Sentence Type : Concurrent	Sentence Imposition Date : 08/29/2013	Case # : 122557-C	Date of offense : 01/01/2013	Offense : ARMED ROBBERY	No	5	Max. Exp. Date : 02/15/2021
		Original Sentence Imposition Date :	Count # : 1	Sentence length : Year: 8 Months : 0 Days : 0	Sentence Start Date : 02/15/2013			
		VOP Date :	Consecutive With :					

Printed 4/9/2019

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**Department of Public Safety and Correctional Services
Sentence Calculation Worksheet**

Inmate Name: Daquan L Tyler

SID Number: 2803883

Control Number: 00413403

Date Printed: 4/9/2019

Facility Location: Roxbury Correctional Institution

Maximum Expiration Date: 02/06/2045

Current Release Date: 02/18/2039

04	Sentence Type : Consecutive	Sentence Imposition Date : 08/29/2013	Case #: 122557-C	Date of offense : 01/01/2013	Offense : FIREARM USE/FEL-VIOL CRIME	No	5	Max. Exp. Date : 02/15/2026
		Original Sentence Imposition Date :	Count # : 3	Sentence length : Year: 5 Months : 0 Days : 0	Sentence Start Date : 02/15/2021			
		VOP Date :	Consecutive With : 03					
05	Sentence Type : Consecutive	Sentence Imposition Date : 08/29/2013	Case #: 122557-C	Date of offense : 01/01/2013	Offense : ARMED ROBBERY	No	5	Max. Exp. Date : 02/15/2029
		Original Sentence Imposition Date :	Count # : 4	Sentence length : Year: 8 Months : 0 Days : 0	Sentence Start Date : 02/15/2021			
		VOP Date :	Consecutive With : 03					
06	Sentence Type : Concurrent	Sentence Imposition Date : 08/29/2013	Case #: 122557-C	Date of offense : 01/01/2013	Offense : FIREARM USE/FEL-VIOL CRIME	No	5	Max. Exp. Date : 02/15/2026
		Original Sentence Imposition Date :	Count # : 6	Sentence length : Year: 5 Months : 0 Days : 0	Sentence Start Date : 02/15/2021			
		VOP Date :	Consecutive With :					
07	Sentence Type : Consecutive	Sentence Imposition Date : 08/29/2013	Case #: 122557-C	Date of offense : 01/01/2013	Offense : ARMED ROBBERY	No	5	Max. Exp. Date : 02/15/2037
		Original Sentence Imposition Date :	Count # : 7	Sentence length : Year: 8 Months : 0 Days : 0	Sentence Start Date : 02/15/2029			
		VOP Date :	Consecutive With : 05					

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APX.

Printed 4/9/2019

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**Department of Public Safety and Correctional Services
Sentence Calculation Worksheet**

Inmate Name: Daquan L Tyler

SID Number: 2803883

Control Number: 00413403

Date Printed: 4/9/2019

Facility Location: Roxbury Correctional Institution

Maximum Expiration Date: 02/06/2045

Current Release Date: 02/18/2039

08	Sentence Type : Concurrent	Sentence Imposition Date : 08/29/2013	Case # : 122557-C	Date of offense : 01/01/2013	Offense : FIREARM USE/FEL-VIOL CRIME	No	5	Max. Exp. Date : 02/15/2026
		Original Sentence Imposition Date :	Count # : 9	Sentence length : Year: 5 Months : 0 Days : 0	Sentence Start Date : 02/15/2021			
		VOP Date :	Consecutive With :					
09	Sentence Type : Consecutive	Sentence Imposition Date : 08/29/2013	Case # : 123131-C	Date of offense : 08/12/2013	Offense : INTIMIDATE/IN JUROR	No	10	Max. Exp. Date : 02/15/2040
		Original Sentence Imposition Date :	Count # : 1	Sentence length : Year: 3 Months : 0 Days : 0	Sentence Start Date : 02/15/2037			
		VOP Date :	Consecutive With : 08					
10	Sentence Type : Consecutive	Sentence Imposition Date :	Case # : 117564-C	Date of offense : 10/23/2010	Offense : ASSAULT-SEC DEGREE	No	10	Max. Exp. Date : 08/15/2042
		Original Sentence Imposition Date : 03/10/2011	Count # : 1	Sentence length : Year: 2 Months : 6 Days : 0	Sentence Start Date : 02/15/2040			
		VOP Date : 08/29/2013	Consecutive With : 09					
11	Sentence Type : Consecutive	Sentence Imposition Date : 05/09/2014	Case # : 122822C	Date of offense : 12/16/2013	Offense : OBSTRUCTING & HINDERING	No	10	Max. Exp. Date : 06/08/2025
		Original Sentence Imposition Date :	Count # : 7	Sentence length : Year: 5 Months : 0 Days : 0	Sentence Start Date : 06/08/2020			
		VOP Date :	Consecutive With : 03					

Printed 4/9/2019

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Department of Public Safety and Correctional Services
Sentence Calculation Worksheet

Inmate Name: DaQuan L Tyler

SID Number: 2803883

Control Number: 00413403

Date Printed: 4/9/2019

Facility Location: Roxbury Correctional Institution

Maximum Expiration Date: 02/06/2045

Current Release Date: 02/18/2039

12	Sentence Type : Consecutive	Sentence Imposition Date : 05/09/2014	Case # : 122822C	Date of offense : 12/16/2013	Offense : INTIMIDATE/INJUROR-MISD	No	10	Max. Exp. Date : 06/08/2030
		Original Sentence Imposition Date :	Count # : 8	Sentence length : Year: 5 Months : 0 Days : 0	Sentence Start Date : 06/08/2025			
		VOP Date :	Consecutive With : 11					
13	Sentence Type : Consecutive	Sentence Imposition Date : 05/09/2014	Case # : 123698C	Date of offense : 11/16/2012	Offense : THEFT: \$500 PLUS VALUE	No	10	Max. Exp. Date : 02/06/2045
		Original Sentence Imposition Date :	Count # : 1	Sentence length : Year: 9 Months : 0 Days : 0	Sentence Start Date : 02/06/2036			
		VOP Date :	Consecutive With : 07					

Reviewed By:

Last Name, First Name

Date