UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1366

September Term, 2015

PAUL ANTONIO BURTON

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 9, 2016

In 1994, following a jury trial in the Circuit Court for Baltimore County, Paul Antonio Burton, the appellant, was convicted of attempted second-degree murder and related offenses. The court found that Burton had two prior convictions for crimes of violence and imposed an enhanced sentence of thirty years' imprisonment for attempted second-degree murder, to be served without the possibility of parole, pursuant to Maryland Code (1957, 1992 Repl. Vol.), Article 27, § 643B(c).[1]

On direct appeal, Burton argued that his sentence for attempted second-degree murder was illegal because the statute only permitted the first twenty-five years to be served without the possibility of parole. While the appeal was pending, a three-judge sentencing review panel of the circuit court reduced to twenty-five years the portion of the thirty-year sentence that would be served without the possibility of parole. We held that the issue was moot. *See Paul Antonio Burton v. State of Maryland*, No. 1775, September Term, 1994 (filed October 12, 1995).

Twenty years later, in 2015, Burton filed a *pro se* motion to correct illegal sentence. He argued that his enhanced sentence for attempted second-degree murder was illegal because he did not have two prior convictions for crimes of violence. Specifically, he maintained that one of the two prior offenses was not a "conviction"; it only was a "probation before judgment." The circuit court ruled that the sentence imposed was legal and denied the motion to correct the sentence, entering an order to that effect.

[1] That statute subsequently was recodified and appears at Maryland Code (2002, 2012 Repl. Vol.), section 14-101 of the Criminal Law Article ("CL").

Burton noted this timely appeal. He presents six questions for review which are reducible to one: Did the circuit court err in denying his motion to correct illegal sentence?[2] For the reasons to be discussed, we shall vacate the order denying Burton's motion and remand the case to the circuit court for further proceedings.

[2] Burton phrased his questions for review as follows:

1. Did the lower court err by accepting a Baltimore City Circuit Court active probation before judgment under Article 27-641 as a conviction to sentence the Appellant to a sentence under Article 27-643(b)?

2. Did the lower court err in using Baltimore City Circuit Court flawed docket entry under Case Numbers 58924247 and 58924248. After finding contradiction within it, as a predicate to sentence Appellant to a recidivist punishment under Article 27-643(b)c. See Baltimore County sentencing page 23 at line 22.

3. Is the Appellant serving an illegal sentence in the meaning of Md. Rule 4-345(a), the Appellant is serving a twenty-five year sentence without parole, with an additional five years under the same conviction of second degree attempted murder, and a add[itional] consecutive ten years for use of a handgun used in the commission of a crime of violence which elements was already used to substantiate the Appellant being sentenced under Article 27-643(b) c?

4. Did the lower court err in imposing an additional consecutive ten year sentence for a handgun used in a crime of violence being that he already received a mandatory sentence under Article 27-643(b) c?

5. Did the lower court err in not complying with Md. Rule 4-407 in answering Appellant's issue before denying his motion to correct his illegal sentence?

6. Did the lower court use a none [sic] existing conviction of assault with intent to murder as a prior conviction to sentence him under Article 27-643(b) c, when his charge was actually maiming?

FACTS AND PROCEEDINGS

Burton's sentencing hearing took place on June 16, 1994. The State urged the court to impose an enhanced sentence for the attempted second-degree murder conviction, under Article 27, § 643B(c), which provided for a mandatory sentence without parole for a third conviction for a crime of violence.[3] In pertinent part, the statute stated:

> Any person who (1) has been convicted on two separate occasions of a crime of violence where the convictions do not arise from a single incident, and (2) has served at least one term of confinement in a correctional institution as a result of a conviction of a crime of violence, shall be sentenced, on being convicted a third time of a crime of violence, to imprisonment for the term allowed by law, but, in any event, not less than 25 years. Neither the sentence nor any part of it may be suspended, and the person shall not be eligible for parole except in accordance with the provisions of Article 31B, § 11. A separate occasion shall be considered one in which the second or succeeding offense is committed after there has been a charging document filed for the preceding occasion.

Art. 27, § 643B(c).[4]

The State had given Burton and his defense counsel notice of its intent to seek the enhanced sentence and included with that notice supporting "attachments and . . . documents."[5] At the sentencing hearing, the State introduced two exhibits as proof of

[3] The penalty for attempted second-degree murder (without enhancement) was a maximum thirty years' imprisonment. *See* Article 27, §§ 412(c) and 644A. (Since recodified at CL 2-206 and 1-201.)

[4] Robbery, robbery with a deadly weapon, assault with intent to murder, and assault with intent to maim were among the crimes included in the definition of "crime of violence." *See* Art. 27, § 643B(a).

[5] Neither the notice nor its attachments are in the record before us.

Burton's prior convictions.[6] State's "Exhibit 1" consisted of certified copies of the "docket entries and indictments" in Baltimore City Circuit Court case nos. 58702302 and 58702303, in which, in 1987, Burton pled guilty to two counts of robbery with a deadly weapon, was sentenced to a three-year term of incarceration, and served time. Burton did not dispute that those offenses, which arose out of a single incident, qualified as one prior conviction for a crime of violence.

State's "Exhibit 2" consisted of certified copies of the "docket entries and indictments" in Baltimore City Circuit Court case nos. 58924247 and 58924248. It was introduced through the testimony of Detective William Wolferman, of the Baltimore County Police Department. These 1990 cases, which arose out of a single incident, served as the second prior conviction for a crime of violence and are the source of Burton's current contention that his enhanced sentence for attempted second-degree murder is illegal.

Detective Wolferman described State's "Exhibit 2" as follows:

> These are certified copies of docket entries and indictments for Baltimore City case numbers 58924247 and 58924248, which charges a David Smith, also known as Paul Burton, with the offense of assault with intent to murder and robbery with a deadly weapon, and under those indictments [Burton] was found guilty on indictment number 58924247, assault with intent to murder, and 58924248 was a plea of guilty on [sic] robbery with a deadly weapon. In both instances he was given time in the D.O.C. of 20 years, that time was suspended, and he was placed on five years probation.

[6] Neither exhibit is in the record before us.

The detective had no personal knowledge of the 1990 cases and his testimony was based solely upon the documents, which his office had obtained from the Circuit Court for Baltimore City.

Defense counsel challenged the State's proof of a second predicate conviction, pointing out a "notation" next to one of the counts on "Exhibit 2" that referenced "Article 27, section 641," the statute authorizing a court to impose probation before judgment.[7] Counsel related that she had visited the courthouse the day before and had "checked it and, in fact, it was Article 27, Section 641, there were no other indications," that is, "there was no cutting off of the page[.]" Thus, defense counsel argued, because it "appear[ed]" that Burton had been given probation before judgment, there was no "conviction" and the State had not established that Burton had "two prior convictions" for crimes of violence.

The prosecutor responded:

> Even assuming that were true, if you look down to the next charge, where he pled guilty and was found guilty of armed robbery and sentenced to 20 years, there's no Article 27, Section 641 for that armed robbery conviction, and that certainly would supply the conviction that would be required under the statute, so even assuming that 58924247 were a probation before judgment, and that certainly is inconsistent with the other entries where the defendant received 20 years suspended and five years probation, but even assuming that was a PBJ, if you take a [l]ook at the second case, the second number, that was not a PBJ, that was a conviction for armed robbery, which would qualify.

Defense counsel replied:

[7] That statute has since been recodified and appears at Maryland Code (2001, 2008 Repl. Vol.), section 6-220 of the Criminal Procedure Article ("CP").

> Your Honor, my only comment to that is that Judge Johnson signs it at the end of the entries, he doesn't have a signature before the first entry under Article 27, Section 641, and if you look immediately down you'll see the word concurrent, and then Judge Johnson's signature, and in my mind that would indicate that if, in fact, that second entry was concurrent to the first, and his signature then appears, that one has to read it as a whole and not as separate incidents or two separate entries, since there's only one signature for the judge.

The sentencing judge rejected the assertion that Burton had been given probation before judgment for either count, remarking that he never had seen a court "give a sentence on Article 27, Section 641." The judge further stated:

> The fact that Article 27, Section 641 is written there is a total contradiction to what is on that page. Now, why it's there and whatever it's there for, I don't see where it has any meaning, especially when it spells out under count 1, guilty of assault with intent to murder, and then it goes on to impose a sentence, and then count number 1 of 58924248, again, and there's no Article 27, Section 641 written next to that, so I find that that argument is just without foundation.

The court concluded that there was no "flaw in this predicate offense." Satisfied that Burton had two prior convictions for crimes of violence, it sentenced him to thirty years' incarceration, without the possibility of parole, for the attempted second-degree murder and to a consecutive ten-year term for use of a handgun in the commission of a crime of violence. The court imposed suspended sentences for robbery with a deadly weapon, kidnapping, and assault with intent to disable. As noted, Burton appealed and while the appeal was pending a three-judge sentencing review panel of the circuit court

modified his attempted second-degree murder sentence so that the first twenty-five years (not thirty) would be served without the possibility of parole.[8]

The State accurately describes the procedural history of the 1990 cases (Baltimore City Circuit Court case nos. 58924247 and 58924248) as "tortured." Although State's Exhibit 2 from the 1994 sentencing hearing is not in the record before us, the State has included in an appendix to its brief recently certified copies of a "Case History" that was prepared or micro-filmed in 1997 and appears to be a computer-generated summary of some of the docket entries from the 1990 cases. The Case History shows that on September 14, 1990, Burton pled guilty to "RDW" (presumably robbery with a deadly weapon) and to "AWIM" (presumably either assault with intent to murder *or* assault with intent to maim) and was sentenced, for each offense, to twenty years' imprisonment, all suspended, in favor of five years' probation. The Case History further shows that the "DISP" (presumably disposition) for each offense was "641A," a reference to Article 27, section 641A.[9] That statute authorized a circuit court to suspend a sentence or impose probation upon entering a judgment of conviction. In contrast, Article 27, § 641, commonly referred to as "probation before judgment" or "PBJ," authorized a trial court to stay the entry of a judgment of conviction and place the defendant on probation.

If a judgment of conviction for robbery with a deadly weapon in fact was entered against Burton on September 14, 1990, it would have been a valid predicate for the

[8] The order of the sentencing review panel is not in the record before us in this appeal.

[9] That statute has since been recodified and appears at CP section 6-221, 222, 225.

enhanced sentence he received in 1994 (as would a conviction for assault with intent to murder or with intent to maim). Burton maintains, however, that he was given a PBJ on both offenses, which when imposed were not "convictions." *See Myers v. State*, 303 Md. 639, 647-648 (1985) (holding that "probation before judgment under § 641 [of Art. 27] is not a 'conviction,' and a person who receives probation before judgment is not convicted of the crime for which he has been found guilty, unless the person violates the probation order and a court enters a judgment on the finding of guilt") (footnote omitted). In support, Burton points to several documents that at least raise a question about the disposition that took place on September 14, 1990.

First, Burton refers us to the transcript of the September 14, 1990 plea hearing in the Circuit Court for Baltimore City.[10] The transcript reflects that, when the 1990 cases were called, the prosecutor informed the court of a plea offer:

> **The State is offering** [Burton], **probation before judgment under art. 27-641**. For the charges of intent to murder and robbery.
> a sentence of twenty years with fifteen years suspended and five years of probation.[11]

(Emphasis added.)

[10] The document appears to be a copy of the official transcript, which, according to the Transcriber's Certificate, was prepared in 1996.

[11] The blank space between the second and third sentences strikes us as odd, as it is in the middle of the line and the next line, which purports to be the beginning of the next sentence, begins with a lower-case letter. Because the document is a copy and not the original, we cannot determine whether the transcript has been altered in any way. The State does not challenge the authenticity of the transcript.

The court asked whether Burton "agree[d]" with the State's plea offer. At that point, defense counsel asked for a sign language interpreter. The court denied the request. Defense counsel then noted, "[f]or the record," his client's request for a jury trial. The court responded: "Denied you have wasted enough of my time and you should have ask [sic] for it from the start." Defense counsel objected on the ground that Burton's "rights wasn't explained to him." The court declined to "talk to" Burton, stating that it did not "know how much he is able to hear." After defense counsel objected again, the court announced that it was reducing the charge of assault with intent to murder to "intent to maim." That prompted another objection by defense counsel. The court then urged defense counsel to accept the plea offer, stating that it was in Burton's "best interest" to do so. Defense counsel noted "for the record" that he had "no other choice but to accept the plea." When the court responded that it was not "forcing" the defense to take the plea, defense counsel again objected "to the whole proceedings and the fact that the court denied [Burton's] request for an [sic] jury trial[.]" The court then stated:

> I have change [sic] the charge to maim and I'm starting his probation from today as for the fifteen year suspended sentence, for the record I'm washing his plate clean so if he violate[s] my probation he will only have five years to back up so the plea is now five years and not twenty.

Defense counsel thanked the court and the on-the-record proceeding apparently ended, as the 3-page transcript reflects that "the disposition was concluded at 10:27:34."

Burton also points to an "Order for Probation" for those cases, also dated September 14, 1990. The order was completed on a pre-printed "Order for Probation"

form with the subtitle "(Under Art. 27 – Sec. 641)." (Burton has appended to his brief only a copy of page one of the two page order.) Although the subtitle of the form references Article 27, § 641—the statute authorizing a court to impose a PBJ—it is not entirely clear whether the "Order for Probation" is in relation to a probation before judgment or a probation after judgment, as the form only is partially completed. The form does clearly show, however, that the "Order for Probation" pertained to the offenses of "maim/robbery" and a term of "5 yrs."

But, as noted, the Case History reflects that on September 14, 1990, Burton pled guilty to assault with intent to murder (or perhaps maim) and to robbery with a deadly weapon and was sentenced for each offense, pursuant to Article 27, § 641A (probation *after* judgment), to *twenty* years' imprisonment, all suspended, in favor of five-years' probation.

On May 3, 1993, Burton was indicted for the offenses in the case *sub judice*. His jury trial took place on March 21 and 22, 1994, and, as noted, he was sentenced on June 16, 1994. His convictions prompted a violation of probation proceeding in the 1990 Baltimore City Circuit Court cases. On July 26, 1994, Burton was found in violation of conditions of his probation and a commitment record was issued in the Baltimore City cases stating that he was to serve twenty years in prison for assault with intent to *murder* (case no. 58924247) and twenty years in prison for robbery with a deadly weapon (case no. 58924248), to run concurrently with each other, but consecutive to the sentence imposed in the case *sub judice*. The 1994 commitment record is inconsistent with the September 14, 1990 transcript and "Order for Probation," which reflect sentences of five-

years' imprisonment, all suspended, for assault with intent to *maim* and to robbery (and would have meant that Burton was facing five years, not twenty years, of back-up time when his probation was revoked in 1994). The commitment record states, however, that the "Commitment is for execution of previously suspended sentence after Defendant was found in violation of probation." From that language, one could infer that the original disposition on September 14, 1990, was the imposition of a sentence *after* conviction, suspended in favor of probation.

Further confusing the matter, on December 2, 1999, Burton received a letter from the Office of the State's Attorney for Baltimore City, apparently in response to his request for information from its files, referencing the 1990 Baltimore City Circuit Court case nos. 58924247 and 58924248 and stating in its entirety:

> Please be advised that **our records show**, **on September 14, 1990, Attorney Howard Margulies, accepted a guilty plea offer on your behalf under Article 27, 641 (PBJ).** Your hearing disability was noted on file when the plea was accepted, however. Judge Kenneth L. Johnson, decided not to have a sign language interpreter present. We cannot provide you with a copy of this file.

(Emphasis added.)

Finally, Burton informs us that in December 2014, in connection with a petition for post-conviction relief in case nos. 58924247 and 58924248, the Circuit Court for Baltimore City entered an order re-sentencing him to 20 years' imprisonment for robbery with a deadly weapon, beginning on July 26, 1994, to run concurrently with any other sentence he is serving, including the 1994 sentence imposed by the Circuit Court for Baltimore County in the case *sub judice*. The order vacated "any sentence as to any other

Counts under Case Number 58924248," as well as "any sentence imposed" in "Case No. 58924247." Burton asserts that this order was the result of a "deal" with the State to correct an illegal sentence for the 1990 assault with intent to murder offense, in exchange for "keep[ing] the armed robbery conviction" and his withdrawing his petition for post-conviction relief with prejudice.

DISCUSSION

Burton contends the docket entries for the 1990 Baltimore City Circuit Court cases (State's "Exhibit 2") showing that in 1990 he was convicted of assault with intent to murder and robbery with a deadly weapon are contradicted by the transcript of the disposition hearing. He maintains that the 1990 dispositions were for assault with intent to maim and robbery and that he received probation before judgment on both charges, which means there was no conviction on either charge when his 1994 sentence for attempted second-degree murder in the case at bar was imposed. Accordingly, because he did not have two prior convictions for crimes of violence when he was sentenced for the Baltimore County crimes in 1994, his sentence was illegally enhanced.

The State responds that, "regardless of [Burton's] status when his sentence was initially imposed [on June 16, 1994], the record clearly shows that when [his] sentence was modified (by the three-judge review panel [on August 29, 1994]) [his] probation in the 1990 cases had been revoked[.]" Accordingly, "the alleged infirmity with the initially imposed enhanced sentence was not present when the three-judge review panel imposed

[Burton's] new sentence[,]" and Burton's sentence to thirty years' imprisonment, the first twenty-five to be served without parole, was not illegal.[12]

We disagree with the State that our focus should be on August 29, 1994—the date of the sentencing review panel's order directing that the no-parole portion of Burton's sentence for second-degree murder be reduced from thirty years to the first twenty-five years of the thirty-year sentence. As this Court previously has noted, "there is a significant difference between a confirmance or reduction in sentence by a review panel . . . and an increase ordered by it[.]" *Rendelman v. State*, 73 Md. App. 329, 334 (1987):

> [W]here the panel merely confirms the existing sentence, the relevant inquiry ordinarily is into that sentence and the procedure leading to its initial imposition. The sentence either violates Constitutional or statutory requirements or it does not; the trial judge who imposed the sentence acted properly and complied with mandatory procedure or did not. Challenging what occurred before the review panel usually adds nothing of real substance. Where the panel *increases* the sentence, however, the focus is necessarily and quite properly on what occurred before the panel. *Its* sentence, not that initially imposed by the trial judge, is what must pass muster, because that is the effective sentence in the case. *That* is the sentence that must be within Constitutional and statutory limits; it is that proceeding that must comport with required procedure; it is the *panel* then that must be free of 'ill will, prejudice or other impermissible considerations.'

[12] The State does not argue that Burton cannot raise this challenge in a motion to correct an illegal sentence pursuant to Rule 4-345(a). Indeed, when a predicate conviction cannot support the imposition of an enhanced sentence, the enhanced sentence is "not permitted by law" and, if imposed, is "inherent[ly] illegal[.]" *See Bryant v. State*, 436 Md. 653, 664-665 (2014) (quoting *Bowman v. State*, 314 Md. 725, 738 (1989)).

Id. at 335 (quoting *Teasley v. State*, 298 Md. 364, 370 (1984)).[13]

In our view, the relevant inquiry is whether, when Burton was sentenced on June 16, 1994, he had two prior convictions for crimes of violence so that the enhanced sentence statute applied. As the United States Court of Appeals for the Fourth Circuit has noted, the "very purpose of [the Maryland] sentence review [statute] is to reconsider and reevaluate information bearing on the appropriateness of the prisoner's punishment"; "it is not designed to examine a defendant's conduct in the interim" between sentence imposition and sentencing review. *Robinson v. Warden, Maryland House of Correction*, 455 F.2d 1172, 1176 (1972). In other words, the fact that Burton's probation in the Baltimore City Circuit Court cases was terminated *after* he was sentenced in this case, but before the sentencing review panel issued its order, has no bearing on the precise issue before us. To hold otherwise would frustrate the notice provisions of the enhanced penalty statutes.

When the State is seeking an enhanced sentence under a subsequent offender statute, it "must give the defendant notice of its intent to seek the mandatory minimum

[13] In *Gardner v. State*, 420 Md. 1, 14 (2011), the Court of Appeals held that, in the context of determining what sentence could be imposed following an appeal and remand for a new trial or resentencing, the sentence altered by a three-judge sentencing review panel is "the 'sentence of the court.'" *Id.* (quoting *Rendelman*, 73 Md. App. at 336). Accordingly, under Maryland Code (1974, 2013 Repl. Vol.), section 12-702(b) of the Courts & Judicial Proceedings Article ("CJP"), upon resentencing or following a retrial, the court cannot impose a sentence "more severe" than the sentence as modified by the sentence review panel, unless that statute is complied with. *Gardner* is distinguishable from the circumstances before us as the focus here is on whether the State had met its burden of proving the requisite predicate convictions at the time of the original sentencing.

penalty and, '*at sentencing*, "the burden is on the State to prove, *by competent evidence* and *beyond a reasonable doubt*, the existence of all of the statutory conditions precedent for the imposition of enhanced punishment."'" *Sutton v. State*, 128 Md. App. 308, 327 (1999) (quoting *Beverly v. State*, 349 Md. 106, 124 (1998) (further citations and footnote omitted) (emphasis added.) Accordingly, an enhanced sentence may not be imposed unless, at the time of sentencing, the State has proven "the existence of prior convictions" beyond a reasonable doubt. *Id.*

Here, as noted, State's "Exhibit 2" consisted of "certified copies of docket entries and indictments for Baltimore City [Circuit Court] case numbers 58924247 and 58924248[.]" As described by Detective Wolferman, the documents showed that Burton was charged "with the offense of assault with intent to murder and robbery with a deadly weapon" and was "found guilty on indictment number 58924247, assault with intent to murder, and 58924248 was a plea of guilty on [sic] robbery with a dangerous weapon." The detective further noted that the documents reflected that Burton was sentenced on each offense to twenty years' imprisonment, all suspended, and placed on a five-year period of probation. Defense counsel responded by pointing out a "notation" on the document to "Article 27, Section 641," the statute authorizing a court to impose probation before judgment and, accordingly, argued that the State had failed to prove that Burton had the requisite "two prior convictions" for crimes of violence.

Whether the September 14, 1990 disposition for one or both of the Baltimore City offenses was a probation before or after judgment is far from clear. Although State's "Exhibit 2" apparently was a "certified copy of the docket entries," the purported

transcript of the September 14, 1990 proceeding reflects a disposition of probation *before* judgment to the reduced charges of assault with intent to maim and robbery. The State's plea offer clearly was for probation *before* judgment and the trial judge did not indicate otherwise. In fact, in urging defense counsel to have Burton accept the plea, as it was in Burton's "best interest" to do so, the judge stated he was "washing [Burton's] plate clean" and if Burton were to violate probation, he would "only have five years to back up." In this context, it is plausible that the phrase "washing the plate clean" was a reference to a probation before judgment. *See Jones v. Baltimore City Police Dep't*, 326 Md. 480, 488 (1992) ("[A] grant of probation before judgment, unless subsequently altered by a violation of that probation, should have the effect of wiping the criminal slate clean."). Moreover, State's "Exhibit 2" appeared to reflect a conviction for assault with intent to murder, whereas the transcript reflects that the charge was reduced to assault with intent to maim**.** "Ordinarily, when there is a conflict between the transcript and the docket entries, unless it is shown to be in error, it is the transcript that prevails." *Savoy v. State*, 336 Md. 355, 360 n. 6 (1994). *See also Turner v. State*, 181 Md. App. 477, 491 (2008) (when there is "a discrepancy between the transcript and the docket entries, absent any evidence that there is an error in the transcript, the transcript controls").

In short, doubt has been cast on the competency of State's "Exhibit 2." If, in fact, Burton received probation *before* judgment for the 1990 offenses when he was sentenced on June 16, 1994, he would not have been subject to the enhanced sentence he received. *Jones*, 326 Md. at 488–89 ("A disposition of probation before judgment cannot be considered a predicate offense for imposition of certain recidivist penalties imposed by

law[.]"); *Myers*, 303 Md. at 647–48 ("[P]robation before judgment under § 641 is not a 'conviction,' and a person who receives probation before judgment is not convicted of the crime for which he has been found guilty, unless the person violates the probation order and a court enters a judgment on the finding of guilt.").

Given that Burton raised a viable claim as to whether the State had proven *beyond a reasonable doubt* that he had two prior convictions for crimes of violence when he was sentenced on June 16, 1994, as a subsequent offender, we hold that the circuit court erred in denying his motion to correct illegal sentence without ruling on that threshold issue. Accordingly, we shall vacate the order denying his motion and remand the matter to the circuit court for further proceedings.[14]

ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY BALTIMORE COUNTY.

[14] There is no merit in Burton's contention that, under "the rule of lenity," the circuit court was prohibited from imposing two enhanced sentences—for attempted second-degree murder and for use of a handgun in the commission of a crime of violence, with the handgun sentence to run consecutive to the attempted second-degree murder sentence. As the State points out, the sentences imposed were for distinct crimes and the court had discretion to run them consecutively. *Kaylor v. State*, 285 Md. 66, 69 (1979). Moreover, the handgun statute Burton violated provides that a person shall be sentenced for the offense to a mandatory minimum of five years without parole, with this sentence to be imposed "in addition to any other penalty imposed for the crime of violence[.]" CL § 4-204 (formerly Md. Code (1957, 1992 Repl. Vol.), Art. 27, § 36B(d)).