

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2046

September Term, 2015

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WARREN D. STUCKEY

v.

STATE OF MARYLAND

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Krauser, C.J.,  
Graeff,  
Nazarian,

JJ.

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PER CURIAM

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Filed: December 12, 2016

\*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 1994, a jury sitting in the Circuit Court for Baltimore City convicted Warren Stuckey, appellant, of first-degree murder, use of a handgun in the commission of a crime of violence or felony, and wearing, carrying, or transporting a handgun under one indictment and, under a second indictment, convicted him of robbery with a dangerous weapon, use of a handgun in the commission of a crime of violence or felony, and wearing, carrying, or transporting a handgun. The court sentenced Stuckey to life imprisonment, without parole, for the murder conviction and to various terms of confinement for the remaining offenses, to run concurrent with the life sentence. On appeal, this Court affirmed. *Stuckey v. State*, No. 1077, Sept. Term, 1994 (filed May 4, 1995).

In 2015, several years after his belated motion for modification of sentence was denied, Stuckey filed a motion to correct an illegal sentence claiming that his convictions should have merged for sentencing purposes. The circuit court denied the motion, whereupon Stuckey noted this appeal.

Stuckey first contends that the circuit court erred in denying his motion to correct an illegal sentence without holding a hearing. Although Maryland Rule 4-345(f) provides that a court may not correct, modify, vacate or reduce a sentence without first holding a hearing, there is no rule or law which requires a court to hold a hearing before *denying* a motion to correct or modify a sentence.

As for the merits, Stuckey maintains that his convictions for first-degree murder and armed robbery should have merged with his convictions for use of a handgun in the commission of crime of violence or felony. Specifically, he asserts that merger is mandated under the “required evidence test” and that the crimes he committed constitute the “same

offense for double jeopardy purposes.” He thus concludes that his sentences for murder and armed robbery must be vacated “as lesser included offenses of the greater offense of the use of a handgun in the commission of a felony or crime of violence.”

Stuckey’s contention is without merit. Section 4-204 of the Criminal Law Article (formerly Article 27, §36B(d)) of the Maryland Code provides that the penalty for the use of a handgun in the commission of a crime of violence or felony shall be “in addition to any other penalty imposed for the crime of violence or felony.” In *Whack v. State*, 288 Md. 137, 149-150 (1980), the Court of Appeals held that the legislature, in enacting this provision, clearly intended that separate and distinct sentences be imposed for the use of a handgun in the commission of a felony and the underlying felony, even where the two offenses were part of the same incident. Accordingly, there was no violation of the Double Jeopardy Clause.

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