Circuit Court for Kent County
Case No. 14-K-12-7968

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1300

September Term, 2016

STEVEN MAURICE LEWIS

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2017

In 2012, following a jury trial in the Circuit Court for Kent County, Steven Maurice Lewis, appellant, was convicted of eighteen offenses, including armed robbery, two counts of attempted armed robbery, first-degree burglary, multiple counts of first-degree assault, use of a handgun in the commission of a felony or crime of violence, and various conspiracy charges. Lewis was sentenced to a total term of 170 years' incarceration. On appeal, this Court vacated convictions for conspiracy to commit burglary, conspiracy to commit assault, and conspiracy to use a handgun in the commission of a felony or crime of violence, but otherwise affirmed the judgments. *See Lewis v. State,* No. 2632, September Term, 2012 (filed May 1, 2015).

In 2016, Lewis filed a motion to correct an illegal sentence pursuant to Rule 4-345(a). Lewis alleged that his sentence was illegal because it exceeded the sentencing guidelines, it constituted cruel and unusual punishment, it violated the double jeopardy clause of the U.S. Constitution, certain sentences should have merged under the principle of fundamental fairness, there was an ambiguity between the docket entries and the sentencing transcript, and his sentence was partially vacated, following his direct appeal, without a hearing. The circuit court summarily denied the motion. Lewis appeals. For the reasons to be discussed, we affirm.

BACKGROUND

The charges against Lewis stemmed from a home invasion that occurred shortly after midnight on March 31, 2011. In addition to the owners, some individuals with special needs resided in the home. The intruders assaulted some of the residents and demanded money and drugs.

At the sentencing hearing, the court merged several convictions for sentencing purposes. Sentences for eight other convictions were run consecutively, with the remaining sentences run concurrently, for a total term of 170 years' incarceration. As noted, on direct appeal, this Court vacated several of Lewis's conspiracy convictions. Because the sentences for the convictions that were vacated on appeal had been run concurrently with other sentences, Lewis's total sentence did not change.

DISCUSSION

In this appeal, Lewis presents a single question: Did the circuit court err in denying his motion without a hearing or written opinion on the merits? In the argument section of his brief, however, he makes essentially the same contentions he made in the circuit court.

The answer to the question Lewis presented on appeal is "no." The circuit court did not err in denying his motion without a hearing or written opinion on the merits as neither a hearing nor a written opinion is required when a court denies a motion to correct an illegal sentence. We turn now to the contentions he raises on the merits of his illegal sentence claim.

First, Lewis asserts that the sentence imposed by the court "improperly exceeded the sentencing guidelines, thus violating due process principles." Specifically, he maintains that the "facts just don't support the circuit court's reasoning" for exceeding the sentencing guidelines.

When imposing sentence, the court stated:

> I will say again that the Court is exceeding the guidelines in this case because of his major role in the offense, because of the level of harm being excessive, and the vicious or heinous nature of the conduct. And, also, I take into

> consideration the fact that this was a home that should have been considered even more inviolate because of the people who were in there being people who were of a fragile nature, the elderly who were cared for, none of whom were aware of this crime, none of whom can be considered victims, but still, in all, it's another circumstance this – this Court takes into consideration in exceeding the guidelines.

Lewis's sentences are within the statutory maximum and thus, they are legal. Consequently, his sentencing guidelines argument is not the proper subject of a Rule 4-345(a) motion to correct an illegal sentence. As the Court of Appeals reiterated in *Colvin v. State,* 450 Md. 718 (2016):

> An illegal sentence, for purposes of Rule 4-345(a), 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. A sentence does not become an illegal sentence because of some arguable procedural flaw in the sentencing procedure. 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 the judgment and sentence in a criminal case.

Id. at 725 (quotations and citations omitted).

Second, Lewis maintains that his sentence "violated the Eighth Amendment prohibition on cruel and usual punishment." Specifically, Lewis asserts that his sentence "constitutes cruel and unusual punishment" because it is "grossly disproportionate to the seriousness of the offense" and, "despite [his] dubious involvement" in the crimes, he "was given more time than his co-defendants whose involvement was firmly established."

Lewis's "cruel and unusual punishment" argument is one that he should have raised on direct appeal. Again, his sentences are lawful. Moreover, when imposing sentence, the court noted that Lewis had a history of criminal convictions, he was on parole when he

committed the offenses in this case, and that he was "a ringleader" and "one of the instigators" of the "heinous crimes" committed here. Finally, as this Court said years ago, "it is firmly established that punishment is not cruel and unusual because sentences are imposed to run consecutively." *Smith v. State,* 23 Md. App. 177, 180 (1974) (citation omitted).

Third, Lewis contends that the court violated the "Double Jeopardy Clause that protects a criminal defendant from multiple punishments for the same offense." Specifically, he asserts that he should not have been sentenced separately for robbery with a deadly weapon of Jamal Brown (count 1), attempted robbery with a deadly weapon of Roger Brown (count 3), attempted robbery with a deadly weapon of Yolanda Brown (count 4), and conspiracy to commit armed robbery of Roger Brown (count 7) because "these events are all sequences stemming from the same event." Lewis maintains that these sentences should have merged "under the rule of lenity or the principle of fundamental fairness."

Although a court's failure to merge a sentence where merger is *required* constitutes an illegal sentence for Rule 4-345(a) purposes, *see Pair v. State,* 202 Md. App. 617, 624 (2011), merger of the aforementioned sentences was not required. On direct appeal, this Court, citing *Carroll v. State,* 428 Md. 679 (2012), concluded that Lewis's convictions for attempted robbery with a dangerous weapon and conspiracy to commit armed robbery did

not merge.[1] Consequently, that issue may not be re-litigated. *State v. Garnett,* 172 Md. App. 558, 562 ("Obviously, the law of the case doctrine would prevent relitigation of an 'illegal sentence' argument that has been presented to and rejected by an appellate court."), *cert. denied,* 399 Md. 596 (2007). As for the other sentences Lewis mentions – robbery with a deadly weapon of Jamal Brown, attempted robbery with a deadly weapon of Roger Brown, and attempted robbery with a deadly weapon of Yolanda Brown – those offenses involved distinct victims and there is no indication that the legislature intended that such sentences be merged. *See Smith, supra,* 23 Md. App. at 183-184 ("We have not the slightest difficulty in determining that in fixing the penalty for robbery and robbery with a deadly weapon, the Legislature intended no bar to cumulative punishment for each victim robbed. The rule of lenity is not invoked."). As for Lewis's argument that these sentences should have merged for fundamental fairness reasons, as we did in *Pair, supra,* we decline "to review the issue of merger pursuant to the so-called 'fundamental fairness' test because we do not believe that it enjoys the procedural dispensation of Rule 4-345(a)." 202 Md. App. at 649.

Fourth, Lewis argues that his sentence is "ambiguous" because, he claims, the docket entries and sentencing transcripts are "at variance." Lewis relies on the fact that,

[1] In *Carroll,* the Court of Appeals recognized that attempted armed robbery and conspiracy to commit armed robbery do not merge under the required evidence test or the rule of lenity and it stated that "[r]are are the circumstances in which fundamental fairness requires merger of separate convictions or sentences." 428 Md. at 695. The Court held that under the facts of this case, Carroll's sentences would not merge on fundamental fairness grounds. *Id.* at 698-700. We note that the merger issue in *Carroll* was raised on direct appeal, not in a motion to correct an illegal sentence.

after imposing sentence for each conviction and ordering Lewis to pay restitution, the court stated:

> [T]he defendant **shall serve 50 percent of the total active sentence of 135 years before he is eligible for parole. No, that's 130 years before he is eligible for parole** because of his involvement in these violent crimes pursuant to Section 7-101 of the Correctional Services Article. [[2]]

(Emphasis added.)

The docket entry, consistent with the transcript, reflects the sentence imposed for each conviction and whether it was to run consecutive to or concurrent with another sentence, but it did not state the total term of incarceration. When the sentences noted on the docket entry are aggregated, they total 170 years' incarceration. Relying on the transcript excerpt cited above, Lewis, however, claims that his total sentence should be 130 years' imprisonment.

The State responds that the "court's statement requires some untangling, but it is not ambiguous and does not contradict the docket; the court was merely restating what the statutory provisions already require." The State asserts that the total term of incarceration is in fact 170 years and that "the court's mention of 130 years does not create a variance," but "can be reconciled by looking at the statute governing parole eligibility for violent crimes." That provision, Section 7-301(c)(1)(ii) of the Correctional Services Article of the Md. Code, provides:

> An inmate who has been sentenced to the Division of Correction after having been convicted of a violent crime . . . is not eligible for parole until the inmate has served the greater of . . . (1) **one-half of the inmate's aggregate sentence for violent crimes**; (2) one-fourth of the inmate's total

[2] The correct citation is Correctional Services Article, § 7-301.

> aggregate sentence; or (3) a period equal of the term during which the inmate is not eligible for parole.

(Emphasis added.)

The State points out that, of the eighteen crimes Lewis was convicted of, nine were violent crimes for which he was sentenced to consecutive terms of imprisonment totaling 130 years. Thus, the State contends that "the sentencing court's intent was clear, and its articulating the figure of 130 years did not evince an intent to impose a lesser sentence; instead the court simply announced that, pursuant to statutory mandate, Lewis would not be eligible for parole until he had served half of 130 years of his sentence."

We agree with the State. The court was simply noting that, by statute, Lewis would have to serve half of the aggregate sentence for the violent crimes he was convicted of, which totaled 130 years' imprisonment, before he would be eligible for parole. Contrary to Lewis's position, the court did not state nor imply that it was sentencing Lewis to a total term of 130 years' imprisonment.

Finally, Lewis claims that the circuit court erred in not holding a "new sentencing hearing" after this Court vacated several of his convictions on direct appeal, which Lewis asserts deprived him of "an opportunity to argue for leniency." Lewis, however, was not entitled to a new sentencing hearing, because the sentences for the vacated convictions had

been run concurrent with other sentences that were not vacated. Consequently, there was no need to re-sentence Lewis; an amended commitment record sufficed.

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