

Circuit Court for Baltimore County
Case No. 03-K-16-001933

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1594

September Term, 2016

SHAKIR MITCHELL

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: November 3, 2017

*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.

Following a jury trial in the Circuit Court for Baltimore County, Shakir Mitchell, appellant, was convicted of first degree sexual offense, first degree assault, robbery with a dangerous weapon, use of a handgun in a crime of violence, false imprisonment, and possession of a stun gun. Mitchell raises a single question: Does his total term of eighty-three years of active incarceration constitute cruel and unusual punishment in violation of the Eighth Amendment? For the reasons that follow, we affirm.

The details of the offenses that led to Mitchell’s convictions are not at issue, but briefly, the victim identified Mitchell as a “hack” who, accompanied by a second man, gave the victim a ride to his apartment. Upon arriving, Mitchell produced a handgun, ordered the victim into his bedroom, and handcuffed him. As Mitchell’s companion “ransacked” the room, Mitchell repeatedly threatened to kill the victim. Discovering a “dildo” and “anal beads” in a closet, Mitchell inserted the objects into the victim’s anal area. Mitchell then used the handgun and a stun gun to attempt to force the victim to disclose the password to his cell phone. After some time, Mitchell again threatened to kill the victim, and Mitchell and his companion departed. The victim later discovered that thousands of dollars in property, including cash, a paycheck, and a television, had been taken from the apartment.

Following trial, the court sentenced Mitchell to life imprisonment, all but sixty years suspended, for the first degree sexual offense. The court merged the conviction of first degree assault. For the robbery with a dangerous weapon, the court sentenced Mitchell to ten years consecutive. For the use of a handgun in a crime of violence, the court sentenced Mitchell to twelve years, all but five years suspended, consecutive. For the false

imprisonment, the court sentenced Mitchell to five years consecutive. Finally, for the possession of a stun gun, the court sentenced Mitchell to three years consecutive.

Mitchell contends that, for various reasons, the total term of eighty-three years of active incarceration “constitutes cruel and unusual punishment in violation of” the Eighth Amendment. *Malee v. State*, 147 Md. App. 320 (2002), is instructive. Malee “was convicted . . . of twenty counts charging a second degree sexual offense, ten counts charging a third degree sexual offense, and one count charging child abuse.” *Id.* at 322. “With most of the sentences being consecutive to the others, [Malee] was sentenced to serve a grand total of 450 years.” *Id.*

On appeal, Malee contended that the “sentence was so excessive as to be in violation of the Eighth Amendment’s prohibition of cruel and unusual punishment.” *Id.* at 333 (quotations omitted). Rejecting the contention, we stated:

The complaint is about a “sentence of 450 years.” We have searched the record and can find no “sentence of 450 years.” What we do find are 31 separate sentences for 31 separate convictions for 31 separate crimes. Not one of those sentences was in excess of 20 years, a sentence within the legislatively prescribed limits.

[Malee’s] real complaint is that 30 of the 31 sentences were ordered to be served consecutively.

Id. Recognizing the conclusion of the Court of Appeals in *Kaylor v. State*, 285 Md. 66 (1979), that “consecutive sentences do not constitute cruel and unusual punishment where the length of each sentence is within the limits prescribed by statute,” *id.* at 69, we stated that we saw “no problem with the consecutive nature of a series of 20 year sentences in [Malee’s] case.” *Malee*, 147 Md. App. at 335.

We reach a similar conclusion here. Mitchell does not have a sentence of eighty-three years of active incarceration. He has five separate sentences for five separate convictions for five separate crimes. Four of those sentences are for offenses created by statute, and not one of them is in excess of the legislatively prescribed limits.¹ The fifth sentence is for an offense, specifically false imprisonment, created in the common law, and Mitchell does not contend that the five-year sentence for that offense constitutes cruel and unusual punishment. Mitchell’s real complaint is that four of the five sentences were ordered to be served consecutively. In light of *Kaylor* and *Malee*, the consecutive nature of the series of sentences does not constitute cruel and unusual punishment.

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

¹The maximum sentence for first degree sexual offense is life imprisonment. Md. Code (2002, 2012 Repl. Vol., 2015 Supp.), § 3-305 of the Criminal Law Article (“CL”). The maximum sentence for robbery with a dangerous weapon is twenty years. CL § 3-403. The maximum sentence for use of a handgun in a crime of violence is twenty years. CL § 4-204. Finally, the maximum sentence for possession of a stun gun while committing a crime of violence is three years. CL § 4-109.