UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2868

September Term, 2015

XAVIER WILSON

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2017

In 1994, following a jury trial in the Circuit Court for Baltimore City, Xavier Wilson, appellant, was convicted of attempted armed carjacking, attempted robbery with a dangerous weapon, and other offenses. The court sentenced Wilson to a total term of forty-five years of imprisonment, including a term of ten years for attempted carjacking and a consecutive term of five years for attempted robbery with a dangerous weapon. This Court affirmed the convictions. *Wilson v. State*, No. 372, September Term, 1995 (filed January 5, 1996). In 2014, Wilson filed a motion to correct an illegal sentence, pursuant to Rule 4-345(a), in which he claimed that he should have received a single sentence for attempted armed carjacking and attempted robbery with a dangerous weapon because both offenses arose from the same conduct, that is, his attempt to take, at gunpoint, a vehicle from its driver. Wilson appeals the circuit court's denial of that motion. Because those crimes do not merge for sentencing purposes, we affirm.

The carjacking statute was enacted in 1993, the year before Wilson committed the crime. As for sentencing, the statute provides:

> A sentence imposed under this section may be separate from and consecutive to a sentence for any other crime that arises from the conduct underlying the carjacking or armed carjacking.

Crim. Law, §3-405 (2012 Repl. Vol.) (formerly Art. 27, § 348A (1992 Repl. Vol., 1993 Supp.)).

Because the legislature has authorized a court to impose a sentence for carjacking "separate from and consecutive to a sentence for any other crime that arises from the conduct underlying the carjacking or armed carjacking," the court was permitted to impose separate (and consecutive) sentences for Wilson's convictions for attempted armed

carjacking and attempted robbery with a dangerous weapon. *State v. Lancaster*, 332 Md. 385, 391 (1993) (Although convictions might merge under the "required evidence test," separate sentences are nonetheless permitted where the legislature "has specifically or expressly authorized multiple punishment."). *See also Missouri v. Hunter*, 459 U.S. 359, 368-369 (1983) (There is no violation of the Double Jeopardy Clause where the legislature has authorized multiple punishments for crimes arising out of the same conduct.).

Moreover, the Court of Appeals has rejected the suggestion that carjacking and robbery would merge under the "required evidence or elements test." In *Harris v. State*, 353 Md. 596 (1999), the Court noted that "[a]n essential element of carjacking, unlike robbery, is the taking of a specific type of property, *i.e.* a motor vehicle. Unlike robbery, the carjacking statute requires no movement or asportation, only unauthorized possession or control." *Id.* at 614-615. In other words, the Court concluded that "robbery can be accomplished without committing carjacking, and carjacking can be accomplished without committing robbery." *Id.* at 615.

Wilson also asserts that his sentences should have merged for "fundamental fairness" reasons. Such a claim, however, must be raised on direct appeal and will not be entertained in a motion to correct an illegal sentence because the court's failure to merge a sentence under principles of fundamental fairness does not create an "inherently illegal" sentence. *See Pair v. State*, 202 Md. App. 617, 649 (2011), *cert. denied*, 425 Md. 397 (2012).

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