

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2885

September Term, 2015

ADAM BURK SCOTT

v.

STATE OF MARYLAND

Berger,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 7, 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.

In 2008, following a jury trial in the Circuit Court for Harford County, Adam Burk Scott, appellant, was convicted of illegal possession of a regulated firearm, fleeing and eluding police, theft of property having a value over \$500, and other offenses. The court sentenced Scott to a mandatory five-year term of incarceration without the possibility of parole for the firearm conviction, to a consecutive fifteen years' imprisonment for theft, to a consecutive one-year term for fleeing and eluding police, and to various other consecutive terms of imprisonment for a total aggregate term of sixty-one years' imprisonment, with all but thirty-six years suspended. In 2015, Scott filed a motion to correct an illegal sentence in which he claimed that his sentence for fleeing and eluding police was illegal because, in essence, he was convicted of fleeing and eluding the police *on foot*, but he was indicted with fleeing and eluding the police *by willfully failing to stop his vehicle*. He also claimed, for various reasons, that his sentence for possession of a regulated firearm was illegal. The circuit court denied the motion, prompting this appeal. We affirm.

Fleeing & Eluding Police

Count 5 of the indictment charged that Scott “did attempt to elude uniform police by failing to stop a vehicle (Fleeing and eluding – Transportation Article § 21-904b).” At trial, the State produced evidence that Scott and two companions stole items from a store. After the police were alerted, Scott, who was driving the get-away car, refused to stop his vehicle despite the fact that the police, who were following him, had activated lights and sirens. When Scott finally stopped after he struck one of the police vehicles pursuing him, he exited his vehicle and fled into the woods, where he was later apprehended.

When instructing the jury on the fleeing and eluding charge, the court informed the jury that in order to convict Scott, the State was required to prove:

one, that the police officer gave a visual or audible sign to stop; two, that the police officer was in a vehicle appropriately marked as an official police vehicle or was in uniform with prominently displayed police officer’s badge or other insignia of office; three, that the driver attempted to elude the police officer by failing to stop the driver’s vehicle; **four, that the driver attempted to elude the police officer by fleeing on foot.**

(Emphasis added.)

During closing arguments, the court realized it should not have included the fourth element because Scott was not charged with fleeing and eluding on foot. When the court brought this to the parties’ attention, the defense did not want the court to re-instruct the jury, but accepted the court’s suggestion that the fourth element be deleted from the written instructions that would be available to the jury during their deliberations. Moreover, defense counsel acknowledged that the defense had “conceded” this count.

In fact, during its closing argument, defense counsel admitted that the evidence was sufficient to support the fleeing and eluding charge, as reflected in the following statements:

[W]e have admitted to you [the jury] that Mr. Scott was fleeing and eluding. It’s a bad situation, bad behavior, and he shouldn’t have done that. I think human panic took over when he found himself where he was. So, we have that going on. The police are chasing, lights and sirens, fear of apprehension, and it is getting worse all the time.

Mr. Scott is doing this bad thing, fleeing the police[.]

The bottom line is Mr. Scott, as I told you up front, tried to flee the police. He tried very hard to flee the police. . . . He tried to flee the police when he found what his situation was.

I’m convinced that you will find Mr. Scott guilty of fleeing and eluding, but I’m also convinced that you will find Mr. Scott not guilty of theft, conspiracy, possession of a handgun, and all of the rest of the charges.

The jury convicted Scott of fleeing and eluding. Scott, however, seems to contend that he was convicted of fleeing and eluding *on foot* and, therefore, he was convicted of a crime for which he was not indicted. Having reviewed the record before us, including the excerpts from the trial transcript cited above, we are convinced that the jury convicted Scott of the offense with which he was charged, that is, fleeing and eluding the police by failing to stop his vehicle. And the sentence he received for that crime is legal. *See* § 27-101(p) of the Transportation Article of the Maryland Code.¹

Illegal Possession of a Regulated Firearm

Section 5-133 of the Public Safety Article of the Maryland Code prohibits a person who was “previously convicted” of a “crime of violence” from possessing a regulated firearm. At trial, Scott stipulated that he had been “previously convicted of a disqualifying crime, which would render it unlawful for [him] to knowingly possess a regulated firearm.”

¹ Scott also asserts that the trial court erred by allowing “dead counts to be included on the verdict sheet.” He seems to be saying that because the defense “conceded” the fleeing and eluding charge, it should not have been included on the verdict sheet. That, however, is incorrect because, despite the concession that the evidence was sufficient to convict him of fleeing and eluding the police, the jury still had to render a verdict on that charge. In other words, conceding that the evidence was sufficient to convict him of fleeing and eluding the police was not the same as pleading guilty to that crime.

Thus, the only issue before the jury was whether Scott had “knowingly possessed a regulated firearm.” The jury convicted him of the offense.

When Scott committed this crime, the penalty portion of the statute provided:

(2) A person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years, no part of which may be suspended.

(3) A person sentenced under paragraph (1) of this subsection may not be eligible for parole.

Public Safety § 5-133(c) (MD Code 2003).

As noted, the court sentenced Scott in accordance with this statute. Scott, however, asserts that his sentence is illegal because the State did not “give proper notice” of the “mandatory” penalty. He relies on Rule 4-245(c), which provides that “[w]hen the law prescribes a mandatory sentence because of a specified previous conviction, the State’s Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing.” If the State fails to do so, the rule provides that “the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement.”

Assuming Rule 4-245(c) was applicable and assuming it was not complied with, Scott’s sentence still is not illegal. His complaint is a procedural one. *Tshiwala v. State*, 424 Md. 612, 619 (2012) (“where the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a.”); *State v. Wilkins*, 393 Md. 269, 273 (2006) (A sentence does not become “an illegal sentence because of some arguable procedural flaw in the sentencing procedure.”) (quotation omitted)). Moreover, by stipulating at trial that

Scott had been previously convicted of a “disqualifying crime,” he clearly was on notice of the “alleged prior conviction” on which the State was relying.

Scott also argues that the State improperly relied on misdemeanor theft convictions he incurred in 2003 as the disqualifying crime. That, however, is not supported by the record before us as the State clearly relied upon a 1984 conviction for assault with intent to rob and two 1988 convictions for robbery with a dangerous and deadly weapon, which met the definition of a crime of violence.

Finally, Scott asserts that because P.S. § 5-133, which prohibited him from possessing a regulated firearm, was enacted in 1996, it “could only apply to offenses committed thereafter.” He then maintains that, because “all of his previous convictions were before October 1, 1996,” his 1984 and 1988 convictions could not serve as predicate offenses for this crime. This contention has no merit. The effective date of the statute pertained to the offense of possessing a regulated firearm, not to the previous convictions that made possessing a firearm illegal.

Finally, we note that Scott has served the sentence for the firearm offense, which was the first in a string of consecutively imposed terms of incarceration. Accordingly, his claim that this sentence is illegal is moot.

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