

Circuit Court for Harford County
Case No. 12-K-05-000203

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2112

September Term, 2016

WILLIAM JAMES MITCHELL

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 2018

*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.

William James Mitchell appeals the denial, by the Circuit Court for Harford County, of his motion to correct an illegal sentence. We affirm.

In 2005, a jury in the Circuit Court for Harford County convicted Mitchell of attempted first and second-degree murder of Tesheka Smythe, first and second-degree assault of Ms. Smythe, use of handgun in the commission of a felony (as to Ms. Smythe), and use of a handgun in the commission of a crime of violence (as to Ms. Smythe). The jury also convicted appellant of second-degree assault of Timothy Bishop and use of a handgun in the commission of a felony (as to Mr. Bishop). In addition, the jury convicted appellant of wearing, carrying, or transporting a handgun on or about his person; wearing, carrying, or transporting a handgun in a vehicle; unlawfully possessing, owning, carrying, and transporting a firearm after being convicted of a felony; and unlawfully possessing a regulated firearm after being convicted of a felony.

The court sentenced Mitchell to a total term of seventy years' imprisonment: forty-five years for attempted first-degree murder of Ms. Smythe (count 1); ten years for use of a handgun in the commission of a crime of violence (as to Ms. Smythe) (count 11); five years for unlawfully possessing, owning, carrying, and transporting a firearm after being convicted of a felony (count 12); five years for second-degree assault of Mr. Bishop (count 6); and five years for use of a handgun in the commission of a felony (as to Bishop) (count 10). The sentences were ordered to run consecutive to each other. The court merged the remaining convictions for sentencing purposes. In 2009, the circuit court vacated the sentence for count 10, leaving a total term of sixty-five years' imprisonment.

In 2016, Mitchell, proceeding *pro se*, filed a motion to correct an illegal sentence pursuant to Maryland Rule 4-345(a). He asserted that the sentencing court had erred in merging his sentences for wearing, carrying, or transporting a handgun on or about his person (a violation of § 4-203(a)(1)(i) of the Criminal Law Article of the Md. Code) (count 7) and wearing, carrying, or transporting a handgun in a vehicle (a violation of Crim. Law, § 4-203(a)(1)(ii)) (count 8). Instead, he asserted that the rule of lenity applied and he asked the court to vacate the sentence for count 7 or count 8. The circuit court summarily denied the motion.

Mitchell raises the same argument on appeal that he did in the circuit court. He states that the aforementioned handgun convictions under Crim. Law, §§ 4-203(a)(1)(i) & (ii) “should not have merged, but that the rule of lenity should have been applied to his sentence, and only one violation under CL 4-203 should have received a sentence.” He urges this Court to “vacate one sentence for either CL 4-203(a)(1)(i) or CL 4-203(a)(1)(ii), and remand for re-sentencing.”¹

Mitchell apparently is confused about the sentences the court imposed. As noted, for sentencing purposes, the court merged the handgun convictions under Crim. Law, §§ 4-203(a)(1)(i) & (ii) (counts 7 and 8) into his conviction for unlawfully possessing, owning, carrying, and transporting a firearm after being convicted of a felony (count 12) (a violation of Crim. Law, § 5-622(b)). In other words, Mitchell was not sentenced separately for the

¹ Mitchell misunderstands the concept of merger for sentencing purposes. The so-called “required evidence test,” the rule of lenity, and fundamental fairness are different theories leading to the same result, that is, a single sentence for two (or more) convictions. See *Latray v. State*, 221 Md. App. 544 (2015).

handgun convictions at issue here – counts 7 and 8. He was sentenced to a ten-year term of imprisonment for use of a handgun in the commission of a crime of violence related to the attempted murder of Ms. Smythe (count 11) and to a five-year term of imprisonment for the firearm offense (count 12). In short, there is no separate sentence for his convictions under Crim. Law, §§ 4-203(a)(1)(i) or (ii) (counts 7 and 8) that could be vacated.

Finally, we note that, in its brief, the State moved to dismiss the appeal because Mitchell failed to provide “a complete transcript of the trial.” The record before us, however, includes the trial transcripts.

**APPELLEE’S MOTION TO DISMISS
APPEAL DENIED. JUDGMENT OF THE
CIRCUIT COURT FOR HARFORD
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**