

Circuit Court for Prince George's County
Case No. CT970577B

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2226

September Term, 2017

ANTHONY JOHNSON

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: December 31, 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.

In 1991, following a jury trial in the Circuit Court for Prince George’s County, Anthony Johnson, appellant, was convicted of first-degree murder and use of a handgun in the commission of a crime of violence. The sentencing court imposed a sentence of life imprisonment for first-degree murder and a consecutive sentence of twenty years’ imprisonment for use of a handgun in the commission of a crime of violence. In 2017, Mr. Johnson filed a motion to correct illegal sentence, claiming that his conviction for first-degree murder should have merged into his conviction for use of a handgun during the commission of a crime of violence. The circuit court denied his motion without a hearing. Because Mr. Johnson’s sentences do not merge and, thus, are not illegal, we affirm.

Section 4-204 of the Criminal Law Article (formerly Article 27, § 36B(d) of the Maryland Code) provides that the penalty for the use of a handgun in the commission of a crime of violence or felony shall be “in addition to any other penalty imposed for the crime of violence or felony.” In *Whack v. State*, 288 Md. 137, 149-150 (1980), the Court of Appeals determined that the legislature, in enacting this provision, clearly intended that separate and distinct sentences be imposed for the use of a handgun in the commission of a felony and the underlying felony, even where the two offenses were part of the same incident. Therefore, the Court held that the imposition of a separate sentence for the use of a handgun in a crime of violence did not violate the Fifth Amendment’s prohibition against double jeopardy. *Id.* at 149.¹ Although Mr. Johnson contends that *Whack* was

¹ In attempting to distinguish *Whack*, Mr. Johnson cites *State v. Ferrell*, 313 Md. 291 (1988), wherein the Court of Appeals found that “the offense of armed robbery merged into the greater offense of use of a handgun in the commission of a felony or crime of
(continued)

wrongly decided, we must follow opinions assented to by a majority of the Court of Appeals unless they are subsequently overruled in another case or by statute. *See Marlin v. State*, 192 Md. App. 134, 151 (2012). Consequently, we hold that the circuit court did not err in denying Mr. Johnson’s motion to correct illegal sentence.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

violence.” *Ferrell* is distinguishable, however, because it was decided in the context of whether the Double Jeopardy Clause prohibited successive prosecutions, not multiple punishments. *Id.* at 292 (“The issue in this case is whether the defendant’s prosecution . . . is barred, under double jeopardy principles, by the defendant’s prior conviction [.]”).