

Circuit Court for Montgomery County  
Case No. 109654C

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 2295

September Term, 2022

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ARMANDO ANTONIO GREEN

v.

STATE OF MARYLAND

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Wells, C.J.,  
Arthur,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: September 27, 2023

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Armando Antonio Green, appellant, appeals the denial, by the Circuit Court for Montgomery County, of his motion to correct illegal sentence. For the reasons that follow, we shall affirm.

In 2008, appellant was convicted of four counts of robbery with a dangerous weapon and one count of use of a handgun in a crime of violence. Appellant was sentenced to consecutive terms of 20 years' imprisonment on each of the robbery charges and a concurrent term of 10 years' imprisonment on the handgun charge. In 2022, appellant filed a motion to correct illegal sentence, claiming that his sentence for use of a handgun in the commission of a crime of violence is inherently illegal because it violates the double jeopardy principles for multiple punishments for the same act. The circuit court denied his motion without a hearing. This appeal followed.

Appellant first asserts that the court erred in denying his motion to correct illegal sentence on the merits. However, 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 Supreme Court held 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.

In attempting to distinguish *Whack*, appellant relies on *State v. Ferrell*, 313 Md. 291 (1988), wherein the Supreme Court 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 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 a defendant’s prosecution . . . is barred, under double jeopardy principles, by the defendant’s prior conviction[.]”). Consequently, appellant’s separate sentences for armed robbery and use of a handgun in the commission of a crime of violence do not violate the Double Jeopardy Clause and merger is not required.

Appellant also contends that the court erred in denying his motion without a hearing. However, unless the court intends to modify, reduce, or vacate a sentence, which it did not in this case, no hearing is required. *See Scott v. State*, 379 Md. 170, 190 (2004).

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