Circuit Court for Charles County
Case No. 08-K-17-000130

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2406

September Term, 2019

LAFAYETTE REMOINE CRUTCHFIELD

v.

STATE OF MARYLAND

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

JJ.

Opinion by Kenney, J.

Filed: August 25, 2021

In 2018, appellant, Lafayette Remoine Crutchfield was sentenced to 48 years as a result of his convictions for various sexual offenses involving a minor. After reversing two of Appellant's convictions, we remanded to the trial court for resentencing on the remaining counts. On remand, the circuit court sentenced him to a total of 34 years. Appellant asks us one question on appeal:

> Did the trial court on remand impose an illegal sentence?

We answer his question in the negative for the reasons that follow.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged Mr. Crutchfield with sexually abusing his domestic partner's twelve-year-old daughter. *Crutchfield v. State*, No. 583, Sept. Term 2018, 2–3 (Aug. 22, 2019) ("*Crutchfield-I*"). The case went to trial in February 2018. At trial, the minor testified that appellant "rubbed her 'vagina area' with his hand and touched her 'butt cheeks' with his penis" when he came up to her room late at night to "cuddle" with her. *Id.* at 3. Prior to this, she thought of him as a father figure. *Id.* at 23.

After two days of trial, the jury convicted appellant on four counts: Count 2, second degree sexual offense; Count 4, sexual abuse of a minor; Count 5, third degree sexual offense; and an unindicted count of third degree sexual offense—submitted to the jury as a lesser-included offense of Count 2. *Id.* at 35. He was sentenced to an aggregate of 48 years: 20 years for Count 2, 20 consecutive years for Count 4, and another 8 consecutive years for Count 5. *Id.* at 1. The unindicted third degree sexual offense was merged into Count 2 for sentencing. *Id.* at 36.

On appeal, Mr. Crutchfield successfully challenged two of his convictions: Count 2, second degree sexual offense, and the unindicted count of third degree sexual offense. *Id.* at 28–38. We reversed Count 2 based on insufficient evidence, and the unindicted count because it was not a lesser-included offense of second degree sexual offense. *Id.* at 35, 37–38. As a result of the reversals, we also vacated the sentences for the remaining convictions and remanded for resentencing under *Twigg v. State*, 447 Md. 1 (2016). *Crutchfield-I* at 38. In doing so, we noted that appellant's "sentence on remand [could not] exceed the originally imposed sentence or the maximum sentence for the remaining two convictions." *Id.* at 38.

The circuit court re-sentenced Mr. Crutchfield on February 4, 2020. The State asked for a total sentence of 35 years on the remaining charges: 25 years for Count 4, sexual abuse of a minor; and 10 consecutive years for Count 5, third degree sexual offenses. In resentencing, the court stated that "the level [of] harm [to the minor victim] was . . . excessive, and no question, it was [an] exploitation of a position of trust." It noted further that this was not appellant's first conviction for sexual offenses against a 12-year-old and its "very serious concerns about the health or well-being of the next 12-year-old." The court sentenced Mr. Crutchfield to 24 years for Count 4 and 10 consecutive years for Count 5 for a total aggregate sentence of 34 years, and stated that he would be "parole eligible obviously much faster than the last sentence." This appeal followed.

DISCUSSION

A. Contentions of the Parties

Appellant contends that the circuit court, on remand, imposed an illegal sentence because the sentences imposed for each remaining count increased. The State counters that this sentence is legal because the new "aggregate sentence for the package of surviving counts does not exceed the original aggregate sentence[.]"[1]

B. Standard of Review

We "review[] without deference the issue of whether a sentence is illegal." *Nichols v. State*, 461 Md. 572 (2018); *see also State v. Thomas*, 465 Md. 288, 301 (2019) ("Whether a sentence is legal is a question of law and, accordingly, we consider that question anew, without any special deference[.]").

C. Analysis

Under Maryland Rule 8-604, "[i]f the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court." Md. Rule 8-604(d)(1). In criminal cases, "if the appellate court reverses the judgment for error in the sentence or sentencing proceeding, the Court shall remand the case for resentencing." Md. Rule 8-604(d)(2).

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[1] The State also contends that law of the case bars appellant's attempt to relitigate our prior decision to order a *Twigg* remand. *See Twigg v. State*, 447 Md. 1 (2016). We do not view appellant's argument that the sentences on the remaining counts should not have been increased to be an attempt to relitigate our remand. Moreover, we are not persuaded that not challenging that remand by a motion to reconsider or seeking further review in the Court of Appeals would bar review of an alleged illegal sentence having been imposed on remand.

Trial courts typically may not increase sentences after a successful appeal:

> (b) If an appellate court remands a criminal case to a lower court in order that the lower court may pronounce the proper judgment or sentence, or conduct a new trial, and if there is a conviction following this new trial, the lower court may impose any sentence authorized by law to be imposed as punishment for the offense. However, it may not impose a sentence more severe than the sentence previously imposed for the offense unless:
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> (1) The reasons for the increased sentence affirmatively appear;
>
> (2) The reasons are based upon additional objective information concerning identifiable conduct on the part of the defendant; and
>
> (3) The factual data upon which the increased sentence is based appears as part of the record.

Maryland Code (1973, 2020 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 12-702.

This safeguard exists "to allow a defendant convicted in a criminal case to seek appellate review without concern that he or she will pay a price, in terms of a more severe sentence, for exercising that right." *Thomas*, 465 Md. at 303 (discussing the statute's codification of the United States Supreme Court decision *North Carolina v. Pearce*, 395 U.S. 711 (1969)).

Twigg v. State arose after this Court remanded a case for a new sentencing hearing after merging certain child abuse convictions. *Twigg*, 447 Md. at 18–19. The Court of Appeals addressed, among other things, "whether Maryland law permits a remand to afford the trial court the opportunity to consider resentencing" after merging sexual offenses with child abuse charges, "and, if so, the limits within which the court must operate when considering a new sentence for that crime." *Id.* at 5. The appellant argued that we did not

have authority to order the remand, and that imposing a new sentence would "implicate double jeopardy and related due process concerns." *Id.* at 19 (cleaned up). The Court agreed with the State and held Maryland Rule 8-604(d) authorizes appellate courts to remand for re-sentencing, and that the resentencing court may exercise its discretion without offending double jeopardy and due process principles. *Id.* at 19–21.

The Court then addressed what would constitute a more severe sentence than the one originally imposed under CJP § 12-702(b). In doing so, it sought to resolve an apparent ambiguity of what the words "sentence" and "offense" meant in the statute:

> Those terms appear unambiguous when applied in a case involving conviction of only one count, yet those same terms are less than clear in cases involving multiple counts arising from a single criminal episode or transaction. In the latter, frequently occurring situation, it is not unreasonable to understand the terms as referring to the total sentence for all those counts upon which the defendant was convicted. In that situation, the General Assembly could well have intended "the offense" to refer to the criminal episode, encompassing all the counts of which the defendant was convicted, and "the sentence" to refer to the total sentence imposed for those component counts.

Id. at 25.

Looking at the legislative history, the Court concluded that "as the word is used in [CJP] § 12-702(b), 'offense' means not simply one count in a multi-count charging document, but rather the entirety of the sentencing package that takes into account each of the individual crimes of which the defendant was found guilty." *Id.* at 26–27. It held that "a defendant's sentence will be considered to have increased under [CJP] § 12-702(b) only if the total sentence imposed after retrial or on remand is greater than the originally imposed

sentence." *Id.* at 30. In other words, courts look to the aggregate sentence when analyzing sentence increases. But the length of the sentence alone is not the only factor considered in deciding whether a sentence is more severe than the previous sentence. For example, a sentence of equal length with a later parole eligibility date is a more severe sentence. *See Thomas*, 465 Md. at 310 ("If, following a successful appeal, a defendant in a criminal case is resentenced to a term of imprisonment of equal length to the original sentence but with a later parole eligibility date, the new sentence is 'more severe' than the original sentence for purposes of [CJP] § 12-702(b).").

In the present case, Mr. Crutchfield contends that the holding in *Twigg* is limited to remands for correcting merger errors, "where the defendant's criminal culpability is unaltered, so a reduction in the defendant's sentence may be unjust." He argues that this reasoning is inapplicable to convictions reversed for insufficiency of the evidence.

In doing so, he seeks to distinguish the recent case of *Johnson v. State*, 248 Md. App. 348 (2020), based on its procedural posture. In *Johnson*, an appellant successfully appealed his conviction of involuntary manslaughter for insufficiency of the evidence. *Id.* at 350–51. We reversed the conviction, but did not remand for re-sentencing. *Id.* at 351. The State filed a Motion to Reconsider and Remand for Resentencing on the remaining charges, which we denied. *Id.* at 352–54. The State filed a petition for writ of *certiorari*; the Court of Appeals granted the petition and, after oral arguments, remanded to us to "clarify the basis of [our] decision . . . denying [the State's] motion for reconsideration." *Id.* at 349, 354.

On remand, we stated that our decision to deny the motion was a matter of discretion and that "[n]o case, statute, or other authority *compelled* [its] outcome[.]" *Id.* at 355. The decision whether to order a remand was "specifically whether this [was] an appropriate case to grant the discretionary relief the State seeks." *Id.* We further explained that a remand for resentencing was a matter of discretion:

> As a matter of principle, nothing in *Twigg* appears to preclude an appellate court from ordering a *Twigg* remand in a case where the sentencing package was disturbed by a decision to reverse a conviction. But by the same token, *Twigg* can't reasonably be read to compel a remand under these circumstances, especially if a remand is discretionary in a merger case such as *Twigg*. The authority to order a remand for resentencing lies in the discretion of the appellate court that reviewed the conviction and decided to reverse it . . . . There is no debate among us about whether we could [order a remand], only whether this is an appropriate case to exercise that discretion.

Id. at 357–58.

In *Crutchfield I*, we exercised our discretion to remand for re-sentencing because, in our view, it was appropriate to do so. The essence of appellant's argument is that reversal of the second degree conviction altered his culpability as reflected in the revised sentencing guidelines and that, in the first sentencing, the trial court had sentenced appellant on Counts 4 and 5 "each appropriately as the way [it] thought they should be sentenced." Therefore, there was no reason to increase the sentences on those counts.

Mr. Crutchfield's argument treats each of the remaining counts as a standalone criminal act rather than a component part of a sentencing package for a multi-count criminal episode. But in multi-count situations, sentencing considerations extend beyond

each conviction to "the total sentence for all of the convictions together." *Twigg*, 447 Md. at 27 (cleaned up). When an appellate court remands for resentencing after "unwrap[ping] the package and remov[ing] one or more charges" from it, it provides the sentencing judge the opportunity to assess the effect of the removed conviction, and, if appropriate, to redefine the sentencing package by increasing the sentence "on the remaining, related counts" so long as the aggregate sentence is not more severe. *Id.* at 28–29.

The remaining convictions in this case are part of the same pattern of child sexual abusive conduct by appellant with the twelve-year-old daughter of his domestic partner over a two-month period of time. At the resentencing, the court explained that "how [it] felt about the case" had not really changed, and in stating its reasons for going above the guidelines, the court noted the appellant's role in the offense, the excessive level of harm, the special circumstances of the victim, the exploitation of a position of trust, the heinous nature of the conduct, and the recommendation by the State's Attorney. In addition, the court explained that "two convictions of this type is really two too many," and expressed its "very serious concerns about the health or well-being of the next 12-year-old."

Here, the total aggregate sentence imposed upon remand was 14 years less than the original sentence, and, as noted by the circuit court, appellant is eligible for parole earlier. In short, the new sentence is not an illegal sentence.

CONCLUSION

For the reasons discussed above, we affirm.

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