

Circuit Court for Washington County
Case No. 21-K-11-046412

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2435

September Term, 2017

EDGAR LORENZO SAYLES

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 5, 2019

*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.

Following a jury trial in the Circuit Court for Anne Arundel County, Edgar Sayles, appellant, was convicted of two counts of distribution of cocaine, two counts of possession of cocaine, and one count of conspiracy to distribute cocaine. The court sentenced Mr. Sayles to two mandatory terms of 40 years' incarceration for each distribution offense pursuant to § 5-608(d) of the Criminal Law Article; merged his sentences for possession of cocaine; and imposed a concurrent term of five years' incarceration for conspiracy to distribute cocaine. On direct appeal, we affirmed Mr. Sayles's convictions, but held that the sentencing court had erred in imposing two 40-year mandatory sentences because both distribution offenses were charged in the same indictment. Therefore, we vacated both sentences for distribution of cocaine and remanded for re-sentencing. *See Sayles v. State*, No. 679, Sept. Term 2012 (filed July 22, 2013). On remand, the court held a new sentencing hearing and imposed a single 40-year sentence. Mr. Sayles now appeals from that re-sentencing and contends that his 40-year mandatory sentence must be vacated because (1) the State did not provide him with sufficient notice that it was seeking to impose an enhanced sentence, and (2) the State failed to prove that he had previously served three separate terms of confinement as a result of three separate convictions. Because the court did not err in imposing a mandatory 40-year sentence for distribution, we affirm.

At the time Mr. Sayles was sentenced, § 5-608(d) of the Criminal Law Article required that a sentence of “not less than 40 years” be imposed for the offense of distribution of cocaine if a defendant had “previously [] served three or more separate terms of confinement as a result of three or more separate convictions [for certain specified drug

offenses].” Pursuant to Maryland Rule 4-245(c), the State was required to “serve a notice of the alleged prior conviction[s] [supporting that mandatory sentence] on the defendant or counsel at least 15 days before sentencing in the circuit court[.]” In the instant case, the State served defense counsel with subsequent offender notices on December 6, 2011, and February 16, 2012. The notices alleged that Mr. Sayles was subject to the 40-year mandatory minimum sentence based on convictions for selling cocaine in Florida in 1991, selling cocaine in Florida in 1994, and distributing cocaine in Maryland in 2006.

On appeal, Mr. Sayles first asserts that the State did not comply with Rule 4-245(c) because it did not personally serve him with the subsequent offender notices. But this issue is not properly before us. Rule 4-245(c) provides that if the State fails to provide the required notice, the only remedy is the postponement of sentencing for 15 days “unless the defendant waives the notice requirement.” At the re-sentencing hearing, defense counsel did not claim that the State had failed to provide adequate notice of Mr. Sayles’s prior convictions or indicate that a continuance was required to prepare a defense. Rather, counsel acknowledged that the re-sentencing was “more of a recordkeeping [] situation” and that there was “not really much to argue from a legal standpoint.” Thus, Mr. Sayles waived his right to notice under Rule 4-245(c). *See State v. Purcell*, 342 Md. 214, 221-22 (1996) (holding that the appellant waived his right to notice under Rule 4-245(c) where his attorney admitted that he was prepared to conduct a defense and refused the opportunity to withdraw the guilty plea and postpone the proceedings).

In any event, even if Mr. Sayles had not waived this issue, we would find no error. Mr. Sayles concedes that the State served defense counsel with the required notice prior to trial, but claims that the State should have also served him personally because he later discharged his attorney and “the State was aware that his relationships with counsel tended to be brief and tumultuous.” However, Rule 4-245(c) only mandates that notice be served on “the defendant or counsel.” It does not require the State to serve both or to re-serve a defendant if he later discharges his counsel, and we decline to read such a requirement into the rule.

Mr. Sayles further contends that the court erred in imposing the 40-year mandatory sentence because the State failed to prove that the three prior convictions it relied upon to enhance his sentence were separated by intervening terms of confinement. *See Montane v. State*, 308 Md. 599, 613 (1987). Specifically, he contends that he may have “served his 1991 and 1994 Florida sentences simultaneously, whether consecutively or concurrently, . . . [which would] not qualify as separate terms of confinement.” As an initial matter, we note that Mr. Sayles did not raise this claim below. However, to the extent that he contends that his 1991 and 1994 convictions “did not qualify under the statute for subsequent offender status and enhanced sentencing,” rather than alleging that the State failed to prove the existence of those convictions beyond a reasonable doubt, his claim is cognizable as an illegal sentence claim. *See Bryant v. State*, 436 Md. 653, 659 (2014). Therefore, we will address it in this appeal.

At sentencing, the State relied on a Presentence Investigation Report (PSI) to establish Mr. Sayles’s prior convictions.¹ As to the 1991 conviction, the PSI established that: Mr. Sayles was convicted of two counts of selling cocaine on February 26, 1991; the court placed him on probation for that offense; the court later revoked his probation on August 9, 1991, and imposed a four and one-half year term of imprisonment; he served approximately one year of that sentence before being released again on parole on July 13, 1992; and the court revoked his parole on August 8, 1994, and ordered him to serve the remaining term of his four and one-half year sentence. The PSI further established that, after Mr. Sayles was released from custody in 1992, he was charged with selling cocaine on January 20, 1994. He was then convicted of that offense and sentenced to 15 months imprisonment on August 8, 1994, the same day that his parole was revoked on the 1991 charges. The 15-month sentence was ordered to run concurrent to the remainder of his sentence on the 1991 charges.

Mr. Sayles asserts that he did not serve separate terms of confinement for the 1991 and 1994 sentences because the 1994 sentence was ordered to run concurrently with the remainder of his 1991 sentence. However, this Court rejected an identical argument in *State v. Simpkins*, 79 Md. App. 687, 697-98 (1989) (holding that the appellant had served separate terms of confinement where the court sentenced him to a term of confinement for robbery in 1970; he was released from custody without serving his entire sentence; he was

¹ Because Mr. Sayles did not object or challenge the accuracy of the information contained in the PSI, the PSI was competent evidence of his prior convictions. *See Sutton v. State*, 128 Md. app. 308, 328-29 (1999).

subsequently convicted of a new robbery in 1976, which he committed after being released on the 1970 robbery; and the court ordered his sentence for the 1976 robbery to run concurrently to the remainder of his sentence for the 1970 robbery). Consequently, the court did not err in sentencing Mr. Sayles to a term of 40 years' imprisonment for distribution of cocaine.

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