

Circuit Court for Baltimore City  
Case No. 116137014

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2721

September Term, 2016

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FENYANGA CHESTNUT

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Friedman,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 11, 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.

Following a jury trial in the Circuit Court for Baltimore City, Fenyanga Chestnut, appellant, was convicted of possession of a regulated firearm after having been convicted of a crime of violence; possession of a regulated firearm after having been convicted of a disqualifying crime; possession of ammunition after having been prohibited from possessing a regulated firearm; and wearing, carrying, or transporting a handgun. The circuit court imposed separate and consecutive sentences for possession of a firearm after having been convicted of a crime of violence; possession of ammunition after having been prohibited from possessing a regulated firearm; and wearing, carrying, or transporting a firearm. It merged his conviction for possession of a regulated firearm after having been convicted of a disqualifying crime for sentencing purposes. Chestnut raises two issues on appeal: (1) whether the circuit court erred in imposing separate sentences for possession of a firearm after having been convicted of a crime of violence and possession of ammunition after having been prohibited from possessing a regulated firearm and (2) whether the circuit court erred in not vacating one of his convictions for illegal possession of a regulated firearm. For the reasons that follow, we vacate Chestnut’s conviction for possession of a regulated firearm after having been convicted of a disqualifying crime but otherwise affirm the judgments.

Chestnut first asserts that his conviction for illegal possession of ammunition must be vacated under a unit-of-prosecution theory or, alternatively, that his sentence for that offense should merge with his sentence for unlawful possession of a regulated firearm pursuant to either the rule of lenity or principles of fundamental fairness. However, as Chestnut concedes, these precise claims were raised and rejected in *Potts v. State*, 231 Md.

App. 398 (2016) (holding that the defendant’s sentences for unlawful possession of a regulated firearm and unlawful possession of ammunition, based on his having carried a loaded firearm, did not merge under a unit-of-prosecution theory, the rule of lenity or principles of fundamental fairness).<sup>1</sup> Although Chestnut claims that *Potts* was wrongfully decided, we decline to reconsider that case.

Chestnut also contends that his conviction for possession of a regulated firearm after having been convicted of a disqualifying crime must be vacated because he cannot be convicted of both that crime and of possession of a regulated firearm after having been convicted of a crime of violence. We agree. Md. Code Public Safety (“PS”) Article § 5-133 prohibits certain categories of people from possessing regulated firearms. By virtue of his prior convictions, Chestnut fits into two of those categories: he has been convicted of a disqualifying crime, PS § 5-133 (b)(1), and he has been convicted of a crime of violence. PS § 5-133 (c)(1)(i). However, the unit of prosecution is “the prohibited act of illegal possession of a firearm,” and the statute “does not support multiple convictions based on several prior qualifying offenses where there is only a single act of possession.” *Melton v. State*, 379 Md. 471, 486 (2004). That is, while both a prior conviction of a crime of violence and a prior conviction of a disqualifying crime individually satisfy PS § 5-

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<sup>1</sup> In *Potts*, we determined that the appellant had not preserved his claim that his sentences should merge under principles of fundamental fairness because he failed to raise that claim in the circuit court. See *Potts*, 231 Md. App. 414. For the same reasons, Chestnut’s fundamental fairness claim is not preserved for our review. However, as in *Potts*, we note that such a claim would fail, even if preserved, because it “was clearly the Legislature’s intent to permit multiple sentences for the crimes at issue and the imposition of separate sentences was not fundamentally unfair.” *Id.*

133, “the statute . . . create[s] punishments for each act of possession *and* not for each prior conviction.” *Id.* At 503 (emphasis added). Therefore, Chestnut only committed one crime when he possessed a regulated firearm at the time of his arrest and the proper remedy is to vacate the superfluous conviction, *i.e.*, the one carrying the lower sentence. *Wimbush v. State*, 201 Md. App. 239, 272 (2011). Consequently, his conviction for possession of a regulated firearm after having been convicted of a disqualifying crime, in violation of Section 5-133(b)(1) of the Public Safety Article, must be vacated.

**CONVICTION FOR POSSESSION OF  
A REGULATED FIREARM AFTER  
HAVING BEEN CONVICTED OF A  
DISQUALIFYING CRIME VACATED.  
THE JUDGMENTS ARE OTHERWISE  
AFFIRMED. COSTS TO BE PAID  
ONE-HALF BY APPELLANT AND  
ONE-HALF BY THE MAYOR AND  
CITY COUNCIL OF BALTIMORE.**