

Circuit Court for Prince George's County
Case No. CT171429A

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3006

September Term, 2018

IAN SULLIVAN

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: February 4, 2020

*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.

Ian Sullivan, appellant, was charged in the Circuit Court for Prince George’s County with unlawful possession of a regulated firearm following conviction of a crime of violence, unlawful possession of a regulated firearm following conviction of a felony, and related offenses. Mr. Sullivan was subsequently convicted by a jury of “firearm possession after being prohibited by law” and related offenses. The court subsequently sentenced Mr. Sullivan, in pertinent part, to a term of imprisonment of fifteen years, all but seven years suspended, for the count of unlawful possession of a regulated firearm following conviction of a crime of violence, and merged the count of unlawful possession of a regulated firearm following conviction of a felony.

On appeal, Mr. Sullivan contends that the conviction for unlawful possession of a regulated firearm following conviction of a felony must be vacated, because “the unit of prosecution for possession of a regulated firearm by a prohibited person is the act of possession itself, not the different ways in which a person might be disqualified.” The State agrees with Mr. Sullivan’s argument, but contends that his contention “is unpreserved,” because “defense counsel below agreed that the sentences should merge and did not request that the conviction . . . be vacated.” The State further contends that the merger “arguably . . . does not constitute an illegal sentence,” because Mr. Sullivan “is not presently subject to a separate sentence” for the conviction.

Assuming, *arguendo*, that the additional conviction does not give rise to an illegal sentence, we shall exercise our discretion, pursuant to Rule 8-131(a), to decide Mr. Sullivan’s contention so as to guide the trial court and avoid the expense and delay of another appeal. In *Melton v. State*, 379 Md. 471 (2004), the Court of Appeals concluded

that “the Legislature did not intend for a court to render separate multiple verdicts of convictions on an individual for illegal possession of a regulated firearm . . . where that individual fits within several categories of prior qualifying convictions, but only possessed a single regulated firearm on a single occasion.” *Id.* at 474. Here, the record indicates, and the State does not dispute, that Mr. Sullivan possessed a single regulated firearm on a single occasion. The Legislature did not intend for Mr. Sullivan to be twice convicted of unlawful possession of a regulated firearm, and hence, his conviction for unlawful possession of a regulated firearm following conviction of a felony must be vacated.

**CONVICTION FOR UNLAWFUL
POSSESSION OF A REGULATED
FIREARM FOLLOWING CONVICTION
OF A FELONY VACATED. CASE
REMANDED TO THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY PRINCE GEORGE’S COUNTY.**