

Circuit Court for Dorchester County
Case No. 09-K-10-014071

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3220

September Term, 2018

TRAMONTA ALLEN JAMAR SMITH

v.

STATE OF MARYLAND

Kehoe,
Friedman,
Gould,

JJ.

Opinion by Gould, J.

Filed: November 13, 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.

INTRODUCTION

Tramonta Smith was sentenced to consecutive prison terms on several convictions stemming from his participation in a burglary. On the same day, Mr. Smith was sentenced in a separate case to a ten-year prison term, to run consecutive to the time to be served in the first case. Now, after two of the convictions in the first case were merged, Mr. Smith challenges his sentence in this case as illegal. Finding no illegality in his sentence, we affirm.

BACKGROUND

In the late Spring and early Summer of 2010, there was a series of residential break-ins in Hurlock, Maryland. Among the items stolen from the homes were weapons, jewelry, and personal documents.

In the early morning of June 22, a Hurlock police officer responded to a report that shots had been fired near a home owned by Ellen Brown, Mr. Smith's grandmother. When he arrived on the scene, the officer identified several of the items that had been stolen from the home of one of the robbery victims, David Hubbard. After proceeding to Ms. Brown's home, the officer also discovered several items stolen from the home of other victims, Gregory Collins and Victoria Payne. Among these items were several documents identifying Mr. Collins or Ms. Payne, as well as an assault rifle that they had reported missing. As a result of the officer's investigation, Mr. Smith, who had been reportedly living with Ms. Brown, was arrested.

Mr. Smith was tried separately in relation to the break-ins at the Collins/Payne residence (Case No. 09-K-10-014033, the "First Case") and the Hubbard residence (Case

No. 09-K-10-014071, the case from which Mr. Smith now appeals) in the Circuit Court for Dorchester County, and was convicted in both cases. In connection with the First Case, Mr. Smith was sentenced for his convictions of misdemeanor theft (count six), possession of a stolen regulated firearm (count seven), and possession of a regulated firearm and ammunition by a person under the age of twenty-one (count eight). On the same day, the same judge sentenced Mr. Smith in this case to a ten-year prison term for theft. The trial judge explained that the ten-year period was to run “consecutive to all sentences in [the First Case], in particular, I guess it would be consecutive to count eight in [the First Case], but it’s consecutive.”

Mr. Smith appealed the judgments in both cases. In the First Case, we reversed in part, holding that the sentence on count eight should have been merged into the sentence on count seven because they were both based on possession of the same firearm. We remanded the case for “the purpose of merging for sentencing the conviction under Count Eight of the criminal information into Count Seven of the criminal information.” For all other purposes, we affirmed the court’s judgment. That same day, by a separate opinion, we affirmed the judgment in this case.

Pursuant to the remand, on October 9, 2012, the circuit court held a re-sentencing hearing in the First Case, at which the court merged for sentencing count eight into count seven.

On November 13, 2018, Mr. Smith moved in this case to correct what he claimed to be an illegal sentence.¹ As the basis for his motion, Mr. Smith contended as follows:

On March 17th, 2011 I, Tramonta Smith [Defendant] was given a sentence of [10 years] to run consecutive to in particular count 8 in Case No. 09-K-10-014033. On 10/09/2012 the sentence of [5 years] on count 8 in Case No. 09-K-10-014033, was vacated and merged into count 7 of that case leaving no term of imprisonment on count 8 for the [10 years] imposed in this case to run consecutive to. Therefore on 10/09/2012 the [10 years] should have begun to start, thus leaving this sentence improper.

The circuit court denied the motion, and Mr. Smith appealed.

Mr. Smith argues on appeal that his sentence violates his right to “understand clearly what debt he must pay to society” due to the confusion sown by the merger of count eight of the First Case into count seven. As best we can tell from his brief, Mr. Smith contends that the court intended that his sentence in this case would commence immediately upon the conclusion of his sentence for count eight in the First Case. Thus, Mr. Smith argues, his sentence in this case should be deemed to have commenced on October 9, 2012, when count eight was merged into count seven. Mr. Smith’s sole explanation for his theory is that “once there was no longer a term of imprisonment on count 8 [in the First Case], the ten years should have automatically” started running.

Mr. Smith also argues on appeal that “after the resentencing on October 9, 2012, [the First Case] was to run concurrent with any other outstanding or unserved [sentences] in which the ten years was in fact an outstanding sentence.” According to Mr. Smith,

¹ This was Mr. Smith’s second motion under Md. Rule 4-345. Mr. Smith filed his first motion to correct illegal sentence on January 16, 2018, which the court denied.

therefore, the circuit court “failed to give appropriate relief to the given circumstances pursuant to rule 4-345 (a) of the Maryland Rules of Procedure.”

The State counters that the sentencing in this case was not the least bit ambiguous, and certainly not illegal. The State contends that the court explicitly imposed a ten-year prison term to run consecutive to all of the prison terms in the First Case, and the merger of count eight into count seven did nothing to change that. The State further suggests that we should not consider Mr. Smith’s second argument because he failed to provide the transcript to the October 9, 2012 hearing where he claims the court ruled that count seven “was to run concurrent with any other outstanding or unserved [sentences].” The State concludes by arguing that Mr. Smith failed to provide any basis for reversing the circuit court’s judgment, and that Mr. Smith’s motion was correctly denied.

For the reasons explained below, we hold that the language of the sentencing court was not ambiguous, and it allows for but one meaning: that Mr. Smith’s sentence in this case begins when he finishes all of the sentences in the First Case.² We therefore affirm the judgment of the circuit court.

DISCUSSION

We review a circuit court’s decision to deny a motion to correct an illegal sentence de novo. See Carlini v. State, 215 Md. App. 415, 443 (2013). An illegal sentence “is one in which the illegality inheres in the sentence itself; i.e., there either has been no conviction

² Court orders, like statutes, are ambiguous when they are susceptible to more than one reasonable interpretation. See Brendoff v. State, 242 Md. App. 90, 109 (2019) (quotation omitted); see also Taylor v. Mandel, 402 Md. 109, 125-26 (2007) (court orders are subject to the same principles of interpretation as other written documents).

warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.” Colvin v. State, 450 Md. 718, 725 (2016) (internal quotation omitted).

As explained above, Mr. Smith argues that because his sentence in this case was intended to run consecutively to the sentence for count eight in the First Case, it should have started to run immediately upon the merger of count eight into count seven. As the trial court pointed out, however, Mr. Smith’s argument begins with the faulty premise “that the sentence imposed in this case was consecutive only to Count 8” in the First Case.

Mr. Smith’s argument is based on the italicized portion of the court’s following statement:

In case 14071, that’s the theft from [\$]1,000 to under [\$]10,000, count three, the sentence of the Court is ten years Division of Correction. That is consecutive to all sentences in 14033, *in particular I guess it would be to count eight in 14033*, but it’s consecutive.

(Emphasis added). Mr. Smith’s interpretation of the above statement is incorrect. When this statement was made, count eight was the last in the three-count chain of consecutive sentences imposed by the court in the First Case. When the court said, “in particular I guess it would be to count eight,” it was merely applying its ruling—that the sentence in this case runs consecutive to “all sentences” in the First Case—to the facts as they existed at the time. If count eight is eliminated, then count seven becomes the last in the chain of sentences to be served before his sentence in this case begins. Mr. Smith’s interpretation

would have us read out the part where the court stated that the sentence in this case is “consecutive to all sentences” in the First Case. This we will not do.

We turn now to Mr. Smith’s second argument, that “after the resentencing on October 9, 2012, [the First Case] was to run concurrent with any other outstanding or unserved sentence[s] in which the ten years was in fact an outstanding sentence.” We reject this argument for two reasons.

First, Mr. Smith failed to make this argument in his motion to correct illegal sentence that was filed with the trial court. Md. Rule 8-131(a) states that we will not ordinarily decide any issue “unless it plainly appears by the record to have been raised in or decided by the trial court.” This rule serves to ensure fairness to all parties and promote the orderly administration of law by allowing the trial court, *in the first instance*, to rule upon any relevant issues. Robinson v. State, 410 Md. 91, 103 (2009). Here, Mr. Smith failed to bring this argument to the attention of the circuit court, and therefore he did not preserve this issue for our review.

Second, Mr. Smith’s argument appears to be premised on something he contends that the court stated at the re-sentencing hearing on October 9, 2012. Ms. Smith has failed, however, to provide us with the transcript of the October 9th proceedings. Because Mr. Smith’s argument is entirely premised on specific statements attributed to the re-sentencing court, we reject this claim of error. See Kovacs v. Kovacs, 98 Md. App. 289, 303 (1993) (citations omitted) (“The failure to provide the court with a transcript warrants summary rejection of the claim of error.”).

CONCLUSION

Because we reject Mr. Smith's interpretation of the trial judge's statement at the hearing in the First Case, we must reject his contention that his sentencing in this case should have started running at the time that count eight in the First Case was merged. Furthermore, we will not address Mr. Smith's argument about his re-sentencing, because he neither preserved this argument nor presented us with the transcript of those proceedings. Accordingly, we affirm.

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