Circuit Court for Wicomico County
Case No. 22-K-02-000775

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2036

September Term, 2016

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TROY RENALDO JONES, SR.

v.

STATE OF MARYLAND

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Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: December 28, 2017

*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.

Troy Renaldo Jones, Sr., appellant, appeals from the denial, by the Circuit Court for Wicomico County, of a motion to correct illegal sentence. For the reasons that follow, we affirm.

In 2002, Jones was charged with first degree rape, first degree sexual offense, first degree assault, kidnapping, and related offenses. Jones elected a bench trial. The State called the victim, who testified that Jones struck her in her face and head and drove her "into a wooded area, down a dirt path." *Jones v. State*, No. 912, September Term, 2003 (filed August 12, 2004), slip op. at 2. There, Jones "choked [the victim], beat her, hit her with [a] tire iron, threatened to kill her, and forced her to participate in numerous sexual acts." *Id.* The court convicted Jones of the offenses.

The court subsequently sentenced Jones to life imprisonment for the first degree rape, a consecutive term of life imprisonment for the first degree sexual offense, a concurrent term of twenty-five years for the first degree assault, and a concurrent term of thirty years for the kidnapping. The court merged the remaining offenses. The court stated: "[B]ecause these charges are crimes of violence, he is required to serve 50 percent of his sentence before he would be eligible for parole." The court subsequently issued a commitment record in which it awarded Jones "373 days credit for time served prior to and not including date of sentence."

In 2016, Jones filed a motion to correct illegal sentence, in which he presented three contentions. First, the court failed to award him credit "for pre-sentence incarceration." Second, the court "was required to . . . convert his life sentence" for first degree rape "into a thirty-year term-of-years sentence." Finally, the sentence for first degree sexual offense

was "inherently illegal," because the offense arose from "the same criminal information [and] single act" as the first degree rape. The court subsequently denied the motion.

Jones contends that the court erred in denying the motion for three reasons. He first contends that the award of credit for pre-trial incarceration as reflected in the commitment record is "in error," because the court failed to award the credit during the sentencing hearing, and "when in conflict the docket and commitment record shall mirror the sentencing impositions [in] the . . . transcript." We agree that the court failed to "state on the record the amount of the credit" for pre-trial incarceration as required by Md. Code (2001, 2008 Repl. Vol.), § 6-218(e)(2) of the Criminal Procedure Article. But, the Court of Appeals has stated that "when there is a conflict between the transcript and the docket entries," the transcript prevails "unless it is shown to be in error[.]" *Savoy v. State*, 336 Md. 355, 360 n. 6 (1994). Here, the transcript of Jones's sentencing has been shown to be in error, and hence, the award of credit for pre-trial incarceration as reflected in the commitment record prevails.

Jones next contends that, because the court stated that he would be eligible for parole after serving fifty percent of his sentence, and Md. Code (1999, 2008 Repl. Vol.), § 7-301(d)(1) of the Correctional Services Article ("CS"), states that "an inmate who has been sentenced to life imprisonment is not eligible for parole consideration until the inmate has served 15 years," the court was required to "reduc[e] the life sentence" for first degree rape "to a 30 year term-of-years sentence." We disagree. During sentencing, the court quoted CS § 7-301(c)(1)(i), which states that "an inmate who has been sentenced to the Division of Correction after being convicted of a violent crime . . . is not eligible for parole until the

inmate has served the greater" of "one-half of the inmate's aggregate sentence for violent crimes" or "one-fourth of the inmate's total aggregate sentence." But, the court had already sentenced Jones to life imprisonment, and hence, his parole eligibility is dictated by CS § 7-301(d)(1), not CS § 7-301(c)(1)(i). The court's error in citing an inapplicable subsection does not require the court to modify the sentence for first degree rape to a term-of-years sentence.

Finally, Jones contends that the court erred in failing to merge the conviction for first degree sexual offense with the conviction for first degree rape, because "all the elements of first degree sex[ual] offense were present in [the] first degree rape," and the offenses "constitute the same offense for double jeopardy purposes." (Quotations omitted.) We disagree. The Court of Appeals has stated that, under the required evidence test, "two convictions must be merged when . . . the two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other." *Brooks v. State*, 439 Md. 698, 737 (2014) (citations omitted). But, "the convictions [must be] based on the same act or acts[.]" *Id.* (citations omitted). At the time of the offenses and trial, a "person [was] guilty of rape in the first degree if the person engage[d] in *vaginal intercourse* with another person by force or threat of force against the will and without the consent of the other person." Md. Code (1957, 1996 Repl. Vol., 2001 Supp.), Art. 27 § 462 (emphasis added), *recodified as* Md. Code (2002), § 3-303(a)(1) of the Criminal Law Article ("CL"). A "person [was] guilty of a sexual offense in the first degree if the person engage[d] in a *sexual act* with another person by force or threat of force against the will and without the consent of the other person." Art. 27 § 464 (emphasis added), *recodified as* CL § 3-

305(a)(1). "Sexual act" was defined as "cunnilingus, fellatio, analingus, or anal intercourse, but [did] *not* include vaginal intercourse." Art. 27 § 461(e) (emphasis added), *recodified as* CL § 3-301(e). Jones's convictions for first degree rape and first degree sexual offense are not based on the same act or acts, and hence, the court did not err in failing to merge the convictions, or in denying the motion to correct illegal sentence.

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