Circuit Court for Prince George's County
Case No. CT150316X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 168

September Term, 2023

SEIFULLAH A. ALI

v.

STATE OF MARYLAND

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: February 5, 2024

This case is before us on appeal from an order of the Circuit Court for Prince George's County denying appellant Seifullah A. Ali's motion to correct an illegal sentence. The sole question before us on appeal is whether the circuit court erred and/or abused its discretion in denying Ali's motion. For the reasons explained herein, we shall hold that Ali's convictions for violating a peace order should have merged with his convictions for misuse of electronic communications. We reject Ali's remaining merger arguments, and remand for resentencing.

FACTS AND PROCEEDINGS

In this appeal, Ali challenges the aggregate twenty-four-year sentence imposed for eighty-nine counts of criminal conduct related to telephone and electronic mail harassment, stalking, and violating a protective order on multiple dates between August and December 2014. Ali was convicted of a total of ninety counts: twenty-five counts of harassment in violation of Md. Code (2002, 2021 Repl. Vol.), § 3-803(a) of the Criminal Law Article ("CR"); twenty counts of misuse of telephone equipment in violation of CR § 3-804(a), twenty-two counts of misuse of electronic communication in violation of CR § 3-805(b), twenty-two counts of failing to comply with a peace order in violation of Md. Code (1974, 2020 Repl. Vol.), § 3-1508 of the Courts and Judicial Proceedings Article ("CJP"), and one count of stalking in violation of CR § 3-802.

Ali was originally sentenced to an aggregate sentence of twenty-seven years' imprisonment. On direct appeal, we vacated the sentence for one count of harassment, holding that the sentence for Count 124, the harassment offense on November 29, 2014,

must merge into his sentence Count 122, the misuse of electronic mail on November 29, 2014, under the required evidence test. We otherwise affirmed. On remand, Ali's commitment record was revised to reflect a sentence of twenty-four years.

We summarized the conduct underlying Ali's convictions on direct appeal as follows:

> Evidence adduced at trial revealed that Ali had, at one point in the past, dated Jeavetta Lucas (the complaining witness) for about three and a half years. Lucas testified that, approximately one year to one-and-a-half years into the relationship, Ali's behavior changed, and he became "aggressive and mean and short" with her. Lucas testified that, on July 12, 2014, Ali tried to kill her, and that he "put a gun in [her] face." She tried to end the relationship in July 2014, but Ali was "very persistent" and "would constantly call" her and send her text messages after she had told him their relationship was over and refused to date him.
>
> Lucas was employed as a hairstylist at a salon on Marlboro Pike in Prince George's County, Maryland. From August to December of 2014, she had two cell phones: a personal cell phone, and a business cell phone that she used to communicate with her clients. The salon where she worked also had a phone. Lucas indicated that, as of August 2014, Ali was calling her a minimum of ten times per day on all three phone numbers while she was at work. The calls were so excessive that the salon had to take its phone off the hook, and she had to silence her cell phones. Although Lucas had asked Ali not to contact her any more, and she had tried to block his phone number, he continued to call her repeatedly.
>
> Lucas was terrified of Ali. She testified that Ali told her that she "would never get away from him, that he would never be out of [her] life," that "[t]his is not over," and that "he should have killed [her] during that time in July." She stated that Ali sent her text messages threatening to "beat [her] face and slit [her] throat."

Photographs or "screenshots" of text messages that Lucas said she received from Ali, as well as recordings of voice mail messages from Ali, were admitted into evidence. Lucas's cell phone records and the cell phone records for a phone number that she identified as belonging to Ali were admitted into evidence.

Lucas testified that, in September 2014, she resorted to "hiding" from Ali. She moved out of her home and moved in with family members. She moved her son, who was nineteen years old, to a location where she thought he would be "safe." As part of her efforts to avoid Ali, she rearranged her work schedule, cut her work hours, asked clients for rides to and from work, and switched cars with friends and family members. But Ali continued calling and texting Lucas, and driving past her place of work.

On September 24, 2014, Lucas obtained a final protective order against Ali in the District Court of Maryland for Prince George's County. But, despite the protective order, Ali continued to call Lucas and send her threatening text messages.

As of November 11, 2014, Lucas was reporting the "constant calling and threatening" from Ali to the court weekly, "sometimes twice a week," and filing charges against Ali.

Lucas testified that, on November 21, 2014, she was at work when she received several text messages from Ali that made her "a little unnerved, a little scared." Shortly thereafter, Ali drove his Tahoe vehicle up to the front windows of the salon so that the grille of the vehicle was bearing on the window. Lucas thought that Ali was "going to come through the window, through the wall," and "[e]verybody [in the salon] just started scattering and shouting." Ali jumped out of the car wearing plastic gloves, goggles, and a hood over his head. He peered in through the windows of the salon and attempted to open the front door of the salon, which was locked as a safety precaution "due to the issue [that Lucas] was having with Ali." Lucas called 911. The 911 recording was played for the jury and admitted into evidence. Lucas described it as "the most

> terrifying experience ever," and said that she felt "scared to death."

Seifullah A. Ali v. State, No. 362 (Sept. Term 2016) (unreported opinion filed July 9, 2018), slip op. at 1-3.

At sentencing, the prosecutor discussed at length Ali's prior conduct in similar situations, emphasizing that Ali had been charged with harassment and violence towards women on multiple other occasions and with multiple other victims. The prosecutor argued:

> Most concerning to the State, in reviewing his criminal history, is that since the year 2000 the majority of the charges that he has incurred have involved harassment and violence towards women. The State, in going through, there were six separate cases where he was charged with telephone misuse, stalking, violation of a peace order, harassment. And these were all different victims.
>
> There [were] six separate female victims in each of these cases. And in 2003 he was convicted in D.C. of felony threats or attempted felony threats and violation of the peace order. Essentially it seems that the defendant spent the entirety of the 21st Century harassing and threatening women.
>
> Additionally, based on our research, we found that there were two other women in 2002 who obtained peace orders against this defendant. The State did obtain copies of those petitions which were filed, and these are petitions that were filed almost 14 years ago.
>
> It is very disturbing, the fact that the allegations made in those petitions are almost identical to the actions that this defendant took against Miss Lucas in this case.
>
> Specifically, there was a petition that was filed and peace order that was granted in favor of a woman named Kristin Perkins, and she alleges that in November of 2002, the defendant called me and threatened me – threatened to, one,

kill me; two, rape me; three, kill my friends; four, flatten the tires of my car; five, break my legs; and six, plant explosives in my car.

Additionally in November of 2002, a woman named Kisha (phonetic) Dosier (Phonetic) also was granted a peace order against this defendant where she alleged that he called her, came to her house, "after I had requested and asked that he stop." She also stated that, "If he sees me with another male in the next 30 days he will kill them." On November 19th, he stated "if I went through with this restraint order that I will not be able to talk."

So, certainly the actions in this case – and I believe it was counsel tried to characterize them as just a heart break. Certainly the State would not agree with that. It appears the actions in this case where [sic] not isolated in any way. They're not unique phenomena. It's not just that he lost it because he's suffering a heart break.

The action that he took against Miss Lucas, very clearly just another victim, another, I guess, act in a pattern of behavior that he has engaged in over the last 16 years against women.

Further, I will note that once he was held in contempt in district court by Judge Anderson, a female judge, and she ruled in a way that he did not like. Instead of accepting that ruling, he engaged in his typically [sic] pattern of the behavior towards women and began screaming at her in court and accused her of being bias [sic] when he didn't get what he wanted.

He then sent her a letter and sent a letter to the court accusing her of misconduct, accusing her or stating that she was biased because they had an affair when she was in law school in San Diego, California. And the State believe [sic] the only way he would have known that was if he had done research on Judge Anderson. Certainly that's disturbing for us.

The State believes that the defendant here is a real, what we consider the most dangerous kind of person. He clearly has an issue with his anger. But this isn't an anger issue where he just has a short temper, it's an anger that's all consuming. It's comings [sic] to the point of obsessiveness and relentless.

The prosecutor further argued that Ali had "violated his probation before," "violated court orders repeatedly in this case and in the past as well," and "shows no respect to the authority of the court." The prosecutor further emphasized that Ali was unlikely to be sufficiently rehabilitated, arguing that "the victim in this case, was not his first victim. She was one of a long line of victims. And the State strongly believes that if this defendant is not taken out of the community, she will almost certainly not be his last."

The jury returned a guilty verdict on a total of ninety counts. The trial court ultimately imposed sentences for twenty-one counts of misuse of electronic communications, nineteen counts of failing to comply with a peace order, and one count of stalking. The defense did not argue that there was anything illegal about the sentence at the time it was imposed.

On December 9, 2022, Ali filed a motion to correct an illegal sentence. The circuit court denied Ali's motion on March 29, 2023. This appeal followed. Additional facts shall be discussed as necessitated by our consideration of the issues on appeal.

STANDARD OF REVIEW

We apply a *de novo* standard of review when addressing an appellant's claim that he was sentenced illegally. *Rainey v. State*, 236 Md. App. 368, 374 (2018) (internal citation omitted). A sentence is "inherently illegal" for purposes of Rule 4-345(a) where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not a permitted one, *id.*; or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews v. State*, 424 Md.

503, 514 (2012). A sentence may also be "inherently illegal" where the underlying conviction should have merged with the conviction for another offense for sentencing purposes, where merger was required. *Pair v. State*, 202 Md. App. 617, 624 (2011). A "motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case." *Colvin v. State*, 450 Md. 718, 725 (2016) (quotation marks and citation omitted).

Pursuant to Maryland Rule 4-345(a), "[t]he court may correct an illegal sentence at any time." "[T]he court's authority to correct an illegal sentence exists even if the defendant failed to object in the trial court at the sentencing hearing or raise the issue in a direct appeal." *Bailey v. State*, 464 Md. 685, 696 (2019). The Supreme Court has explained, however, that the scope of the court's authority under Rule 4-345(a) is "narrow":

> Lest Rule 4-345(a) swallow up the preservation requirement, the scope of the court's authority under this Rule is "narrow." *Bailey v. State*, 464 Md. 685, 697, 212 A.3d 912 (2019) (citation omitted). The Rule is designed to correct "inherently illegal" sentences, not sentences resulting from "procedural error[s]." *Id.* at 696, 212 A.3d 912 (citing *Colvin v. State*, 450 Md. 718, 728, 150 A.3d 850 (2016)). Thus, "only claims sounding in substantive law, not procedural law, may be raised through a [Maryland] Rule 4-345(a) motion." *Id.* (quoting *Colvin*, 450 Md. at 728, 150 A.3d 850). "[T]he illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding." *Matthews v. State*, 424 Md. 503, 512, 36 A.3d 499 (2012).

State v. Bustillo, 480 Md. 650, 665 (2022).

"Maryland recognizes three grounds for merging a defendant's convictions: (1) the required evidence test; (2) the rule of lenity; and (3) 'the principle of fundamental fairness.'" *Carroll v. State*, 428 Md. 679, 693-94 (quoting *Monoker v. State*, 321 Md. 214, 222–23 (1990)). A sentence imposed in violation of the required evidence test and/or the rule of lenity is an illegal sentence that can be corrected at any time pursuant to Maryland Rule 4-345(a), regardless of whether the issue was preserved. *Taylor v. State*, 224 Md. App. 476, 500 (2015). An illegal sentence does not include a failure to merge sentences based upon the principle of "fundamental fairness." *Pair v. State*, 202 Md. App. 617, 649 (2011). When a "fundamental fairness" argument is not raised at trial, it is not preserved for appellate review. *White v. State*, 250 Md. App. 604, 644 (2021).

DISCUSSION

Ali asserts that his sentence is inherently illegal for three reasons. First, Ali asserts that harassment and electronic mail misuse are continuing course of conduct offenses, and, therefore, he should have been sentenced for only one charge of harassment and one charge of electronic mail misuse because "[t]he unit of prosecution is the continuing course of conduct." Second, Ali asserts that his convictions for misuse of electronic communications should merge with his conviction(s) for harassment under the alternative elements test. Third, Ali asserts that the convictions for failing to comply with a peace order should merge with his conviction(s) for harassment under the rule of lenity. Ali maintains that he should only have been sentenced for one count of harassment, one count of stalking, and one count

of failing to comply with a peace order because, in Ali's view, all of the other offenses should have merged for sentencing. As we shall explain, we are not persuaded.

A. Course of Conduct

Ali asserts that each instance of his misuse of electronic communications to harass Ms. Lucas was part of one continuing course of conduct and that he should have been sentenced for only one count each of misuse of electronic communications and harassment. We disagree.

Section 3-805(b)(1) of the Criminal Law Article, the misuse of electronic communications statute, provides:

> A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:
>
> (i) with the intent to harass, alarm, or annoy the other;
>
> (ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and
>
> (iii) without a legal purpose.

Section 3-801 of the Criminal Law Article defines "course of conduct" as "a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose." There is no minimum number of contacts required by statute to sustain a stalking or harassment conviction. *Schiff v. State*, 254 Md. App. 509, 536, *cert denied*, 479 Md. 81 (2022) ("We decline to read into the statutes a minimum number of contacts necessary to sustain a stalking or harassment conviction when the legislature has not chosen to do so and when we can find no precedent for doing so.").

Ali emphasizes that, in closing argument, the prosecutor used the phrase "continuing course of conduct" when arguing, "[i]t is a continuing course of conduct. It's not just what happened at the shop on November 21st. It's the defendant's actions from August until December." Ali asserts that all of his conduct between August 1, 2014 and December 18, 2014 should have been charged as a single count of electronic mail misuse and one of count harassment. He maintains that all of the texts and phone calls over the four-and-a-half-month period were one single course of conduct that gives rise to one charge.

Ali concedes, however, as he must, that this Court considered and rejected a similar argument in the case of *Johnson v. State*, 228 Md. App. 27 (2016). In *Johnson*, we upheld convictions and separate sentences for ten counts of harassment by electronic mail sent on ten separate dates. 228 Md. App. at 43-44. We held that "each day that [the] appellant harassed [the victim] via a series of emails constituted a distinct 'pattern' or course of conduct in violation of the e-mail harassment statute." *Id.* at 44. Ali does not attempt to distinguish *Johnson* but instead asserts that *Johnson* was wrongly decided and "urges this Court to reconsider its holding." We decline Ali's invitation.

Each item on the verdict sheet, including the charges of misuse of electronic communications, related to a specific date, and the jury was instructed that it was required to "consider each charge separately and return a separate verdict for each charge." The jury is presumed to have followed the trial court's instructions when finding Ali guilty of violating CR § 3-805(b)(1) on multiple dates between August 1, 2014 and December 18,

2014, and, under *Johnson*, *supra*, the circuit court did not err by sentencing Ali separately for each offense. Accordingly, we reject Ali's contention that the imposition of separate sentences for convictions of misuse of electronic communications and harassment was illegal.

B. Merger of Misuse of Electronic Communications/Telephone Misuse Under the "Alternative Elements" Test

Ali further asserts that his convictions for misuse of electronic communications and telephone misuse should merge with his convictions for harassment under the "alternative elements" test. "Under federal double jeopardy principles and Maryland merger law, 'the principal test for determining the identity of offenses is the required evidence test.'" *Christian v. State*, 405 Md. 306, 321 (2008) (quoting *Dixon v. State*, 364 Md. 209, 236–37 (2001)). Under the required evidence test, "we examine the elements of each offense and determine 'whether each provision requires proof of a fact which the other does not . . . .'" *Paige v. State*, 222 Md. App. 190, 206-07 (2015) (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). "Sentences for two convictions must be merged when: (1) the convictions are based on the same act or acts, and (2) under the required evidence test, 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) (citing *Nicolas v. State*, 426 Md. 385, 400-02 (2012); *State v. Lancaster*, 332 Md. 385, 391 (1993)). "In spite of its name, the focus of the required evidence test is on the elements of the offenses, not the evidence introduced at trial to prove them in a given case." *Koushall v. State*, 249 Md. App. 717, 734 (2021), *aff'd*, 479 Md. 124 (2022). When an offense is a "multi-purpose

crime," *i.e.*, when various modalities are alternative elements of the crime, "a court in applying the required evidence test must examine the alternative elements relevant to the case at hand." *Koushall v. State*, 479 Md. 124, 160 (2022).

On direct appeal, this Court addressed the issue of whether Ali's conviction for harassment in violation of CR § 3-803(a) should merge with his conviction for misuse of electronic communication in violation of CR § 3-805(b)(1) under the required evidence test. The State agreed that a conviction for harassment merges into a corresponding conviction for misuse of electronic communications, and so did we. We explained:

> [CR] § 3-805 contains one more element in addition to those listed above, namely, that the harassment must occur "through the use of electronic communication." We conclude, therefore, that the circuit court should have merged the offense of harassment in Count 124 into the offense of misuse of electronic mail in Count 122 for the purposes of sentencing. Accordingly, we shall vacate the sentence for Count 124. *See Carroll v. State*, 202 Md. App. 487, 518 (2011) ("[W]here merger is deemed to be appropriate, this Court merely vacates the sentence that should be merged[.]"), *aff'd*, 428 Md. 679 (2012).

Ali, *supra*, slip op. at 15.

In this appeal, Ali asserts that harassment is a multi-purpose statute because CR § 3-803 "proscribes more than one modality of committing the crime." Ali contends that the basis for each harassment conviction is ambiguous because, in each instance, it may have been based on one or more of the specific charges of electronic mail misuse, or telephone misuse, or both. Ali is correct that the harassment statute proscribes two different modalities of committing the crime:

> (a) A person may not follow another in or about a public place **or** maliciously engage in a course of conduct that alarms or seriously annoys the other:
>
> (1) with the intent to harass, alarm, or annoy the other;
>
> (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and
>
> (3) without a legal purpose.

CR § 3-803(a) (emphasis supplied).

In this case, however, the jury was instructed only of one modality and was instructed that it was required to find that the State had proved "beyond a reasonable doubt that" Ali "maliciously engaged in a course of conduct that alarmed or seriously annoyed Jeavetta Lucas." As such, the ordinary required evidence test applies in this case.

The misuse of telephone facilities equipment statutes proscribes the following conduct:

> (a) A person may not use telephone facilities or equipment to make:
>
> (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another;
>
> (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or
>
> (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent.

CR § 3-804.

And, the misuse of electronic mail statute proscribes:

> (b)(1) A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:

(i) with the intent to harass, alarm, or annoy the other;

(ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and

(iii) without a legal purpose.

CR § 3-805.

As we explained in our prior opinion on direct appeal, the general offense of harassment under CR § 3-803 merged into the offense of misuse of electronic communications. It does not follow, however, that misuse of telephone equipment and/or misuse of electronic communications merge into the general offense of harassment. The offenses of misuse of telephone equipment and misuse of electronic communications contain elements that the general offense of harassment does not. Accordingly, we reject Ali's assertion that the sentences merge under the required evidence test.

C. Sentences for Failure to Comply with a Peace Order

Ali's final argument is that his convictions for failure to comply with a peace order in violation of CJP § 3-1508 must merge for sentencing purposes with his corresponding convictions for electronic mail misuse under the rule of lenity.[1] The State asserts that the rule of lenity should not compel merger in this case. As we shall explain, we agree with

[1] Ali asserts that each conviction for violating the peace order must merge into the accompanying conviction for harassment. Ali argues in the alternative that if this Court agrees with the peace order merger argument, but does not agree with the "alternative elements" argument that we considered and rejected *supra* in Part B of this opinion, the sentences for violating a peace order would merge into the corresponding one-year sentences for electronic mail misuse on each of the twenty-one dates.

Ali that the sentences for violating the peace order should merge in the corresponding electronic mail misuse convictions for sentencing purposes.

The rule of lenity is "a principle of statutory construction" that is "applied to resolve ambiguity as to whether the Legislature intended multiple punishments for the same act or transaction." *Kyler v. State*, 218 Md. App. 196, 228 (2014) (quoting *Marlin v. State*, 192 Md. App. 134, 167 (2010)). The rule of lenity applies when "at least one of the two crimes subject to merger analysis is a statutory offense." *Pair*, *supra*, 202 Md. App. at 638 (citing *Khalifa v. State*, 382 Md. 400, 434 (2004)). "Where there is doubt or ambiguity as to whether the Legislature intended that there be multiple punishments for the same act or transaction, multiple punishments will not be permitted and for sentencing purposes, the statutory offenses will merge." *Jones v. State*, 357 Md. 141, 167 (1999).

The State acknowledges that we previously held in *Quansah v. State*, 207 Md. App. 636 (2012), that a sentence for violating a peace order merges for sentencing purposes with a conviction for second-degree assault based on the same act. The State further acknowledges that we held similarly in *Morgan v. State*, 252 Md. App. 439, 464 (2021), holding again that second-degree assault merged with a conviction for violating a protective order under the rule of lenity. Nonetheless, the State asks that we depart from *Quansah* and *Morgan* in this case. We decline to do so.

In our view, *Quansah* and *Morgan* compel us to conclude that the convictions for violating the peace order at issue in this case must merge with the corresponding convictions for electronic mail misuse. As in *Quansah* and *Morgan*, the conviction for

violating the peace order was likely based upon the same underlying act as the corresponding violations of the criminal law article for each date. As we explained in *Quansah*, when "there is ambiguity about whether the conviction for violating the peace order stemmed from the [conduct] upon which the guilty verdict on the [criminal offense] is likely premised," the "ambiguity must be resolved in favor of appellant." 207 Md. App. at 653 (citations omitted). Accordingly, we are compelled by Ali's rule of lenity argument regarding his convictions for violating the peace order.

In accordance with *Twigg v. State*, 447 Md. 1, 20-27 (2016) and Maryland Rule 8-604(d)(2), "[i]n a criminal case, if the appellate court reverses the judgment for error in the sentence or sentencing proceeding, the Court shall remand the case for resentencing." In *Twigg*, the Supreme Court recognized that sentencing in a case involving multiple counts is akin to sentencing on a "package" that "takes into account each of the individual crimes of which the defendant was found guilty." *Id.* at 26-27. Accordingly, we shall vacate the sentences for all of Ali's convictions and remand this case to the circuit court for resentencing. We note that, upon remand, the court ordinarily may not impose a sentence greater than the sentence that it originally imposed.[2] *Twigg*, 447 Md. at 30 n.14 ("The only caveat, aside from the exception set forth in [Md. Code (1988, 2013 Repl. Vol.), § 12-

[2] Because the sentences for the peace order violations were run concurrently with Ali's other sentences, our ruling in this appeal does not meaningfully affect Ali's aggregate sentence. On remand, the circuit court is free to impose the same aggregate sentence as it previously imposed, albeit without the concurrent sentences for the peace order violations.

702(b)(1)-(3) of the Courts and Judicial Proceedings Article], is that any new sentence, in the aggregate, cannot exceed the aggregate sentence imposed originally").

SENTENCES VACATED AND REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR RESENTENCING. JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE PAID TWO-THIRDS BY PRINCE GEORGE'S COUNTY AND ONE-THIRD BY APPELLANT.