Circuit Court for Baltimore City
Crim. Case No. 114310011

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 508

September Term, 2024

MICHAEL WARREN HAMILTON

v.

STATE OF MARYLAND

Berger,
Ripken,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 14, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Michael Hamilton, appellant, challenges the denial of his motion to modify consecutive sentences for second degree murder (30 years) and wearing or carrying a dangerous weapon (three years). After we affirmed his convictions, *see Hamilton v. State*, No. 1890, Sept. Term 2016, 2018 WL 3388512 (filed July 11, 2018), Hamilton petitioned for post-conviction relief, which the Circuit Court for Baltimore City granted in part, on the limited ground that his trial counsel rendered ineffective assistance by failing to file a motion to modify his sentence under Md. Rule 4-345(e). *See* Circuit Court for Baltimore City, Post-Conviction Case No. 12061, June 8, 2023 Order. The post-conviction court allowed Hamilton to belatedly file such a motion. *See id.*

Hamilton did so on September 5, 2023. By order entered March 13, 2024, the circuit court denied Hamilton's motion seeking to modify his sentence. Hamilton noted this timely appeal, challenging the denial of sentencing relief on grounds of sentencing merger, sufficiency of the evidence, and ineffective assistance of counsel.

The State moves to dismiss this appeal, arguing that the challenged order is not appealable. Alternatively, the State contends that Hamilton failed to preserve his claims by waiting to raise them for the first time in this appeal, and that in any event, the circuit court did not err or abuse its discretion in denying the motion.

For reasons that follow, we conclude that, with the exception of Hamilton's merger challenge, his claims are not appealable, but in any event, none warrants the relief he seeks.

FACTS AND LEGAL PROCEEDINGS

Our summary presents relevant information from both this criminal case and Hamilton's separate post-conviction record. On October 9, 2014, Kevin Jowers was murdered. *See Hamilton*, 2018 WL 3388512, at *1-2. That afternoon, Mr. Jowers had drinks at a Baltimore City tavern with a woman he previously dated, Chantay Walker, who was then living with Mr. Hamilton. *See id.* at *1. After leaving the tavern, Ms. Walker and Mr. Jowers were struck by "an unidentified individual" who "came from behind Ms. Walker[,]" then "took off running." *Id*. Mr. Jowers ran after the fleeing assailant. *See id*. A motorist at a stoplight, after observing two men in a physical altercation, called 911 to report that she saw one of the men "standing on the corner of Fulton Avenue 'bleeding holding his neck,'" then "walk toward an alley, and fall to the ground." *Id.*

Mr. Jowers died at the scene, from a "'catastrophic injury' above his collarbone, which was 'arterial' and 'spraying everywhere.'" *Id*. at *2. The medical examiner testified that he sustained "'sharp force injuries,' including 'four stab wounds and eight cutting wounds,' which were caused by a weapon 'consistent with a single edged knife.'" *Id*.

The police recovered clothing belonging to Hamilton, which Ms. Walker identified as what he wore that day. *See id.* Hamilton's clothing also matched the motorist's description of Jowers' assailant and tested positive for blood matching Jowers' DNA. *See id.*

On July 7, 2016, a jury convicted Hamilton of second degree murder, for which he was sentenced to 30 years, and wearing and carrying a dangerous weapon, for which he was sentenced to a consecutive three years. *See id.* at *1, 3. On direct appeal, this Court

affirmed those convictions, rejecting Hamilton's challenges to jury voir dire, evidence of a recorded jail call and cellphone text messages, and jury instructions. *See id.* at *1, 19.

Hamilton sought post-conviction relief in the Circuit Court for Baltimore City. By order entered on June 8, 2023, the post-conviction court partially granted his petition on the limited ground that the failure of Hamilton's trial counsel "to file a motion for modification of sentence" constituted "ineffective assistance of counsel[.]" The post-conviction court permitted Hamilton to file, within 90 days, a belated motion seeking to modify his sentence.

On September 5, 2023, Hamilton filed such a motion in this case. He acknowledged his history of "struggles with drug addiction and past encounters with the criminal justice system" while pointing out that he "was a 48-year-old father of a 10-year-old daughter" with "work experience in retail sales management[,]" "mechanic services[,]" and "food service management[.]" As grounds for modifying his sentence, Hamilton asserted that while serving his sentences for these crimes, he had "given much thought to his decisions resulting in his incarceration" and time "lost with his family and friends." While "not incur[ring] a single disciplinary infraction" during his incarceration, he alleges, he has been "a helpful presence[,]" by "train[ing] and work[ing] in industrial sewing and as a sight guide and scribe for fellow inmates who are blind." In addition, Hamilton claims that he "distinguished himself as an employee in dietary services, where he has earned strong performance reviews and the appreciation of correctional staff members" with whom he interacts daily. He "earn[ed] a commercial driver's certificate" and "participated in

numerous self-improvement programs, including courses and discussion groups in victim awareness, which have instilled him with . . . accountability" that he lacked.

On March 13, 2024, the circuit court entered an order denying Hamilton's motion to modify his sentence. Hamilton noted this timely appeal.

DISCUSSION

In his informal brief, Hamilton presents three issues, which we summarize as follows:

- First, he challenges the legality of his sentence on the ground that the sentencing court "failed to merge carrying a deadly weapon with second degree murder." In his view, his consecutive sentences are unlawful because they are "for one case, one indictment, one act."

- Second, Hamilton contends the trial court erred in denying his motion for acquittal on the carrying charge, arguing that because "no weapon was ever recovered," there was "no evidence of a deadly weapon," much less that he possessed and carried one.

- Finally, Hamilton again asserts ineffective assistance of his trial counsel, this time citing failures "to call any witnesses on [his] behalf[,]" "to investigate the State[']s case[,]" and "to preserve [his] right to a speedy trial under the 6th Amendment[.]"

The State moves to dismiss this appeal "as not allowed by law." Alternatively, the State argues that Hamilton's claims are waived because he did not previously raise them and they otherwise do not "form a basis for relief in this appeal."

For reasons that follow, we agree that to the limited extent Hamilton's merger challenge is properly before us, the rule of lenity does not require merger of his convictions for second degree murder and carrying a dangerous weapon. With respect to the remaining challenges, including the State's failure to produce the murder weapon and the allegedly

ineffective assistance of trial counsel, Hamilton's arguments are neither preserved nor persuasive.

Motion to Dismiss

Under Md. Rule 4-345(e)(1)(B),

> [u]pon a motion filed within 90 days after imposition of a sentence . . . in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Based on trial counsel's failure to timely file such a motion, the post-conviction court extended this deadline by granting Hamilton 90 days to file a belated motion to modify his sentence. As recounted above, Hamilton proffered his remorse and exemplary record during incarceration as grounds for reducing his sentences. When the circuit court denied that relief, Hamilton noted this appeal.

As our Supreme Court has recognized, the denial of a motion to modify a sentence is not appealable unless predicated on a determination that the court lacked jurisdiction to modify the sentence in question. *See Brown, Bottini & Wilson v. State*, 470 Md. 503, 548 n.52 (2020); *Howsare v. State*, 185 Md. App. 369, 380 (2009); *Hoile v. State*, 404 Md. 591, 617-18 (2008); *Fuller v. State*, 397 Md. 372, 395 (2007). Here, there is only a written order, which states that "upon consideration" of Hamilton's motion, the court denied relief. Although the court's reasoning is not stated, we may fairly infer from the fact that the post-conviction court authorized the motion and that Hamilton did not challenge the circuit court's jurisdiction to consider it, that the circuit court did not predicate its denial of Hamilton's request for sentence modification on a determination that it lacked jurisdiction.

Nevertheless, we recognize that to the extent that Hamilton challenges the legality of his sentences under the rule of lenity, that issue is reviewable. Although Hamilton did not assert, either at sentencing or on direct appeal, that his sentences merge, courts "may correct an illegal sentence at any time." Md. Rule 4-345(a). *See Jordan v. State*, 323 Md. 151, 161 (1991); *Walczak v. State*, 302 Md. 422, 427 (1985); *Griffin v. State*, 137 Md. App. 575, 578-79 (2001). When multiple sentences are imposed in violation of the rule of lenity, as Hamilton alleges happened here, the sentence that should have been merged constitutes "an 'illegal sentence' within the contemplation of Rule 4-345(a)." *Pair v. State*, 202 Md. App. 617, 625 (2011). Consequently, we must review Hamilton's sentencing merger challenge despite his failure to previously raise that argument.

Sentencing Merger

"Whether a conviction merges for sentencing purposes is a question of law that is assessed under a *de novo* standard of review." *Koushall v. State*, 479 Md. 124, 148 (2022). The three measures for whether convictions merge are "'(1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness.'" *Id*. at 156 (quoting *Carroll v. State*, 428 Md. 679, 694 (2012)).

Here, the issue is whether Hamilton's convictions for second degree murder and carrying a dangerous weapon should have been merged for sentencing purposes. Maryland has codified common law murder, establishing degrees for sentencing purposes.[1] *See Bruce*

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[1] First degree murder is killing by poison or lying in wait, as well as willful, deliberate, and premeditated killing, Crim. § 2-201(a)(1)-(3); solicited murder; and felony murder predicated on enumerated common law and statutory felonies. *See* Crim. § 2-
(continued)

v. State, 317 Md. 642, 644-45 (1989). In this case, the modality of second degree murder presented to the jury was "the killing of another person without legal justification, excuse, or mitigation, and with either the intent to kill or the intent to inflict grievous bodily harm[.]" *Banks v. State*, 92 Md. App. 422, 439 (1992). *See* Md. Code, § 2-204 of the Criminal Law Article ("Crim."). Subsection 4-101(c) of the Criminal Law Article, in pertinent part, prohibits "wearing or carrying a dangerous weapon concealed on or about the person" and carrying "a dangerous weapon . . . openly with the intent or purpose of injuring an individual in an unlawful manner."

Under the required evidence test, sentences for separate convictions based on the same act or acts must be merged only 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). *See State v. Johnson*, 442 Md. 211, 218 (2015); *Hamrick v. State*, 263 Md. App. 270, 284-85 (2024), *cert. denied*, No. 330, Sept. Term, 2024, 2025 WL 432900 (Md. Jan. 29, 2025). As applied to this record, Hamilton could have committed second degree murder without carrying a dangerous weapon, and vice-versa. Because carrying a dangerous weapon is neither an element of second degree murder, nor a lesser

201(a)(4); Crim § 2-201(c). All other murders are second degree. *See* Crim. § 2-204(a); MPJI-Crim. 4:17. *See generally Garcia v. State*, 480 Md. 467, 476-77 (2022) (recognizing that second degree murder encompasses "killings accompanied by any one of the following states of mind: (1) killing another with the intent to kill . . . without premeditation; (2) killing another person with the intent to inflict serious bodily harm that death would be the likely result; (3) depraved-heart murder; and (4) felony murders, where the killing is done during the commission of certain felonies").

included offense, Hamilton's sentences for those convictions do not merge under the required evidence test.

Likewise, Hamilton's convictions do not merge under the rule of lenity, which applies to statutory offenses by giving defendants "the benefit of the doubt" when it is not clear whether the Legislature intended to provide for "two crimes arising out of a single act." *See Latray v. State*, 221 Md. App. 544, 555 (2015); *Walker v. State*, 53 Md. App. 171, 201 (1982). *See generally Monoker v. State*, 321 Md. 214, 222 (1990) (recognizing that, as a matter of statutory construction, courts do not interpret criminal statutes in a manner that increases the penalty "'when such an interpretation can be based on no more than a guess as to what [the Legislature] intended'") (citation omitted). As our Supreme Court has recognized, a conviction for carrying a dangerous weapon generally does not merge under the rule of lenity unless the other offense incorporates carrying the weapon as an element. *See Biggus v. State*, 323 Md. 339, 357 (1991). After "Maryland cases have uniformly refused to merge [Crim. § 4-101] convictions into convictions for other offenses where such merger was not mandated by the required evidence test[,]" the Legislature "has taken no action to change the result of those decisions." *Id*.

In these circumstances, we have recognized that separate convictions and sentences implement "a primary purpose of statutes proscribing the carrying or employment of dangerous or deadly weapons[,]" which "is to discourage their use in criminal activity." *Id*. Consistent with that policy, when "the underlying criminal activity does not itself necessarily involve the carrying or use of a dangerous or deadly weapon, the carrying or

use of a dangerous or deadly weapon . . . is an aggravating factor warranting punishment in addition to the punishment imposed for the underlying criminal activity." *Id*.

Moreover, the principle of fundamental fairness does not require merger because "[w]hen someone commits a crime . . . , and also employs a dangerous or deadly weapon in violation of [Crim. § 4-101(c)], there is no unfairness associated with the imposition of separate sentences for each offense." *Id*. *Compare, e.g., Burkett v. State*, 98 Md. App. 459, 479 (1993) (holding conviction for carrying a dangerous weapon did not merge with sexual offense in the second degree); *Nance v. State*, 77 Md. App. 259, 267 (1988) (holding conviction for rape did not merge with convictions for other sexual offenses), *with Eldridge v. State*, 329 Md. 307, 320 (1993) (merging conviction for carrying a dangerous weapon into armed robbery conviction because Legislature enacted an enhanced penalty for armed robbery over simple robbery and did not intend further punishment); *Somers v. State*, 156 Md. App. 279, 317 (2004) (merging conviction for carrying a dangerous weapon openly with the intent to injure into conviction for robbery with a dangerous weapon).

Here, in contrast to *Chilcoat v. State*, 155 Md. App. 394 (2004), where carrying a beer stein a few steps was merely incidental to a bludgeoning assault, the sequence of events supports separate convictions and sentences for murder and carrying a dangerous weapon. Based on evidence of two separate encounters between Hamilton and Jowers -- first outside the tavern, then on Fulton Street -- the jury could find that Mr. Hamilton carried the knife he used to murder Mr. Jowers both before and after that fatal encounter. Specifically, the timeline supports reasonable inferences that Hamilton transported the knife to the tavern where he struck Mr. Jowers, and again while fleeing from that initial

encounter. Alternatively, evidence that no weapon was recovered at or near the scene of the stabbing supports an inference that Hamilton again carried the knife while he fled the fatal altercation on Fulton Avenue. Based on this record, the trial court did not err in failing to merge Hamilton's convictions for second degree murder under Crim. § 2-204 and carrying a dangerous weapon under Crim. § 4-101.

Failure to Recover a Weapon

Hamilton next contends that the fact "no weapon was ever recovered" required acquittal as a matter of law. As we have explained, that claim falls outside the permissible grounds for appeal from the denial of his motion for sentence modification. *See Brown, Bottini & Wilson*, 470 Md. at 548 n.52.

Even if this contention were properly before us, we conclude that it lacks merit because there was ample evidence for the jury to find beyond a reasonable doubt that the murder weapon was a knife wielded by Hamilton. Specifically, jurors could easily infer that Hamilton carried the murder weapon based on the forensically matched blood discovered on his clothing and the cutting and "sharp force injuries" suffered by Mr. Jowers, which included a "catastrophic" neck wound that the medical examiner determined is "consistent with a single edged knife" large enough to inflict a lethal level of "arterial" bleeding that was "spraying everywhere." *See Hamilton*, 2018 WL 3388512, at *2. Because such circumstantial evidence is sufficient to support the verdicts, the circuit court did not err in denying Hamilton's motion for acquittal or abuse its discretion in declining to modify his sentences based on the State's failure to produce the murder weapon.

Ineffective Assistance of Trial Counsel

Finally, we also reject Mr. Hamilton's new claims of ineffective assistance, which are premised on allegations regarding trial counsel's deficient representation before and during trial. Such allegations could, should, and may indeed have been presented in the post-conviction proceedings. But those rulings are not before us in this challenge to the denial of sentencing modification relief.

Even if Hamilton did assert claims that trial counsel rendered ineffective assistance by failing to call witnesses, to investigate, and/or to assert speedy trial rights, his failure to appeal the post-conviction order bars him from reasserting that claim. *Cf., e.g., Holloway v. State*, 232 Md. App. 272, 282 (2017) (holding that law of the case doctrine bars re-litigation of claims that were decided in prior appeals and any claims "that could have been raised and decided"). Alternatively, if Hamilton failed to raise such claims, it is too late to do so now in this appeal of the denial of his motion to modify his sentence. *See* Md. Code § 7-106(b) of the Criminal Procedure Article ("CP") (Under Uniform Post-Conviction Procedure Act, "an allegation of error is waived when a petitioner could have made but intelligently and knowingly failed to make the allegation . . . on direct appeal" or "in any other proceeding that the petitioner began."); CP § 7-106(b)(2) ("When a petitioner could have made an allegation of error at [such] a proceeding . . . but did not make an allegation of error, there is a rebuttable presumption that the petitioner intelligently and knowingly failed to make the allegation."); *State v. Smith*, 443 Md. 572, 601 (2015) (recognizing that petitioner waives any claim that was not "raised at trial or in a previously-filed appeal, application for leave to appeal, or post-conviction petition").

CONCLUSION

Accordingly, to the limited extent the order denying Mr. Hamilton's motion to modify his sentences is appealable, we affirm that decision.

ORDER ENTERED MARCH 13, 2024, BY THE CIRCUIT COURT FOR BALTIMORE CITY, AFFIRMED ON GROUNDS STATED IN THIS OPINION. COSTS TO BE PAID BY APPELLANT.