Circuit Court for Howard County
Case No. C-13-CR-20-000316

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 661

September Term, 2023

ISAAC ABIOLA OLUGBEMI

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Howard County of two counts of first degree assault and related offenses, Isaac Abiola Olugbemi, appellant, presents for our review a single issue, which for clarity we rephrase: whether the court illegally imposed upon Mr. Olugbemi more than one mandatory minimum sentence for first degree assault. For the reasons that follow, we shall affirm the judgments of the circuit court.

Mr. Olugbemi was charged by indictment with first degree assault of Shanice Jackson, first degree assault of Emmanuel Hayford, use of a firearm in the commission of a crime of violence, and related offenses. At trial, the State called Ms. Jackson, who testified that Mr. Olugbemi is her former boyfriend. On July 16, 2020, Ms. Jackson and Mr. Hayford were sitting in the front seats of Ms. Jackson's rental car when Mr. Olugbemi approached the car, opened the driver's door, and "said he would shoot" Ms. Jackson and Mr. Hayford. Ms. Jackson "[c]losed the door back and drove off," then heard a "loud bang." Ms. Jackson drove to a gas station, where she exited the car and observed a "gunshot" hole in one of the doors of the car. Ms. Jackson then drove Mr. Hayford to a "development before [a] shopping center," where Mr. Olugbemi "pulled up" in front of the couple. As Mr. Olugbemi "was getting out of [his] car," Ms. Jackson "drove off." Mr. Olugbemi re-entered his car and followed Ms. Jackson until she pulled into a shopping center where some police officers were located. Mr. Olugbemi then "drove behind [the couple] and went the other way." The State also called Mr. Hayford, who gave similar testimony. Following trial, the jury convicted Mr. Olugbemi of the aforementioned offenses.

At sentencing, the prosecutor stated, in pertinent part:

Your Honor, [Mr. Olugbemi] has two prior convictions. One was a 2011 robbery conviction with a violation of probation in 2012. And then there was a 2014 possession with intent to distribute CDS.

I believe, and I believe counsel views it differently, but I believe that [Mr. Olugbemi] is subject to the mandatory minimum as set forth in Criminal Law Article [("CR"), §] 14-101(d),[1] a second crime of violence.

* * *

So, Your Honor, in the State's view, [Mr. Olugbemi] is subject to mandatory minimum on the first two counts of the indictment that he was convicted on; the first degree assaults. I believe they would stack because they're individual victims. Ms. Jackson in Count 1 and Mr. Hayford in Count 2.

So the State is going to recommend a sentence as to Count 1, 25 years, suspending all but 10, which is the mandatory minimum . . . . . .

. . . I would ask that Count 2, that Your Honor impose a ten year flat sentence for the assault on Mr. Hayford, consecutive to Count 1.

---

[1]CR § 14-101(d)(2) states:

(i) On conviction for a second time of a crime of violence committed on or after October 1, 2018, a person shall be sentenced to imprisonment for the term allowed by law, but not less than 10 years, if the person:

> 1. has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 2018; and
>
> 2. served a term of confinement in a correctional facility for that conviction.

(ii) The court may not suspend all or part of the mandatory 10-year sentence required under this paragraph.

(iii) A person sentenced under this paragraph is not eligible for parole except in accordance with the provisions of § 4-305 of the Correctional Services Article.

Defense counsel requested, for numerous reasons, that if the court found "the ten without applicable, that [it be] applicable to one count and one count only."

Following argument and allocution, the court stated:

> I looked at [the statute], and my read of it is that ten years is appropriate as a mandatory minimum without parole for Count 1.
>
> So, here's the sentence that I'm imposing. For Count 1, 10 years – 25 years, suspend all but 10 without.
>
> Count 2, 10 years consecutive to Count 1. There were two very distinct victims here, both of whom were innocent victims, neither of whom brought this upon themselves. So I'm not saying that victim number two was any more innocent than victim number one, there is no excuse for this behavior.

The court merged two related offenses, imposed a term of imprisonment of "five years consecutive" for the use of a firearm in a crime of violence, and imposed concurrent terms of imprisonment for the remaining offenses.

The court subsequently issued a commitment record which states that Mr. Olugbemi is "[n]ot eligible for parole" from the sentence for Count 1, and "[e]ligible for parole" from the sentence for Count 2. The court also signed a "Maryland Sentencing Guidelines Worksheet" that had been prepared by the prosecutor. In the worksheet, the prosecutor indicated that the minimum term of imprisonment for Counts 1 and 2 was ten years, and that "Subsequent Offender [was] Proven" for both counts.

Mr. Olugbemi contends that because the "sentencing guidelines worksheet reflects that the sentences for both assault convictions are mandatory minimum sentences," the court illegally "enhanc[ed] both assault sentences under the sentencing enhancement provisions of [CR §] 14-101, which can only be applied to one conviction per criminal

incident." *See Calhoun v. State*, 46 Md. App. 478, 489 (1980) ("holding . . . that [the predecessor to CR § 14-101] permits the imposition of only one mandatory sentence without the possibility of parole"). We disagree. The court explicitly stated that it was imposing a term of imprisonment of ten years for the first degree assault of Mr. Hayford not because the prosecutor, in the sentencing guidelines worksheet, contended that ten years was the mandatory minimum sentence, or that "Subsequent Offender" had been proven for both counts, but because "[t]here were two very distinct victims here," "neither of [them] brought this upon themselves," and "there is no excuse for [Mr. Olugbemi's] behavior." The court also explicitly recognized "that ten years is appropriate as a mandatory minimum without parole for" only the first degree assault of Ms. Jackson, and did not make any statement indicating that it would have imposed a lesser sentence for the first degree assault of Mr. Hayford but for the enhancement provisions of CR § 14-101(d)(2). Finally, the court explicitly stated in its commitment record that Mr. Olugbemi is "[e]ligible for parole" from the sentence for the first degree assault of Mr. Hayford. This statement shows that the court recognized that the enhancement provisions of CR § 14-101(d)(2) applied only to the sentence for the first degree assault of Ms. Jackson, and hence, the court did not illegally impose upon Mr. Olugbemi more than one mandatory minimum sentence for first degree assault.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.