Circuit Court for Baltimore City
Case No. 121126024

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1170

September Term, 2023

DONALD RAYCO WILLIAMS

v.

STATE OF MARYLAND

Leahy,
Kehoe, S.,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 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.

Following a jury trial in the Circuit Court for Baltimore City, Donald Williams, appellant, was convicted of seven counts of child sexual abuse. On appeal, he contends there was insufficient evidence to sustain three of his convictions. The State concedes that three of his convictions should be vacated. For the reasons that follow, we shall vacate three of appellant's convictions and remand the case to the circuit court for resentencing.

In reviewing the sufficiency of the evidence, we ask "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Ross v. State*, 232 Md. App. 72, 81 (2017) (quotation marks and citation omitted). Furthermore, we "view[ ] not just the facts, but 'all rational inferences that arise from the evidence,' in the light most favorable to the" State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (citation omitted). In this analysis, "[w]e give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (citation omitted).

Here, appellant's indictment alleged that he committed the offenses of sexual abuse of a minor as follows:

(1) "on or about March 1, 2007 – February 28, 2008, at 1111 N. Stricker Street"

(2) "on or about March 1, 2008 – February 28, 2009, at 1111 N. Stricker Street"

(3) "on or about March 1, 2009 – February 28, 2010, at 1111 N. Stricker Street"

(4) "on or about March 1, 2010 – February 28, 2011, at 1111 N. Stricker Street"

(5) "on or about March 1, 2011 – February 29, 2012, at 703 Wharton Court"

(6) "on or about March 1, 2012 – February 28, 2013, at 703 Wharton Court"

(7) "on or about March 1, 2013 – March 7, 2013, at 703 Wharton Court."

These time frames and locations were also listed on the verdict sheet.

At trial, the victim, who was born in 1997, testified that she moved to the Wharton Court address when she was 15 and that appellant sexually abused her on multiple occasions at that address, including two occasions that she described in detail. She also testified that appellant had abused her "probably four or five times" when she was between 6 and 7 years old and living at a house located at 1734 N. Calhoun Street, a location not set out in the indictment.

With respect to the 1111 N. Stricker Street address, the victim testified that she moved there when she was 10 or 11, which would have been in 2007 or 2008. However, she only testified to a single incident of sexual abuse that occurred at that address. And, despite being specifically asked, she could not remember another time that appellant abused her there.

On appeal, appellant contends that the State failed to prove that he committed more than one offense at the 1111 N. Stricker Street address. The State agrees, as do we. The first four counts of the indictment specifically charged appellant with committing four counts of child sexual abuse between 2007 and 2011 at 1111 N. Stricker Street. Yet, the victim only testified to a single instance of abuse at that location. And although there was

testimony at trial that appellant committed other acts of abuse between 2003 and 2004 at a different location, we are not persuaded that the indictment gave appellant adequate notice that he was being charged with, and was thus required to defend against, that conduct. The evidence at trial was thus insufficient to sustain four counts of sexual abuse of a minor at 1111 N. Stricker Street. Consequently, we shall vacate appellant's convictions for child sexual abuse set forth in counts two, three, and four of the indictment.

As the Supreme Court of Maryland stated in *Twigg v. State*, 447 Md. 1, 30 n.14 (2016), where an appellate court determines that at least one of a defendant's sentences must be vacated, the appellate court may vacate all of the defendant's sentences and remand for resentencing "to provide the [trial] court maximum flexibility on remand to fashion a proper sentence that takes into account all of the relevant facts and circumstances." Here, the court imposed consecutive sentences of 25 years' imprisonment, with all but 4 years suspended, on each count. The sentences on counts 1-4 were ordered to run consecutively, and the sentences on counts 5-7 were ordered to run concurrently, resulting in a total sentence of 100 years' imprisonment, with all but 16 years suspended. Were we to simply vacate appellant's convictions on counts 2-4, his total active sentence would be reduced by 12 years. Under the circumstances, we therefore find it appropriate to exercise our discretion to vacate all of appellant's sentences and remand for resentencing so that the

sentencing judge will have the opportunity to revise the initial sentencing package, while preserving the sentencing scheme originally intended. *See id.* at 28.

APPELLANT'S CONVICTIONS ON COUNTS 2, 3 AND 4 REVERSED. APPELLANT'S SENTENCES ON COUNTS 1, 5, 6, AND 7 VACATED AND CASE REMANDED FOR A NEW SENTENCING HEARING. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.