

Circuit Court for Baltimore City
Case Nos. 113329039-41

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1551

September Term, 2024

DEVON D. FERGERSON

v.

STATE OF MARYLAND

Shaw,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 28, 2025

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

Devon D. Ferguson,¹ appellant, appeals from the denial, by the Circuit Court for Baltimore City, of a motion to correct illegal sentence. For the reasons that follow, we shall affirm the judgment of the circuit court.

In 2015, Mr. Ferguson was convicted by a jury of two counts of first degree murder, two counts of using a handgun in the commission of a crime of violence, and one count of possession of a regulated firearm by a prohibited person. The offenses were alleged to have occurred on November 5, 2013. At sentencing, the prosecutor asked the court to “impose a life sentence plus 20 years for the death of Carl Burine consecutive,” “a life sentence plus 20 years consecutive to that for the death of the other brother,” and “15 years consecutive for . . . having a handgun in his possession after being convicted or prohibited.”

The following colloquy subsequently occurred:

THE COURT: Thank you. All right, the Court did have the opportunity to observe the trial, the witnesses, the testimony presented. This Court is mindful of the fact that the State proceeded on first degree murder charges and the jurors, twelve of them indicated to this Court by their verdict that they believed the State met its burden beyond a reasonable doubt to show that the Defendant was guilty of murder in the first degree for Carl Burine and murder in the first degree for Kurt Burine. I do not need to belabor this point. I do believe the only appropriate sentence in this Court’s estimation, again not that I am required to enter this sentence, but I believe it is the appropriate sentence for the case number 113329039 on the charge of first degree murder where the victim is Carl Burine, the sentence is life on first degree murder. On the charge of use of a handgun in the commission of a crime of violence, the sentence is 20 years. That sentence is consecutive to the life sentence.

Case number 113329040, on the charge of murder in the first degree of Kurt Burine, I believe the appropriate sentence in that case is life. It is

¹Mr. Ferguson is alternatively identified in the record as “Fergurson” and “Ferguson.” For consistency, we shall identify him as “Ferguson,” as he is so identified in his brief.

consecutive to the case ending in 039. And for the charge of use of a handgun in the commission of a crime of violence, the sentence is 20 years consecutive to that life sentence.

And in case 113329041, possession of a regulated firearm by a prohibited person, the sentence is 15 years consecutive.

The court subsequently issued a commitment record reflecting a total term of imprisonment of “double life plus 55 years,” to commence on November 5, 2013.

In January 2024, Mr. Ferguson filed the motion to correct illegal sentence, in which he contended that for four reasons, his sentences are illegal. First, Mr. Ferguson contended that the court erred in failing to merge the sentences for first degree murder and use of a handgun in the commission of a crime of violence. Second, Mr. Ferguson contended that the court erred in failing to award him credit for time spent in custody prior to sentencing. Third, Mr. Ferguson contended that the court’s use of the phrase “believe the appropriate sentence” gives rise to an impermissible ambiguity, the court erred in failing to specify the term of imprisonment in case number 113329039 to which the subsequent terms of imprisonment are to run consecutively, and the court erred in failing to announce whether any of the terms of imprisonment are to run consecutively or concurrently with “a 4 year sentence that had been imposed prior to” sentencing in the instant matters. Finally, Mr. Ferguson contended that “the sentencing transcript[], and not commitment record, . . . is the source of authority when determining the [c]ourt’s imposed sentence.” The court denied the motion.

Mr. Ferguson contends that, for three reasons, the court erred in denying the motion. Mr. Ferguson first contends that the court “err[ed] in running the possession of

a[] regulated firearm sentence consecutive to the use of handgun sentence in” case number 113329040, because “the handgun violation . . . is the lesser included offense that should have been merged.” We note that Mr. Ferguson failed to present this contention in the motion to correct illegal sentence. Nevertheless, the Supreme Court of Maryland has long held that “the Legislature may punish certain conduct more severely if particular aggravating circumstances are present, by imposing punishment under two separate statutory offenses,” and “its . . . concern about the aggravating circumstance of [a] handgun being possessed by a person who has been convicted of a crime of violence[] is not unreasonable.” *Frazier v. State*, 318 Md. 597, 615 (1990) (citation omitted). Hence, the offense of possession of a regulated firearm by a prohibited person does not merge.

Mr. Ferguson next contends that the sentencing court “err[ed] when failing to give [him] credit for time already spent in custody.” But, in its commitment record, the court explicitly ordered that the total term of imprisonment commence on the date of the offenses, specifically November 5, 2013. Hence, the court was not required to award Mr. Ferguson additional credit for time served.

Finally, Mr. Ferguson contends that the prosecutor’s request that “the court . . . run each of the . . . sentences consecutively was an error that influenced the sentence scheme” and “request[ed] cruel and unusual punishment.” We again note that Mr. Ferguson failed to present this contention in the motion to correct illegal sentence. Also, we have recognized that the scope of a motion to correct illegal sentence is “narrow” and “limited to those situations in which the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not

a permitted one for the conviction upon which it was imposed and . . . is intrinsically and substantively unlawful.” *Carlini v. State*, 215 Md. App. 415, 426 (2013) (internal citation and emphasis omitted). Here, the error alleged by Mr. Ferguson does not inhere in the sentence itself, and hence, the court did not err in denying the motion to correct illegal sentence.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**