Circuit Court for Worcester County
Case Nos.: 23-K-15-000341 & 23-K-16-000038

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Nos. 1612 & 1613

September Term, 2023

PATRICK THOMAS

v.

STATE OF MARYLAND

Arthur,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: December 11, 2024

* 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 Maryland Rule 1-104(a)(2)(B).

This is an appeal from the denial of a motion to correct an illegal sentence filed by Patrick Thomas, appellant, in the Circuit Court for Worcester County. In 2016, appellant was convicted of, among other things, distribution of heroin and involuntary manslaughter for which he received separate sentences. Those convictions stemmed from appellant's sale of heroin to the victim, Colton Lee Matrey, who fatally overdosed on that heroin. In appellant's motion to correct an illegal sentence, he argued, among other things, that, under the rule of lenity, the court erred in imposing separate sentences for heroin distribution and for involuntary manslaughter. The circuit court denied his motion. On appeal, appellant challenges that decision and asks: "Did the lower court err in imposing separate sentences for involuntary manslaughter and distribution of heroin?"

For the reasons discussed in this opinion, we answer that question in the negative, and we shall affirm the judgment of the circuit court denying appellant's motion to correct an illegal sentence.

BACKGROUND

The background facts supporting appellant's convictions are not disputed. As pertinent to this appeal, those undisputed facts showed that, in the early morning hours of June 26, 2015, the victim was found in a bathroom in his mother's house dead from a fatal drug overdose. A subsequent police investigation revealed that appellant had sold him the drugs upon which he overdosed. The police investigation included an interview of appellant wherein he admitted to using heroin, to selling heroin generally, and specifically to selling heroin to the victim on the night he fatally overdosed. The investigation also included a search of appellant's home on July 2, 2015, during which the police recovered,

among other things, sixty individually packaged white wax paper bags of heroin. As a result of all of that, the State charged appellant with a variety of offenses.

On March 2, 2016, arising from the narcotics recovered from his home when the police searched it on July 2, 2015, appellant entered a guilty plea in the Circuit Court for Worcester County, in Case No. 23-K-15-0341, to one count of possession of heroin with the intent to distribute it.[1]

Several months later, on June 9, 2016, in that same court, in Case No. 23-K-16-0038, appellant pleaded not guilty on an agreed statement of facts to involuntary manslaughter, distribution of heroin, and reckless endangerment, for selling the narcotics to the victim that resulted in his death by overdose.

That same day, the court sentenced him, in Case No. 23-K-15-0341, to fifteen years' imprisonment for possession of heroin with the intent to distribute it, and, in Case No. 23-K-16-0038, to a consecutive term of twenty years' imprisonment for distribution of heroin, and a concurrent term of ten years' imprisonment for involuntary manslaughter.[2,3]

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[1] Appellant entered his guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), under which a criminal defendant need not admit his or her participation in the crime when pleading guilty. Nonetheless, an *Alford* plea is the functional equivalent of a guilty plea. *Ward v. State*, 83 Md. App. 474, 480 (1990).

[2] The court merged the sentence for reckless endangerment into the sentence for involuntary manslaughter.

[3] After the sentencing proceeding, appellant's case took an appellate odyssey, which we briefly recount. Appellant took an appeal to this Court in Case No. 23-K-16-0038 and, in a reported decision, we reversed his manslaughter conviction based on a legal insufficiency of the evidence for both of the forms of involuntary manslaughter advanced by the State, to wit, unlawful act manslaughter and grossly negligent act manslaughter. *Thomas v. State*, 237 Md. App. 527 (2018). The State then sought, and obtained, a writ of

(continued…)

Thereafter, appellant, acting *pro se*, cross-filed identical motions to correct an illegal sentence in each of his circuit court cases. He argued that his separate sentence for possession with the intent to distribute heroin in the case ending in 0341, and his sentence for distribution of heroin in the case ending in 0038 should have merged. In addition, he argued that his separate sentence for distribution of heroin in the case ending in 0038 should have merged, under the rule of lenity, into the sentence for involuntary manslaughter in that same case. On September 26, 2023, after holding a hearing where appellant was represented by counsel, the circuit court denied both motions from the bench. Appellant then noted appeals of those denials, which we consolidated upon request of the parties.

certiorari from the Supreme Court of Maryland ("SCM") which reversed this Court's decision and found the evidence sufficient to support the gross negligence form of involuntary manslaughter. The State did not challenge this Court's holding with respect to unlawful act manslaughter, and the SCM therefore did not address that question. *State v. Thomas*, 464 Md. 133 (2019).

The SCM then remanded the case to this Court for us to consider arguments appellant had made on appeal that we had left unresolved in light of our reversal of his manslaughter conviction concerning merger of his sentences for the manslaughter and distribution of heroin convictions. *Id.* at 180.

Upon remand, we determined that the sentences for manslaughter and heroin distribution did not merge under the required evidence test set forth in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). In addition, relying on *Pair v. State*, 202 Md. App. 617, 649 (2011), we declined to address appellant's fundamental fairness-based merger argument because he had not preserved it for appellate review. Because appellant did not then argue that the sentences should have merged under the rule of lenity, we declined to consider that question. *Thomas v. State*, No. 1115, Sept. Term, 2016 (filed unreported Nov. 25, 2019).

Of course, all of those legal conclusions are now binding on us as law of the case. *See Scott v. State*, 379 Md. 170, 183 (2004) ("[O]nce an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.").

On appeal, appellant makes no argument concerning the correctness, *vel non*, of the circuit court's decision to deny the motion to correct an illegal sentence that he filed concerning the sentence imposed in the case ending in 0341. Thus, all that is now before us is appellant's rule of lenity-based merger argument concerning the separate, yet concurrent, sentences imposed in the case ending in 0038.[4]

DISCUSSION

Illegal Sentence

Maryland Rule 4-345(a) allows a trial court to "correct an illegal sentence at any time." "A failure to merge a sentence is considered to be an 'illegal sentence' within the contemplation of the rule." *Pair v. State*, 202 Md. App. 617, 624 (2011). Generally, we review the legality of a defendant's sentence under a *de novo* standard of review. *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

Sentencing Merger Generally

"The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law." *Brooks v. State*, 439 Md. 698, 737 (2014). "Merger protects a convicted defendant from multiple punishments for the same offense." *Id.* "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 (2012) (quotation marks and citation omitted).

[4] Therefore, nothing about Case No. 23-K-15-0341 is germane to this appeal. We only include mention of it for the sake of completeness.

As noted earlier, at issue in this case is appellant's contention that his sentences for involuntary manslaughter and distribution of heroin should merge under the rule of lenity.

Rule of Lenity Merger

Generally speaking, "[t]he rule of lenity is a common law doctrine that directs courts to construe ambiguous criminal statutes in favor of criminal defendants." *Alexis v. State,* 437 Md. 457, 484-85 (2014). The rule "applies to merger of two statutory crimes, or one statutory crime and one common law crime." *Howard v. State*, 232 Md. App. 125, 171 (2017) (citing *Khalifa v. State*, 382 Md. 400, 434 (2004)). Essentially, the rule of lenity provides that two offenses may not be separately punished if the General Assembly intended for them to be punished in one sentence. *Alexis*, 437 Md. at 485.

We have observed that, "[i]t is the assumption (often not articulated) that under the circumstances of a given case, it is reasonable to believe that the legislature that enacted a particular statute or statutes would express some intent as to multiple punishment." *Latray v. State*, 221 Md. App. 544, 556 (2015) (quoting *Johnson v. State*, 56 Md. App. 205, 215 (1983)). Generally, that assumption arises

> when a single act is charged as multiple offenses under a single statute, where the subject of the two statutes is of necessity closely intertwined, where one offense is necessarily the overt act of a statutory offense, and where one statute, by its very nature, affects other offenses because it is designed to effect multiple punishment.

Id. (cleaned up). In such circumstances, "it is not unreasonable to assume that the legislative body contemplated the possibility of multiple punishment and to conclude that unless the intention in favor of multiple punishment is clear the Rule of Lenity or its

equivalent should be applied against the imposition of multiple punishment." *Id.* (cleaned up).

"[T]he rule of lenity 'serves only as an aid for resolving an ambiguity; it is not used to beget one.'" *Wimbish v. State*, 201 Md. App. 239, 274 (2011) (cleaned up) (quoting *Dillsworth v. State*, 308 Md. 354, 365 (1987)). "If there is no ambiguity, 'the rule of lenity simply has no application.'" *Fenwick v. State*, 135 Md. App. 167, 174 (2000) (cleaned up) (quoting *Jones v. State*, 336 Md. 255, 262 (1994)).

> Like other canons of statutory construction, the rule of lenity is neither absolute nor exclusive. *White v. State*, 318 Md. 740, 744 (1990). "Other considerations may also be applicable in arriving at a principled decision. . . . For example, in deciding merger questions, we have examined the position taken in other jurisdictions. We have also looked to whether the type of act has historically resulted in multiple punishments. The fairness of multiple punishments in a particular situation is obviously important." *White v. State*, 318 Md. 740, 745-46 (1990) (citations omitted).

Holbrook v. State, 133 Md. App. 245, 257 (2000), *aff'd*, 364 Md. 354 (2001).

Under the rule of lenity, the offense carrying the lesser maximum penalty ordinarily merges into the offense carrying the greater maximum penalty. *Miles v. State*, 349 Md. 215, 229 (1998).

Appellant's Lenity-Based Merger Argument

The State charged appellant with distribution of heroin under section 5-602 of the Criminal Law Article of the Maryland Code ("CR"), which is purely a statutory offense. The State also charged him with involuntary manslaughter under CR § 2-207, which remains a common law offense; however, the General Assembly has provided a statutory penalty for it. *Bowers v. State*, 227 Md. App. 310, 314 (2016).

Appellant's lenity-based merger argument is premised in the General Assembly's non-passage of Senate Bill 303 during the 2015 regular session of the Maryland General Assembly.[5,6] That legislation would have specifically criminalized distribution of heroin or fentanyl, "the use of which is a contributing cause of the death of another[.]" In addition, Senate Bill 303 would have established a maximum penalty not exceeding thirty years' imprisonment which would have been required to have been imposed "separate from and consecutive to a sentence for any crime based on the act establishing a violation" of the proposed law. The Bill received an unfavorable report from the Senate Judicial Proceedings Committee on March 25, 2015, and was withdrawn by its sponsor.

From the non-passage of Senate Bill 303, appellant divines the intent of the General Assembly to not punish separately his convictions for involuntary manslaughter and distribution of heroin. We are not persuaded.

As the Supreme Court of Maryland has observed "when engaging in statutory interpretation, legislative inaction is seldom a reliable guide in discerning legislative intent." *Syed v. Lee*, 488 Md. 537, 596 (2024) (cleaned up). "That is the case because there are often myriad reasons why the General Assembly may decide not to adopt proposed legislation, including the General Assembly's belief that the objectives of a proposed bill are already covered elsewhere in Maryland law." *Id.*

[5] The Bill was cross-filed with House Bill 222.

[6] On appeal, appellant also directs us to the General Assembly's non-passage of the same legislation in 2017 (House Bill 612) and in 2018 (House Bill 1730). Although it is of no significance to our holding, he never mentioned those Bills in his motion to correct an illegal sentence.

As noted earlier, appellant was convicted of the gross-negligence variety of involuntary manslaughter. That form of involuntary manslaughter involves doing some act in a criminally negligent, *i.e.*, grossly negligent, way which causes the death of another. *State v. Thomas*, 464 Md. 133, 152 (2019). The gross negligence necessary to support a conviction for involuntary manslaughter involves a wanton or reckless disregard for human life. *Id.* at 153.

Reckless endangerment is a lesser included offense of involuntary manslaughter, and therefore the "same" offense within the meaning of *Blockburger v. United States*, 284 U.S. 299, 304 (1932). *State v. Kanavy*, 416 Md. 1, 10 (2010) (agreeing with this Court's statement in *Williams v. State*, 100 Md. App. 468 (1994) that reckless endangerment merged into involuntary manslaughter under the required evidence test). [7]

In *Holbrook v. State*, 364 Md. 354 (2001), Holbrook was charged with, among other things, reckless endangerment and first-degree arson for setting a pillow on fire that was on the back porch of a home containing eight people. All of the occupants evacuated the house safely. *Id.* at 361-62. The trial court found Holbrook guilty of one count of first-degree arson, and eight counts of reckless endangerment (one count of reckless endangerment for each of the eight persons present in the house at the time of the fire). On

[7] CR § 3-204(a)(1) provides that "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another[.]" A charge of reckless endangerment requires a showing: '"1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly."' *Hall v. State*, 448 Md. 318, 329 (2016) (quoting *Jones v. State*, 357 Md. 408, 427 (2000)).

appeal, Holbrook argued that his separate sentences for first-degree arson and reckless endangerment should have merged under the required evidence test, the rule of lenity, or for reasons of fundamental fairness. *Id.* at 364. The Supreme Court of Maryland rejected all three arguments.

In declining to merge the sentences under the rule of lenity, the Court emphasized that one of the offenses, first-degree arson, was a crime against property, and the other offense, reckless endangerment, was in the nature of an inchoate crime against persons. *Id.* at 373-74. The Court noted that, even if the inchoate offense of reckless endangerment, which does not contain an element of harm to a person, had ripened into such harm, the offense still would not have merged into arson under the rule of lenity. *Id.* at 374. The Court concluded its analysis on the subject as follows:

> We believe that there is clear legislative intent that persons convicted of arson also may . . . be convicted of reckless endangerment. It is not logical to assume that the Legislature intended that reckless endangerment would merge for purposes of sentencing with arson. Rather, the General Assembly intended arson and reckless endangerment to be separate offenses subject to multiple punishments. Because there is no doubt or ambiguity as to whether the Legislature intended that there be multiple punishments for Petitioner's act, the punishments are permitted and the statutory offenses do not merge for sentencing purposes.

Id.

We find the reasoning of *Holbrook* persuasive, if not dispositive, of appellant's lenity-based merger argument in this case. As in *Holbrook*, the offenses at issue in this case are distinct offenses directed at different harms. Also as in *Holbrook*, where the sentences did not merge even though the same act or transaction formed the factual basis for both the arson and the reckless endangerment convictions, in this case, the same act (selling heroin)

formed the factual basis for both the involuntary manslaughter and the distribution of narcotics. We see no meaningful distinction between the merger analysis in *Holbrook* and the present case. As a result, because the two offenses in this case are distinct offenses directed at different harms, we hold that they do not merge under the rule of lenity.

We affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.