

Circuit Court for Baltimore County
Case No. C-03-CR-20-003585

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1650

September Term, 2023

ISAIAH DARIUS FOGG

v.

STATE OF MARYLAND

Reed,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 13, 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 Rule 1-104(a)(2)(B).

On October 25, 2021, Isaiah Fogg was convicted in the Circuit Court for Baltimore County of attempted second-degree murder, first-degree assault, robbery with a dangerous weapon, firearm possession with a felony conviction, and use of a firearm in the commission of a felony. In Fogg’s direct appeal, we vacated his conviction for the use of a firearm in the commission of a felony because the record as submitted reflected omissions in the polling and hearkening of that charge. *Fogg v. State*, No. 1974, Sept. Term 2021 (filed Jan. 31, 2023). We otherwise affirmed the judgment of the circuit court, affirming Fogg’s other convictions. *Id.* at 12.

Fogg subsequently filed a Motion to Correct an Illegal Sentence in the Circuit Court for Baltimore County, asserting that the vacated conviction rendered all of his remaining convictions inconsistent and illegal. After the circuit court denied his request to correct an illegal sentence, Fogg filed this timely appeal.¹ He presents the following question for our review, which we have recast as:

Did the circuit court err in not vacating Fogg’s remaining convictions due to an inconsistent verdict?²

For the reasons below, we shall affirm.

¹ Fogg’s motion also alleged that his commitment record was not updated to reflect the vacated conviction for the use of a firearm in commission of a felony. The circuit court granted Fogg’s motion in part to the “extent necessary” to correct his commitment record.

² Fogg also claims that he was entitled to a hearing pursuant to Md. Rule 4-345(a) before his sentence could be vacated. In our unreported opinion, we appropriately exercised our authority to vacate Fogg’s conviction pursuant to Md. Rule 8-604(a)(6). No further hearing was required in the circuit court.

BACKGROUND

Fogg’s convictions stem from a November 2020 armed robbery in a Baltimore County hotel room. *Id.* at 1. In his direct appeal to our Court, Fogg argued that the jury did not properly announce the verdict as to the charge of use of a firearm in the commission of a felony. *Id.* at 9. In light of the record submitted to us, we agreed and held that the “failure to poll the jurors on the use of a firearm in the commission of a felony or violent crime combined with the less than clear hearkening” of the verdict required vacation of the guilty verdict for that crime. *Id.* at 12. Accordingly, we vacated the conviction for the use of a firearm in the commission of a felony as well as the corresponding twenty-year sentence Fogg received for that charge.³ *Id.*

Fogg then filed in the circuit court a motion to vacate his remaining convictions, arguing that they became legally inconsistent after we vacated his conviction for the use of a firearm in the commission of a felony. The circuit court denied his motion, finding that Fogg’s argument was “not supported by applicable law.” Fogg then noted this timely appeal.

³ The jury was, in fact, properly polled in the case, but a transcript error did not reflect this at the time of the appeal. After our opinion was issued, the State belatedly corrected the transcripts and filed a motion for reconsideration. Consistent with the position that our Court “shall not ordinarily entertain requests to correct a record made after the filing of our opinion in a case[.]” we denied the State’s motion. *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 665, 668 n.1 (1992).

DISCUSSION

Fogg argues that the vacated sentence for a crime involving a firearm means that he should be found “not guilty” of any firearms related crimes. Because some of the jury instructions for his remaining convictions contained references to a firearm, Fogg contends that those guilty verdicts are now “contrary to the instructions of the trial judge” and are legally inconsistent. Additionally, Fogg asserts that we cannot consider the amended transcript pages because we denied the State’s previous motion for reconsideration.

The State responds that the verdicts were not inconsistent because the corrected transcript reflects that Fogg was convicted of all counts. The State also contends that because “[a] vacated conviction is not an acquittal,” the verdict could not be inconsistent.

We reject Fogg’s claim that our vacation of his conviction for use of a firearm in the commission of a felony rendered the verdicts for the other crimes “inconsistent.” First, the corrected transcript pages reflect that the jury unanimously rendered a guilty verdict on all counts, including the use of a firearm in the commission of a felony. The jurors then confirmed their verdicts through individual polling and collective hearkening. That we vacated one conviction based on an insufficient record does not mean that the verdicts on the other counts are legally or factually inconsistent.

Fogg overstates the impact of our denial of the State’s motion for reconsideration in his direct appeal. We denied the State’s attempt to correct the record in the direct appeal because the case had not only been briefed and argued, but we had issued our unreported opinion. Nothing in our prior Order precludes us from considering the corrected

transcripts, which demonstrate that the jury properly rendered guilty verdicts on all charges.

In summary, we reject Fogg’s argument that the vacation of his conviction for the use of a firearm in the commission of a felony rendered the verdicts on the other counts legally or factually inconsistent. *See McNeal v. State*, 426 Md. 455, 458 (2012).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**