

Circuit Court for Cecil County
Case No. 0090601C

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1654

September Term, 2022

DELMAR WILLIAM PATRICK, III

v.

STATE OF MARYLAND

Leahy,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 5, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Delmar William Patrick, III, appellant, appeals from the denial, by the Circuit Court for Cecil County, of a “Motion to Clarify Sentencing Order” (hereinafter “motion to clarify”). For the reasons that follow, we shall affirm the judgment of the circuit court.

On May 26, 1994, Mr. Patrick pleaded guilty in the Circuit Court for Cecil County to first degree felony murder. The court sentenced Mr. Patrick to a term of life imprisonment, all but fifty years suspended, to commence on September 3, 1990. On December 30, 2002, the court modified the sentence to a term of imprisonment of fifty years, all but 35 years suspended, to commence on September 3, 1990.

On February 11, 2003, Mr. Patrick was convicted in the Circuit Court for Washington County of concealing a deadly weapon. The court sentenced Mr. Patrick to a term of imprisonment of fourteen months, to run “consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences.” On December 8, 2005, Mr. Patrick was convicted in the Circuit Court for Washington County of attempted second degree rape. The court sentenced Mr. Patrick to a term of imprisonment of thirteen years, to run consecutive to the sentence for concealing a deadly weapon.

On August 6, 2008, the Circuit Court for Cecil County, for reasons that are not clear from the record, issued a commitment record in which the court committed Mr. Patrick to the custody of Commissioner of Correction for a term of imprisonment of fifty years, all but 35 years suspended. The record states that the “total time to be served is” 35 years, “to run . . . concurrent with any other outstanding or unserved sentence and begin on”

September 3, 1990. The record further states that it “supersedes commitment issued on July 21, 2008.”¹

On October 31, 2021, Mr. Patrick filed the motion to clarify, in which he contended that the Division of Corrections is “not running [his] sentences consistent with the August 6, 2008 commitment order.” Mr. Patrick contended:

This commitment order stated [that] it superseded a commitment order from July 21, 2008, although the box marking it as a sentencing modification was not checked by the clerk. It should be noted that according to the docket entries a Motion for Modification and/or Reduction of Sentences was filed on July 31, 2008. This would be consistent with a new sentencing order/modification being issued/held on July 21, 2008, a modification filed 10 days later, and then for some reason a corrected sentencing order issued August 6, 2008.

Mr. Patrick requested that the court order the Division to run the sentence for first degree felony murder “concurrent with the sentences” imposed by the Circuit Court for Washington County.

Following a hearing, the court denied the motion, stating in pertinent part:

Although it appears that a “corrected sentencing order” dated August 6, 2008, in the Felony Murder case appears in the record, stating that it was to run concurrent with any outstanding or unserved sentence and begin on September 3, 1990, this court is not persuaded that this entry can be interpreted as [Mr. Patrick] urges. This court believes that the Cecil County Felony Murder sentence as modified on December 30, 2002, cannot be deemed to run concurrently with the two Washington County sentences passed on February 11, 2003, and December 8, 2005. This [c]ourt notes the obvious chronology of events which would not allow such an interpretation as [Mr. Patrick] urges when the Washington County sentences had not yet been passed at the time of the Felony Murder conviction in Cecil County. Accordingly, even if the docket entry in question recites that the Felony Murder sentence[] [run] “concurrent with any outstanding or unserved sentence and begins on September 3, 1990,” as [Mr. Patrick’s] motion

¹The record does not contain any commitment record dated July 21, 2008.

recites, clearly the Washington County convictions were not extant as of September 3, 1990, and only the Washington County judges in those respective cases had discretion to run their respective sentences concurrently or consecutively to the Cecil County sentence. Moreover, this court notes that [the sentencing judge] in the Felony Murder case had opportunities on at least three subsequent occasions to further modify the Felony Murder sentence on April 26, 2010, May 28, 2010, and April 8, 2011, but declined to do so.

Mr. Patrick contends that because “[t]he commitment record issued on August 6, 2008, makes it abundantly clear that the thirty-five year sentence in this case is to ‘run concurrent with’” the sentences imposed by the Circuit Court for Washington County, and “the rule of lenity requires that any doubt be resolved in Mr. Patrick’s favor,” the court erred in denying the motion to clarify. We disagree. Rule 4-345(f) states that a “court may modify . . . a sentence only on the record in open court.” Here, there is no evidence that the Circuit Court for Cecil County held such a hearing prior to its issuance of the August 6, 2008 commitment record, and Mr. Patrick does not cite any authority that empowers a court to modify a sentence solely by issuing a new commitment record. Also, Mr. Patrick does not cite any authority that would allow the consecutive nature of the sentences imposed by the Circuit Court for Washington County to be modified, and indeed, negated, by the language contained in a commitment record issued by the circuit court of another jurisdiction. Finally, Mr. Patrick does not cite any authority that would empower the Circuit Court for Cecil County to order that a sentence that commences on September 3, 1990, run concurrent with sentences that were imposed on later dates. It appears that what Mr. Patrick actually desires is not an order that the sentence imposed by the Circuit Court for Cecil County run concurrent with the sentences imposed by the Circuit Court for

Washington County, but an order that the sentences imposed by the Circuit Court for Washington County run concurrent with the sentence imposed by the Circuit Court for Cecil County. Only the Circuit Court for Washington County may so modify its sentences, and hence, the Circuit Court for Cecil County did not err in denying the motion to clarify.

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