Circuit Court for Anne Arundel County
Case No. 02-K-13-001102

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2187

September Term, 2022

JOHN MICHAEL WINNER

v.

STATE OF MARYLAND

Nazarian,
Reed,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 28, 2023

*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.

*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.

Following a 2014 jury trial in the Circuit Court for Anne Arundel County, John Michael Winner, appellant, was convicted of four counts of second-degree rape, one count of fourth-degree sexual offense, and one count of sexual abuse of a minor, based on evidence that he raped and sexually abused the minor victim on multiple occasions when she was between the ages of 14 and 16. The court imposed a 25-year sentence on the sexual abuse of a minor charge, along with a consecutive 20-year sentence on one of the rape charges. On the second rape charge, the court imposed another 20-year sentence, consecutive to the sentence on the first rape charge, but suspended that sentence in its entirety. The sentences on the remaining counts were imposed to run concurrently, resulting in a total sentence of 45 years' imprisonment.

In 2022, appellant filed a motion to correct illegal sentence, claiming that his four convictions for second-degree rape should have merged for sentencing purposes because they were "based on the same act." The court denied the motion without a hearing. Appellant raises two issues on appeal: (1) whether the court erred in denying his motion to correct illegal sentence, and (2) whether the court erred in denying the motion without holding a hearing. For the reasons that follow, we shall affirm.

Appellant first claims that the court erred in denying his motion to correct illegal sentence on the merits. Specifically, he contends that: (1) because he was "charged with 4 separate counts of second-degree rape, with the same victim-within a certain time period" his actions "consist[ed] of a continuing course of conduct;" (2) that "the unit of prosecution as it relates to ninety-day minimum intervals of time in a continuing course of conduct" is governed by Section 3-315(a) of the Criminal Law Article, which provides that "[a] person

may not engage in a continuing course of conduct which includes three or more acts . . . over a period of 90 days or more;" and (3) because the plain language of § 3-315(a) prohibits separate convictions and sentences for consecutive 90-day intervals of a single continuing course of conduct, he should only have been sentenced for a single count of second-degree rape.

To be sure, appellant is correct that § 3-315(a) prohibits separate convictions and sentences for consecutive 90-day intervals of a single continuing course of conduct. *See State v. Bey*, 452 Md. 255 (2017). The problem with appellant's argument, however, is that § 3-315 is completely irrelevant to his case. Appellant was not charged with continuing course of conduct under that statute. Nor was he required to be. *Georges v. State*, 252 Md. App. 523, 547 (2021) ("Charging the collective conduct as a 'continuing course of conduct,' therefore, is a tactical option, not a prosecutorial mandate."). In fact, the State could not have charged him under § 3-315, as the victim was more than 14 years old at the time of the charged offenses and § 3-315 applies only in the case of "a victim who is under the age of 14 years."

Here, appellant was charged with, and convicted of, four separate counts of second-degree rape. And based on our review of the record it is clear each of those counts was based on a different act. Consequently, appellant's convictions for second-degree rape do not merge and the court did not err in denying appellant's motion to correct illegal sentence.

Appellant also asserts that the court erred in denying his motion without holding a hearing. However, the open hearing requirement found in Rule 4-345 applies only when

the court intends to "modify, reduce, correct, or vacate a sentence." *Scott v. State*, 379 Md. 170, 190 (2004). Because, the court denied appellant's motion, no hearing was required.

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