

Circuit Court for Wicomico County
Case No.: C-22-CR-23-000262

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2392

September Term, 2023

MILTON LEE HARMON, JR.

v.

STATE OF MARYLAND

Arthur,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 10, 2024

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

A jury in the Circuit Court for Wicomico County convicted Milton Lee Harmon, Jr., appellant, of armed robbery and related offenses. The court later sentenced him to 16 years' incarceration, the first 10 of which are without parole. On appeal, Harmon challenges the sufficiency of his convictions, contending that the evidence failed to show he had the necessary specific intent. This issue, however, is not preserved for our review.

At trial, Harmon moved for a judgment of acquittal at the close of the State's case. Under Maryland Rule 4-324(a), he was required to "state with particularity all reasons why the motion should be granted." Harmon stated only two reasons: (1) "there was insufficient evidence to support the value of the property that[was] alleged to have been taken"; and (2) his conduct was "insufficiently objectively frightening in order to constitute an intent to frighten assault." The trial court denied this motion. When Harmon renewed his motion at the close of all the evidence, he "[j]ust ask[ed] the [c]ourt to incorporate by reference the arguments previously made." The trial court denied this motion too.

In the trial court, Harmon did not assert as a ground for acquittal, that the evidence failed to show he had the necessary specific intent. And on appeal, he does not assert the grounds he raised in the trial court. "The issue of sufficiency of the evidence is not preserved when the defendant's motion for judgment of acquittal is on a ground different from the one set forth on appeal." *Winston v. State*, 235 Md. App. 540, 574 (2018). In other words, "a defendant may not tell the trial court that the evidence was insufficient for one reason, but then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal." *Id.* at 574–75. Because Harmon raises a "different reason" in challenging the denial of a motion for judgment of acquittal on appeal

from the ones that he raised at trial, his argument is not preserved for our review. *See id.* at 575.

But still, Harmon seeks to save his sufficiency argument by asking us to conclude that defense counsel’s failure to preserve the issue rendered their assistance constitutionally ineffective. We decline to do so.

The Supreme Court of Maryland has stated that “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel . . . omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to allegations of the counsel’s ineffectiveness.” *Mosley v. State*, 378 Md. 548, 560 (2003). The record does not reveal why defense counsel failed to assert as a ground for acquittal, insufficient evidence of specific intent. As the State notes in its brief, it is possible that defense counsel did not believe they could prevail on the argument under the State-friendly standard that governs a motion for judgment of acquittal. We cannot know because the record is silent as to defense counsel’s decisionmaking. A post-conviction proceeding will allow for the introduction of testimony and evidence, and fact-finding, directly related to Harmon’s contention, and so, the contention should be addressed in such a proceeding.

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