

Circuit Court for Baltimore County
Case No. 03-K-93-001555

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2017

September Term, 2018

(REVISED)

EDWIN PILE

v.

STATE OF MARYLAND

Fader, C.J.
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: October 9, 2020

*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.

Edwin Pile (“Appellant”) was tried three times in the Circuit Court for Baltimore County, each being appealed to this Court, in connection with the armed robbery and murder of a known drug dealer on December 23, 1991.

In 2014, more than sixteen (16) years after a jury convicted Appellant of first-degree murder, felony murder, two counts of armed robbery, and other related offenses in his third trial, Appellant filed a motion to correct an illegal sentence. In his motion, Appellant argued that his conviction and sentence for first-degree murder were in violation of the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution. Appellant asserted that because docket entries from his first trial reflect that the circuit court granted his motion for judgment of acquittal as to second-degree murder and manslaughter, double jeopardy barred his later conviction and sentence for first-degree murder. The circuit denied his motion, and upon appeal, this Court affirmed. In its unreported opinion, this Court held that a motion to correct an illegal sentence under Maryland Rule 4-345(a) was not the correct vehicle to raise an improper second prosecution claim. As such, this Court did not reach the merits of Appellant’s argument.

Once more Appellant has filed an appeal to this Court stemming from his third trial and conviction. In bringing his appeal, Appellant presents one question for appellate review:

- I. Did the circuit court err in denying Appellant’s motion to correct an illegal sentence?

For the following reasons, we answer Appellant’s question in the negative and affirm.

FACTUAL & PROCEDURAL BACKGROUND

Appellant was first tried in the Circuit Court for Baltimore County in connection with the armed robbery and murder of a known drug dealer on December 23, 1991. Appellant was charged with felony murder, two counts of robbery with a deadly weapon, two counts of assault, and wearing and carrying a handgun. At the first trial on October 6, 1993, the Circuit Court for Baltimore County declared a mistrial after the jury could not reach a unanimous verdict.

At a second trial, Appellant was convicted of first-degree premeditated murder, felony murder, robbery with a deadly weapon, assault, and use of a handgun in the commission of a crime of violence. He was acquitted on one assault charge. On appeal, this Court reversed the convictions due to restrictions the trial court placed on Appellant's cross-examination of a State witness and remanded the case for a third trial in an unreported opinion. *Pile v. State*, No. 696 (Md. Ct. Spec. App. filed Feb. 15, 1995).

A third trial was held on November 29-30 and December 1, 1995. At the end of the trial, the circuit court instructed the jury, in pertinent part, as follows:

The Defendant is charged with first degree premeditated murder of Robert Collins, first degree felony murder of Robert Collins, robbery with a dangerous and deadly weapon of Robert Collins, robbery with a dangerous and deadly weapon of Bonnie Green, assault of Bonnie Green, and use of a handgun in the commission of a crime of violence. You must consider each charge separately and return a separate verdict as to each.

The court also informed the jury of the difference between premeditated murder and felony murder, stating:

The Defendant is charged with a crime of murder and this charge includes first degree premeditated murder and first-degree felony murder. First degree

premeditated murder is the killing of another person with willfulness and deliberation and premeditation without mitigation.

In order to convict the Defendant of first-degree premeditated murder, the State must proof [sic] that the conduct of the Defendant caused the death of Robert Collins, that the killing of Robert Collins was willful, deliberate, and premeditated, and that there was [sic] no mitigating circumstances presented in this case.

Willful means that Defendant actually intended to kill the victim Robert Collins. . .

. . .

The Defendant is charged with a crime of first-degree felony murder. In order to convict the Defendant of first degree felony murder, the State must prove that the Defendant or any other participating in the crime with the Defendant committed or attempted to commit a robbery with a dangerous weapon, the Defendant or another participating in the crime killed Robert Collins, that the act resulting in the death of Robert Collins occurred during the commission or attempted commission of robbery with a dangerous weapon.

It is not necessary for the State to prove that Defendant intended to kill the victim. . .

Appellant did not object to any of the jury instructions. The jury was then given the verdict sheet, which asked the jury to make a finding regarding: (1a) first-degree premeditated murder of Collins; (1b) first-degree felony murder of Collins; (2) robbery with a dangerous and deadly weapon of Collins; (3) robbery with a dangerous and deadly weapon of Green; (4) assault of Green; and (5) use of a handgun in the commission of a crime of violence.

The jury subsequently convicted Appellant of first-degree premeditated murder, felony murder, two counts of robbery with a deadly weapon, assault, and use of a handgun in the commission of a crime of violence. Appellant was sentenced to life imprisonment

for the first-degree premeditated murder conviction, two (2) concurrent twenty-year sentences for the armed robbery convictions, and a consecutive sentence of twenty (20) years for the handgun violation. The State abandoned the felony conviction at sentencing, and the assault conviction was merged. Appellant then appealed his sentence, arguing that the circuit court imposed a greater sentence after his first appeal, among other alleged trial errors. We affirmed the circuit court's rulings. *See Edwin Pile v. State*, No. 529 (Md. Ct. Spec. App. Filed Feb. 14, 1997).

On December 2, 2005, Appellant filed his first Motion to Correct an Illegal Sentence in the Circuit Court for Baltimore County, which was ultimately denied. This Court affirmed the denial of that motion in an unreported opinion. *Edwin Pile v. State*, No. 2300 (Md. Ct. Spec. App. filed May 16, 2007).

On December 4, 2012, Appellant filed a second Motion to Correct Illegal Sentence, which was also denied. This Court once again affirmed the denial in an unreported opinion. *See Pile v. State*, No. 0815, 2015 WL 5920650 (Md. Ct. Spec. App. July 13, 2015).

On May 24, 2018, Appellant filed a third Motion to Correct Illegal Sentence. In his motion, Appellant argued that his sentencing violated double jeopardy, as he was convicted of the murder of a victim twice. The circuit court denied Appellant's motion on July 9, 2018. This appeal followed.

STANDARD OF REVIEW

Our review of the circuit court's order is governed by Rule 8–131(c), which provides:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witness.

“The clearly erroneous standard does not apply to the circuit court’s legal conclusions, however, to which we accord no deference and which we review to determine whether they are legally correct.” *Cattail Assocs. v. Sass*, 170 Md. App. 474, 486 (2006). Additionally, “discussing Maryland Rule 886, predecessor to Rule 8–131(c), the Court found that it is equally obvious that the clearly erroneous portion of [the] Rule [] does not apply to a trial court’s determinations of legal questions or conclusions of law based upon findings of fact.” *Garfink v. The Cloisters at Charles, Inc.*, 392 Md. 374, 383 (2006) (internal quotations and citations omitted).

DISCUSSION

A. Parties’ Contentions

Appellant contends that the circuit court erred in denying his motion, as his conviction for the armed robbery of Collins was not merged into his first-degree murder conviction. Furthermore, Appellant claims that by being convicted of two different theories of murder – first-degree premeditated murder and felony murder – Appellant’s Sixth Amendment rights have been violated. Appellant also claims that previous time served while incarcerated in New York was not considered when he was being sentenced. As such, Appellant believes the circuit court erred in denying his third Motion to Correct Illegal Sentence.

The State argues that while Appellant was convicted of two theories of murder, he was only sentenced for the premeditated murder of Collins. As Appellant was not sentenced for his felony murder conviction, Appellant’s conviction for armed robbery of Collins does not require merger. Additionally, the State claims that Appellant was not serving time in New York for the crimes subject to this appeal, but for other crimes committed in New York. As such, the State contends that the time served in New York should not have been considered during the sentencing hearing. Regardless, the State asserts that a motion to correct an illegal sentence is not the proper vehicle by which to address a circuit court’s failure to properly consider time served; instead, the State argues that Appellant should file a motion to correct the commitment order.

B. Analysis

i. Merger

One of the twin evils traditionally guarded against by the prohibition against double jeopardy, pursuant to either the Double Jeopardy Clause of the Fifth Amendment or to the common law of Maryland, is that of multiple punishment for the “same offense.” *Pair v. State*, 202 Md. App. 617 (2011). The necessary inquiry is whether separate punishments are being imposed for the “same offense.” In *Monoker v. State*, 321 Md. 214, 219–20 (1990), the Court of Appeals stated:

The required evidence test focuses on the elements of each crime in an effort to determine whether all the elements of one crime are necessarily in evidence to support a finding of the other, such that the first is subsumed as a lesser included offense of the second. We summarized the test as follows:

The required evidence is that which is minimally necessary to secure a conviction for each ... offense. *If each offense requires proof of a*

fact which the other does not, or in other words, if each offense contains an element which the other does not, the offenses are not the same for double jeopardy purposes, even though arising from the same conduct or episode. But, where only one offense requires proof of an additional fact, so that all elements of one offense are present in the other, the offenses are deemed to be the same for double jeopardy purposes. And of course

if both [offenses] have exactly the same elements, the offenses are also the same within the meaning of the prohibition against double jeopardy.

(internal citations omitted).

Appellant contends that he was sentenced for his felony murder conviction. As such, Appellant claims that his conviction for armed robbery should have merged and he should not have been sentenced for that crime. In support of his argument, Appellant relies primarily on *State v. Frye*, 283 Md. 709 (1978). However, *Frye* states in part:

The convictions and sentences for the underlying felonies in the present cases are supportable if the juries found willful, deliberate and premeditated killings but are not supportable if the murder verdicts rested upon the felony murder theory, and it is impossible to tell which basis was chosen by the juries in rendering the verdicts on the murder counts. The Supreme Court in *Yates v. United States*, 354 U.S. 298, 312 (1957), made it clear that the doubtful verdict in such a situation cannot stand: ‘In these circumstances we think the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected.’

Frye, 283 Md. at 722–23 (internal citations omitted).

Frye makes clear that merger should occur in situations where the basis for a jury reaching a guilty verdict for murder is *ambiguous* in regard to whether the murder conviction is based on premeditation or because the murder occurred during the commission of a felony. However, in this case, the verdict sheet clearly indicates the jury’s consideration of both theories of first-degree murder. Here, the jury sheet indicates that

Appellant was found guilty of both first-degree premeditated murder and for felony murder.

Borchardt v. State, 367 Md. 91 (2001), provides much more clarity in reviewing situations like this, such as when the verdict sheet indicates that the jury made a determination regarding two theories of murder:

In *Newton*, we concluded that felony murder and the underlying felony must be treated as one offense for double jeopardy purposes and that, for sentencing, the underlying felony must merge into the murder. That is because felony murder contains every element contained in the underlying felony and therefore does not present the situation in which each offense contains an element not found in the other. We also made clear, however, that if a first-degree murder conviction is based on independent proof of premeditation and deliberation, the murder, even if committed in the course of a felony, would not be deemed the same offense as the felony and there would therefore be no merger. In *Frye*, we held that, whether a merger is required depends on the basis for the jury's verdict on the murder count: "The convictions and sentences for the underlying felonies . . . are supportable if the juries found willful, deliberate and premeditated killings but are not supportable if the murder verdicts rested upon the felony murder theory." In the two cases consolidated before us in *Frye*, the defendants were charged under both theories, but the juries were not instructed to specify in their verdicts which form, if either, they found, and they returned a general verdict of guilty. When the verdict is ambiguous in that manner, the doubt is resolved in the defendant's favor and the sentences imposed on the underlying felonies are vacated.

Borchardt, 367 Md. at 142–43 (internal citations omitted).

Here, the jury sheet provided no ambiguity. In fact, the jury sheet clearly asked the jury to make a determination regarding both premeditated murder and felony murder, to which the jury found Appellant guilty of both. As there is no ambiguity regarding the jury's verdict sheet, *Frye* is not applicable in this case.

Instead, this Court must determine if Appellant's armed robbery conviction should

have merged into the murder conviction for which Appellant was sentenced. Recognizing that a court cannot sentence an individual for the murder of one victim twice, the State requested that Appellant be sentenced for first-degree premeditated murder. Unlike felony murder, where the underlying felony is merged into the conviction for felony murder, no such merger is guaranteed for premeditated murder.

Simply put, first-degree premeditated murder and armed robbery do not merge. First-degree premeditated murder cannot merge into a conviction for armed robbery because premeditated murder requires a willful killing, which is not required for a conviction for armed robbery. *Borchardt*, 367 Md. at 142. Likewise, a conviction for armed robbery does not merge into a conviction for first-degree premeditated murder because armed robbery requires the use of a dangerous and deadly weapon, which is not a required element of premeditated murder. *Id.* As such, merger in this case was not required.

Finally, Appellant argues that by refraining to sentence him for felony murder, the trial court is basically implementing a suspended sentence, thus clearly violating double jeopardy. In support of this contention, Appellant cites *Fabian v. State*, 235 Md. 306 (1964). However, *Fabian* did not involve an illegal sentence challenge or double jeopardy protections regarding multiple punishments for the same offense. Instead, *Fabian* discusses why the defendant *had a right to appeal* due to an inconsistent verdict even though he was never sentenced on two of the three counts at issue. As the Court of Appeals noted, “the failure to impose a sentence on the two counts may be treated as a suspended sentence *for purposes of allowing the defendant to appeal those convictions.*” *Ridgeway v. State*, 369 Md. 165 (2002) (emphasis added). Here, Appellant is not appealing his convictions – as he

has already done twice through this Court – but rather the denial of a motion to correct an illegal sentence. As such, *Fabian* is inapplicable.

The decision by the trial court to deny Appellant’s motion was proper because armed robbery does not merge into first-degree premeditated murder. Though Appellant was convicted under two theories of murder, Appellant was only sentenced for first-degree premeditated murder. As such, there was no double jeopardy violation.

ii. Time Served

Appellant also claims that the trial court improperly denied his motion because the trial court’s sentencing did not take into account prior time served by Appellant while jailed in New York State. Specifically, Appellant argues that he was arrested in New York City on January 17, 1992, and extradited for trial in Maryland on March 30, 1993. However, Appellant’s sentence did not begin until June 4, 1995. Appellant contends that the trial court’s failure to account for this time served in New York made his sentence illegal, and thus his motion to correct his illegal sentence should have been granted. The State maintains that a motion to correct an illegal sentence is not the proper method to address errors in considering time served.

The State is correct. *Bratt v. State*, 468 Md. 481, 506 (2020) (“The failure to award credit for time served against an otherwise legal sentence is appropriately addressed through Rule 4-351. As such, we hold that, in the absence of a corresponding illegality, Rule 4-345 does not apply.”).

Accordingly, we affirm the judgment of the Circuit Court for Baltimore County.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**