

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1633-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SAMUEL STEWART CANN,
a/k/a KOJO MUATA,

Defendant-Appellant.

Submitted May 3, 2023 – Decided July 20, 2023

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 91-02-
0823.

Samuel Stewart Cann, a/k/a Kojo Muata, appellant pro
se.

Theodore N. Stephens, II, Acting Essex County
Prosecutor, attorney for respondent (Matthew E.
Hanley, Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Kojo Muata, f/k/a Samuel Cann, appeals from a December 17, 2021 order denying his motion to correct two allegedly illegal sentences. As neither sentence is illegal, we affirm.

Defendant first complains about the aggregate seven-year sentence with three-and-a-half years of parole ineligibility he received in 1990, following his guilty plea to two counts of burglary, unlawful possession of a sawed-off shotgun and aggravated assault on a police officer, thereby resolving all charges in four indictments. Defendant claims the sentence is illegal because he accepted the plea with the understanding he would receive a flat sentence, and there would be no period of parole ineligibility.

Defendant has raised this issue several times before, the first time at sentencing when he made a motion to take back his plea on that basis. The sentencing judge denied the motion because, although the prosecutor agreed not to seek a period of parole ineligibility, the plea papers defendant signed made clear, as he was advised by his counsel before entering the plea, that the court was not bound by the State's recommendation and was free to impose a period of parole ineligibility. The sentencing judge commented that the plea

"was extremely favorable and, but for the fact that the court" had discretion to impose a minimum term, "would have in fact turned it down out of hand."

Defendant appealed that sentence, and we affirmed it in an order dated June 6, 1991, following oral argument on our excessive sentence calendar, "satisfied that the sentence [was] not manifestly excessive or unduly punitive and [did] not constitute an abuse of discretion." In denying defendant's motion, Judge Romanyshyn repeated that defendant's seven-year sentence and parole ineligibility term does not exceed the maximum penalty for the offenses and was imposed in accordance with law, and thus does not qualify as an illegal sentence. See State v. Hyland, 238 N.J. 135, 145 (2019).

Defendant also contends the trial court erred in failing to find the aggregate sentence he subsequently received following his conviction by a jury of murder, felony murder, two counts of first-degree kidnapping, two counts of first-degree armed robbery, second-degree attempted murder, first-degree aggravated sexual assault, and unlawful possession of a weapon, that being life in prison, plus forty years with a fifty-year period of parole ineligibility, is illegal because the sentencing judge failed to merge all the offenses for sentencing purposes.

When we vacated defendant's conviction for murder because of an error in the charge, State v. Cann, No. A-3878-92 (App. Div. Mar. 6, 1996) (slip op. at 4), and remanded to allow the prosecutor the option of unmerging defendant's felony murder conviction and having the court re-sentence defendant on felony murder, see State v. Pennington, 273 N.J. Super. 289, 295-96 (App. Div. 1994), we rejected his argument that his sentence was otherwise "excessive, unduly punitive and not in conformance with the Code of Criminal Justice." Cann, slip op. at 4. The Supreme Court denied certification. State v. Cann, 145 N.J. 375 (1996).

On remand, the prosecutor opted not to re-try defendant for murder, and defendant was re-sentenced for felony murder, receiving life in prison with thirty years of parole ineligibility. The judge imposed the same sentences he imposed previously on the remaining offenses, leaving defendant's aggregate sentence of life in prison plus forty years with fifty years of parole ineligibility, unchanged. We subsequently affirmed defendant's direct appeal from his re-sentencing, State v. Cann, No. A-4669-95 (App. Div. Nov. 10, 1997), and the Supreme Court denied certification, State v. Cann, 153 N.J. 48 (1998).

Since that time, defendant has filed four petitions for post-conviction relief, a motion for a new trial and a habeas petition, all of which have been rejected. We agree with Judge Romanyshyn that defendant has repeatedly, and unsuccessfully, raised issues as to his life sentence and fifty years of parole ineligibility, with defendant's claims about merger only the latest permutation.

As we have held previously, there is no infirmity or illegality as to defendant's aggregate life sentence and period of parole ineligibility. Defendant's claims that the court on re-sentencing improperly failed to merge his convictions for kidnapping, armed robbery, attempted murder, aggravated sexual assault, and unlawful possession of a weapon into his felony murder conviction are simply wrong as a matter of law. See State v. Cole, 120 N.J. 321, 325-35 (1990) (explaining the principles our courts follow in assessing questions of merger). We agree with Judge Romanyshyn that defendant's "sentence has been repeatedly determined not to be illegal and the result is no different here." Defendant's claims to the contrary are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION