

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

GEORGE SPRING MASON, III,

Appellant,

v.

Case No. 5D18-3691

STATE OF FLORIDA,

Appellee.

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Opinion filed December 20, 2019

Appeal from the Circuit Court  
for Hernando County,  
Stephen E. Toner, Jr., Judge.

James S. Purdy, Public Defender, and  
Joseph Chloupek, Assistant Public  
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Douglas T. Squire,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

COHEN, J.

George Spring Mason III was sentenced to five consecutive life sentences after a jury convicted him of three counts of premeditated first-degree murder (Counts 1–3), one count of attempted first-degree murder (Count 4), and one count of burglary of a dwelling with a firearm (Count 5). Mason appeals his convictions as well as the trial court’s denial of his Florida Rule of Criminal Procedure 3.800(b)(2) motion to correct illegal sentence.

We affirm Mason’s convictions without further discussion, but reverse the order denying Mason’s motion to correct illegal sentence and remand for resentencing.

Mason shot four individuals at Tracy Taylor’s home in Brooksville. The evening’s events involved a dispute between Mason and one of the victims, Ralph Peyton. Initially, Mason shot Ralph and Gabriel Taylor in the home, striking both numerous times. Mason then walked outside the home and shot Tarasha Townsend in the head. Mason reentered the home and shot Jannie Taylor.

Although injured by the earlier gun shots, Gabriel fled the home but was pursued by Mason. Mason caught up with Gabriel down the street and shot him several more times. Ralph, Tarasha, and Jannie died from their injuries.

Following his convictions, Mason received an enhanced sentence pursuant to the habitual felony offender (“HFO”) statute<sup>1</sup> on Counts 4 and 5, and the trial court ordered his sentences to run consecutively. Mason subsequently moved to correct illegal sentence, but the trial court denied his motion. On appeal, Mason argues that the trial court could not have imposed consecutive sentences on Counts 4 and 5 because those sentences were enhanced through the HFO statute and occurred during the same criminal episode.<sup>2</sup>

“[O]nce a defendant’s sentences for multiple crimes committed during a single criminal episode [are] enhanced through habitual felony offender statutes, the total

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<sup>1</sup> See § 775.084, Fla. Stat. (2014).

<sup>2</sup> Mason argued for the first time in his reply brief that the trial court could not order his sentences on Counts 4 and 5 to run consecutively to the consecutive life sentences that were imposed for Counts 1–3. Arguments raised for the first time in a reply brief are waived. See, e.g., Hoskins v. State, 75 So. 3d 250, 257 (Fla. 2011).

penalty [can] not be further increased by ordering that the sentences run consecutively.” Claycomb v. State, 142 So. 3d 916, 917 (Fla. 4th DCA 2014) (citing Hale v. State, 630 So. 2d 521 (Fla. 1993)). “When determining whether the offenses arose from the same criminal episode, the court must consider ‘1) whether separate victims are involved; 2) whether the crimes occurred in separate locations; and 3) whether there has been a temporal break between the incidents.’” Hartman v. State, 92 So. 3d 893, 895 (Fla. 5th DCA 2012) (quoting Teague v. State, 26 So. 3d 616, 618 (Fla. 1st DCA 2009)). Accordingly, if Mason committed Counts 4 and 5 during the same criminal episode, the trial court could not sentence him to consecutive sentences on those counts because the sentences were enhanced through the HFO statute.

It is undisputed that Counts 4 and 5 involved different victims; Tracy was the victim of the burglary of a dwelling with a firearm, and Gabriel was the victim of the attempted murder. However, regarding the other two applicable factors, we find that the trial court erroneously concluded that the crimes occurred at different locations and times. Mason committed the burglary when he entered Tracy’s home and shot Ralph and Gabriel, which was the same time that he committed the attempted murder of Gabriel. The trial court found a spatial and temporal break based on the second shooting of Gabriel, which occurred several blocks from the home and followed the shootings of Tarasha and Jannie. However, the State did not charge two counts of the attempted murder of Gabriel and presented the evidence of Mason’s attempted murder as a continuing event. That theory is supported by the record, which demonstrates that Mason pursued Gabriel immediately after discovering that Gabriel survived Mason’s initial attack. Thus, because the burglary and attempted murder were committed at the same location and at the same time, we

find that Mason committed the crimes during the same criminal episode. Accordingly, the trial court improperly imposed consecutive sentences for Counts 4 and 5.

AFFIRMED IN PART; REMANDED for the imposition of concurrent life sentences for Counts 4 and 5.

WALLIS and HARRIS, JJ., concur.