UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1103

September Term, 2014

TYRONE T. CONWAY, JR.

v.

STATE OF MARYLAND

Woodward,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: December 11, 2015

*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.

This case arises out of a decision by the Circuit Court for Wicomico County to deny a motion to correct an illegal sentence filed by Tyrone T. Conway, appellant, who is proceeding on appeal in proper person. On July 15, 2009, Conway was convicted by a jury of attempted second-degree murder, first- and second-degree assault, reckless endangerment, and wearing and carrying a dangerous weapon with the intent to injure. He was sentenced to incarceration for a term of thirty years for attempted second-degree murder, the first twenty-five years to be served without parole due to his status as a subsequent offender. For the wearing and carrying a dangerous weapon conviction, Conway was sentenced to a consecutive term of three years. The remaining convictions were merged for sentencing purposes.

Conway filed a direct appeal to this Court arguing, among other things, that the trial court erred in failing to exercise its discretion in sentencing him to a consecutive term of incarceration for the wearing and carrying conviction. In an unreported opinion, we affirmed the judgments of the circuit court. *See Conway v. State*, No. 1683, Sept. Term 2009 (Md. Ct. Spec. App., filed October 19, 2011).

Several years later, on June 24, 2014, Conway filed, in proper person, a motion to correct an illegal sentence on the ground that the court erred in imposing both a sentence of thirty-years and the mandatory minimum sentence of twenty-five years for the same offense. The circuit court denied Conway's motion on the ground that the "[s]entence [was] not illegal." This timely appeal followed.

ISSUES PRESENTED

Conway presents the following three issues for our consideration, all of which challenge the imposition of the no-parole provision on his sentence for attempted second-degree murder:

> I. Did the [circuit] court err in construing Maryland Annotated Code, Article 27, [Section] 643B(c) (now [Section] 14-101) to mean that the court could sentence Appellant to both the maximum term allowed by law, as well as the mandatory minimum prescribed by the statute (643B(c)) for the same offense?
>
> II. Did the [circuit] court err in its interpretation and application of [Section] 643B(c) . . . in regard to the court[']s authority to place a no-parole provision on Appellant's thirty (30) year sentence?
>
> III. Did the [circuit] court err by making the mandatory minimum sentence prescribed by the statute a condition and/or stipulation of serving the greater sentence?

For the reasons stated below, we shall affirm.

FACTUAL BACKGROUND

Because the underlying facts in this case were set forth in our prior unreported opinion, *supra*, it is not necessary to set them out here. It is sufficient to note that on November 20, 2008, Conway got into an argument with the mother of one of his children and stabbed her numerous times. Conway claimed that he had smoked marijuana and used cocaine prior to the incident and did not recall anything that had occurred.

DISCUSSION

Conway contends that the circuit court erred in denying his motion to correct an illegal sentence. He maintains that the sentencing court erred in imposing "the maximum term allowed by law, as well as the mandatory minimum prescribed by statute" for his

attempted second-degree murder conviction. He argues that he "received 30 years, which is the maximum [he] could have received for Attempted Second Degree Murder," and "also received the 25 year mandatory minimum sentence . . . for the same offense," even though he could only be subject to one or the other sentence, not both.

In addition, Conway contends that "the no-parole provision applies only to the minimum twenty-five (25) year term of imprisonment, which may not be suspended by the Court, rather than to any period of incarceration beyond a twenty-five year sentence, actually imposed." According to Conway, once the court elected to sentence him to more than 25 years, it had no authority to place parole limitations on the sentence.

Finally, Conway maintains that the sentence imposed is equivalent to a sentence of thirty years without parole because:

> Appellant will never have a parole hearing, having to serve 25 years day for day prior to parole eligibility. The Good Conduct Credit (GCC) that Appellant would receive automatically upon arrival to the Division of Corrections (DOC) would immediately negate any parole eligibility on that 30 year sentence, because 5 years would automatically be removed from Appellant's 30 year sentence, leaving Appellant with an entire sentence to be served without parole.

We disagree and explain.

Maryland Rule 4-345(a), which provides that a "court may correct an illegal sentence at any time[,]" creates a limited exception to the general rule of finality. *State v. Griffiths*, 338 Md. 485, 496 (1995). The exception applies only to sentences that are "inherently" illegal; that is, where "there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively

unlawful." *Chaney v. State*, 397 Md. 460, 466 (2007). The Court of Appeals has stated that "any illegality must inhere in the sentence, not in the judge's actions. In defining an illegal sentence the focus is not on whether the judge's 'actions' are *per se* illegal but whether the sentence itself is illegal." *State v. Wilkins*, 393 Md. 269, 284 (2006).

The record before us shows that Conway's sentence is not illegal. It falls within the applicable statutory limits. At the time of Conway's crime, §2-206 of the Criminal Law Article ("CL") provided, as it does now, that "[a] person who attempts to commit murder in the second degree . . . is subject to imprisonment not exceeding 30 years." Md. Code Ann. (2002, 2012 Repl. Vol.). As Conway was sentenced to incarceration for a term of 30 years, the sentence is not illegal.

As for the no-parole provision of his sentence, at the time of Conway's crime, CL §14-101 provided, in relevant part:

> (a) "*Crime of violence" defined*. – In this section, "crime of violence" means:
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> * * *
>
> (7) murder;
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> * * *
>
> (17) an attempt to commit any of the crimes described in items (1) through (16) of this subsection;
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> * * *
>
> (d) *Third conviction of a crime of violence*. – (1) Except as provided in subsection (g) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:
>
> (i) has been convicted of a crime of violence on two prior separate occasions:

> 1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and
>
> 2. for which the convictions do not arise from a single incident; and
>
> (ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.
>
> (2) The court may not suspend all or part of the mandatory 25-year sentence required under this subsection.
>
> (3) A person sentenced under this subsection is not eligible for parole except in accordance with the provisions of §4-305 of the Correctional Services Article.

(2002, 2008 Supp.).[1]

There is no dispute that the subject conviction was Conway's third conviction for a crime of violence. As a result, he was subject to the enhanced punishment set forth in CL §14-101(d). Because Conway's sentence was within the allowable range, and because he was subject to the enhanced punishment, his sentence is not illegal.

Conway's argument that the court could sentence him either to the twenty-five year minimum without parole or the thirty year maximum with parole, but could not sentence him as it did, is without merit. It is based on a misreading of *Taylor v. State*, 333 Md. 229 (1993). In *Taylor*, the defendant was convicted of first-degree murder and other crimes and sentenced to life imprisonment without the possibility of parole. *Taylor*, 333 Md. at 231-32. The trial judge sentenced Taylor to life imprisonment without the possibility of parole

[1] CL §14-101(d) (2002, 2008 Supp.) is currently codified as CL §14-101(c) (2012 Repl. Vol., 2015 Supp.).

because it was under the mistaken belief that it had no option but to impose that sentence. *Id.* at 237. The Court of Appeals held that, under the applicable statute,[2] while it was within the trial court's discretion to impose a life sentence without parole, it was also within the court's discretion to impose a sentence of life imprisonment with all but twenty-five or more years thereof suspended. *Id.* at 237. The Court noted that "[o]nly 25 years of that imprisonment must be served without parole." There is nothing in *Taylor* to support Conway's assertion that, in the case *sub judice*, the court could not sentence him as it did.

Conway also asks us to apply the rule of lenity and declare his sentence illegal. Under the rule of lenity, an ambiguous penal statute is interpreted in a light most favorable to the defendant. *Ogelsby v. State*, 441 Md. 673, 681 (2015). In *Ogelsby*, the Court of Appeals commented that the rule of lenity "is not so much a tool of statutory construction as a default device to decide which interpretation prevails when the tools of statutory construction fail." *Id.* at 676.

The cardinal rule of statutory construction is to ascertain and effectuate legislative intention. *State v. Green*, 367 Md. 61, 81 (2001) (and cases cited therein). Our "quest to discover and give effect to the objectives of the legislature begins with the text of the statute." *Adamson v. Correctional Medical Services, Inc.*, 359 Md. 238, 251 (2000) (quoting *Huffman v. State*, 356 Md. 622, 628 (1999)). "[I]f the plain meaning of the statutory language is clear and unambiguous, and consistent with both the broad purposes

[2] *Taylor* involved Article 27, §643B(c), which was a predecessor to both CL §14-101(d) (2002, 2008 Supp.), which applied at the time of Conway's crime, and the current version of that statute, CL §14-101(c) (2012 Repl. Vol., 2015 Supp.).

of the legislation, and the specific purpose of the provision being interpreted, our inquiry is at an end." *Thomas v. Dep't of Labor, Licensing, and Regulation*, 170 Md. App. 650, 659 (2006) (quoting *Breitenbach v. N.B. Handy, Co.*, 366 Md. 467, 473 (2001)).

In the case before us, Conway was sentenced to incarceration for a term of thirty years. The sentencing court stated that he was not eligible for parole during the first twenty-five years of that sentence. This sentence is consistent with CL §14-101(d), which mandated that the sentencing court impose the no-parole provision. As the sentence imposed is in accord with the applicable statutory provisions, none of which are ambiguous, Conway's sentence is not inherently illegal.

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