

**UNREPORTED**  
**IN THE COURT OF SPECIAL APPEALS**  
**OF MARYLAND**

No. 1820

September Term, 2014

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TYRONE HARRELL

v.

STATE OF MARYLAND

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Meredith,  
Berger,  
Kenney, James A., III  
(Retired, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: June 25, 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.

At the conclusion of a jury trial in the Circuit Court for Baltimore County in 1982, Tyrone Harrell, appellant, was convicted of the first-degree murder of Marvin Brown and other offenses. On February 19, 1984, he was sentenced to life plus 105 years. Harrell appealed to this court and, in an unreported per curiam opinion, we affirmed the judgments entered in the circuit court. Thereafter, Harrell filed several petitions seeking post-conviction relief and applications for leave to appeal, all of which were denied.

On August 26, 2014, Harrell filed a “Motion to Correct Illegal Sentence or, in the Alternative Motion for Appropriate Relief” in the Circuit Court for Baltimore County. In a written order filed on September 8, 2014, the circuit court determined that no hearing was required, and the court denied the motion. This timely appeal followed.

### **QUESTIONS PRESENTED**

Harrell, who is proceeding as a self-represented litigant, presents the following eight questions for our consideration (capitalization altered):

- (A) Did the court below err by not giving a statement of reasons indicating which of the pleading alternatives the ruling is based [sic]?
- (B) Did the court below error by not giving a statement of reasons upon which the denial was based?
- (C) Did the court below error by not addressing the merits of the claims presented in either (or both) of the alternative pleadings presented for adjudication?
- (D) Did the court below error by not reaching the merits of the claim that appellant was convicted of an unindicted crime?
- (E) Did the court below error by not entertaining the merits of the claim that the charging document was unconstitutionally amended or subjected to a variance without appellant’s knowledge and consent to include an uncharged offense?
- (F) Did the court below err by not addressing the merits of appellant’s claim that he was subjected to double jeopardy when he was convicted of both felony and premeditated murder especially when he was only indicted for a single count of murder in the indictment?

(G) Did the court below err when it did not reach the merits of the claim that the jury was discharged and then subsequently reconvened to deliberate on another charge without again being sworn?

(H) Did the court below error by not recognizing that the verdicts rendered are in fact inconsistent as it relates to the murder count?

Harrell urges us to reverse the ruling of the circuit court, vacate his sentence, and remand the case for a new trial.

### **BACKGROUND**

We glean from the record that, after a jury trial in 1982, Harrell was convicted of the first-degree murder of Marvin Brown and other related offenses. For the first-degree murder conviction, he was sentenced to imprisonment for life. Because none of Harrell's arguments suggests a basis to grant Harrell relief from an illegal sentence, we shall affirm the circuit court's denial of the motion.

### **DISCUSSION**

A motion to correct an illegal sentence is neither a substitute for a belated appeal nor a mechanism for raising issues which may be raised in a post-conviction petition. As we said in *Ingram v. State*, 179 Md. App. 485, 505 (2008), "Rule 4-345(a) is not intended to reach every contention that the defendant was wrongly convicted." In Maryland, "challenges to sentencing determinations are generally waived if not raised during the sentencing proceeding." *Bryant v. State*, 436 Md. 653, 660 (2014). There are, however, limited grounds on which a sentence may be properly reviewed by an appellate court despite the failure to object at the time of the proceedings. *Id.* at 662. Maryland Rule 4-345(a) provides that a "court may correct an illegal sentence at any time." This authority to modify sentences under Rule 4-345(a) is "limited to those situations in which the illegality inheres in the sentence itself; *i.e.*, 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 emphasized: “[W]here the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a).” *Tshiwala v. State*, 424 Md. 612, 619 (2012).

None of the issues raised in Harrell’s motion, and none of the questions presented in this appeal, relate to an illegality inherent to Harrell’s sentence, and, therefore, none are cognizable under Rule 4-345(a).

**(A), (B) & (C)**

Harrell first contends that the circuit court, in denying his motion, erred by not giving a statement of reasons. Harrell’s motion was titled “Motion to Correct an Illegal Sentence or, in the Alternative Motion for Appropriate Relief.” In its written order, the circuit court stated that it had considered the motion and “the arguments contained therein.” We view that order as a denial of all of the arguments presented in the motion.

Harrell further asserts that the circuit court abused its discretion in denying his motion by not holding “a hearing or permitting [him] to generate a record in support of his claims,” by not giving a statement of reasons for the denial of his motion, and in not addressing the merits of the claims he presented. Maryland Rule 4-345(f) provides, in part, that “[t]he court may . . . *correct . . . a sentence* only on the record in open court, after hearing from the defendant, the State and from each victim or victim’s representative who requests an opportunity to be heard.” (Emphasis added.) Here, the circuit court did not *correct* the sentence because none of the issues raised in the motion asserted an illegality that inhered

in the sentence itself. Consequently, no hearing was required for the court to deny the motion.

**(D), (E) & (F)**

Harrell makes several arguments pertaining to the jury instructions and the jury's finding of guilt as to both first-degree premeditated murder and felony murder, which we shall address together. He first asserts that, although he was indicted for a single count of murder, he was convicted of both premeditated and felony murder, which are two separate and distinct crimes that require different methods of proof. He maintains that "there was no jurisdictional authority to have him placed in jeopardy for both premeditated and felony murder."

Harrell also contends that, although he was "officially charged" with first-degree premeditated murder, the trial judge instructed the jury as to both premeditated murder and the "uncharged crime" of felony murder, thereby amending or varying the original charge and committing "constitutional error which encroached on the sacred and prohibited grounds of Double Jeopardy." According to Harrell, the verdicts of guilty as to both premeditated murder and felony murder were "legally and factually inconsistent." He maintains that, because only one murder occurred, he could not be twice placed in jeopardy for the same offense by being convicted of both premeditated and felony murder. But, as we observed in *Ingram, supra*, 179 Md. App. at 510, a claim based on double jeopardy is not properly raised pursuant to Rule 4-345(a) unless the issues were specifically related to the sentence. That is not the case here. Although the jury found Harrell guilty of the first degree murder count on two theories (premeditation as well as felony murder rule), the court imposed only one sentence for first degree murder.

In addition, Harrell contends that the trial court erred in allowing the State to *nolle pros* the lesser included offenses. He maintains that “[t]his action . . . trapped [him] into being convicted of the highest level of murder.”

As we have already noted, motions to correct an illegal sentence are limited to those situations in which an illegality inheres in the sentence itself. None of these contentions raised by Harrell relate to an illegality inhering in the sentence itself. The record we have before us gives no indication that there was any subsequent prosecution or second punishment imposed for the same crimes of which Harrell was prosecuted in this case. Clearly, the life sentence imposed for first-degree murder was a legal sentence for that offense. *See* Maryland Code (1957), Article 27, § 412(b) (specifically permitting imprisonment for life as a penalty for first-degree murder, currently codified in Criminal Law Article, § 2-201(b)). *See also Greco v. State*, 427 Md. 477, 505 (2012) (“the statutorily prescribed penalty for first degree murder is, at a minimum, life imprisonment”).

**(G)**

Harrell next contends that the circuit court erred in failing to address the merits of his claim that, after the jury was discharged, the jury was reconvened without having been re-sworn for the purpose of deliberating on additional charges. Any such issue is not properly raised by way of a motion to correct an illegal sentence. *Bryant*, 436 Md. at 662-63. According to the docket entries, Harrell was sentenced to a single life sentence for first-degree murder. That sentence was not illegal.

**(H)**

Harrell’s final contention is that the trial court erred by not recognizing that the verdicts pertaining to first-degree murder were inconsistent. There is nothing in this

contention to suggest that an illegality inhered in Harrell’s sentence. *Bryant*, 436 Md. at 662-63.

### **CONCLUSION**

Because none of the contentions raised by Harrell, either in his motion or on appeal, suggest that an illegality inhered in his sentence, his claims are not cognizable under Rule 4-345(a). For that reason, the circuit court did not err in denying Harrell’s “Motion to Correct Illegal Sentence or, in the Alternative Motion for Appropriate Relief.”

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