

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1434

September Term, 2013

ANTHONY HARE

v.

STATE OF MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Berger, J.

Filed: May 2, 2016

*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.

A jury in the Circuit Court for Prince George’s County convicted appellant, Anthony Hare, of attempted second-degree murder, second-degree assault, attempted robbery with a deadly weapon, carrying a dangerous weapon, and conspiracy to commit murder. Appellant was sentenced to thirty years’ imprisonment for attempted second-degree murder, twenty-five years’ imprisonment for second-degree assault, twenty years’ imprisonment for attempted robbery with a deadly weapon, and three years’ imprisonment for carrying a dangerous weapon.

On appeal, this Court vacated appellant’s sentences for second-degree assault and openly carrying a dangerous weapon on the grounds that they should have merged with his sentences for attempted second-degree murder and attempted robbery with a dangerous weapon, respectively. Following a hearing in the circuit court, appellant was resentenced in accordance with this Court’s mandate. Appellant subsequently filed a motion to correct an illegal sentence, which was denied by the circuit court. In this appeal, appellant presents the following questions for our review, which we rephrase:¹

¹ Appellant phrased the questions as:

1. “Where the Maryland Court of Special Appeals vacates a sentence and remands the case back to the lower court for resentencing, was the trial court’s denial of the Appellant’s right to be present at his sentencing hearing and the right to be represented by counsel legally correct by appreciating [sic] the absent [sic] of the Appellant and his Attorney and proceeding with the sentencing hearing without the present [sic] of the Appellant or his Attorney when Maryland Rule 4-231(b) entitles a defendant the right to be present at every

(continued...)

1. Whether the trial judge properly denied Hare’s motion to correct an illegal sentence.
2. Whether the trial judge erred by failing to recuse himself.

For the following reasons, we affirm the judgment of the circuit court.

BACKGROUND

On April 25, 2001, appellant was sentenced to a total of 78 years’ imprisonment for attempted second-degree murder, second-degree assault, attempted robbery with a deadly weapon, and carrying a dangerous weapon. On August 21, 2002, we vacated appellant’s sentences for second-degree assault and carrying a dangerous weapon.

On January 23, 2003, the circuit court held a hearing at which the court imposed a total of 50 years’ imprisonment for attempted second-degree murder and attempted robbery

stage of his trial and the right to be represented by counsel?”

2. “Where the Maryland Court of Special Appeals vacates a sentence and remands the case back to the lower court for resentencing, did the lower court deny the Appellant and his attorney the right to give an Allocution to present information in mitigation prior to sentencing by proceeding with the sentencing hearing without the present [sic] of the Appellant and his attorney when Maryland Rule 4-342(e) entitles a defendant the opportunity, personally, and through counsel, to make a statement and to present information in mitigation of punishment?”
3. “Where the Appellant move [sic] for Judge Richard Sothoron, Jr., to rescues [sic] himself due to impartiality issues, should the relief should [sic] have been granted?”

with a deadly weapon, in accordance with the mandate of this Court. Neither appellant nor appellant’s attorney was present at the hearing.

On June 8, 2011, appellant filed a motion to correct an illegal sentence. Appellant’s motion was denied, and this timely appeal followed.

DISCUSSION

Maryland Rule 4-345(a) allows a trial court to “correct an illegal sentence at any time.” *Id.* A sentence is considered “illegal” if the sentence itself is not permitted by law, such as when “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[.]” *Chaney v. State*, 397 Md. 460, 466 (2007). On the other hand, a sentence is not illegal, and thus not correctable under Md. Rule 4-345(a), simply because the trial court did not institute specific procedural safeguards:

For a sentence to be illegal within the meaning of Rule 4-345(a), “the illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding.” Accordingly, “we have denied relief pursuant to Rule 4-345(a) because the sentences imposed were not inherently illegal, despite some form of error or alleged injustice.”

Bonilla v. State, 443 Md. 1, 6 (2015) (quoting *Matthews v. State*, 424 Md. 503, 512 (2012)) (internal citations omitted). We review the issue of appellant’s sentencing as a matter of law. *See Blickenstaff v. State*, 393 Md. 680, 683 (2006).

Appellant argues that his 2003 sentence was illegal because the trial court resentenced the appellant without him or his attorney being present, in violation of

Maryland Rule 4-231(b).² Appellant also argues that his 2003 sentence was illegal because the trial court conducted the hearing without giving appellant the opportunity to present mitigating evidence, in violation of Maryland Rule 4-342(e).³ We disagree.⁴ Appellant is correct that neither Hare nor his attorney were present at the January 23, 2003 hearing. Hare, however, is incorrect in characterizing the hearing as a resentencing hearing. Indeed, the trial judge recognized, in light of the Mandate from our Court, the hearing was unnecessary.

Our review of the record demonstrates that appellant’s sentences are not illegal. Appellant was sentenced to thirty years’ imprisonment for attempted second-degree murder and twenty years’ imprisonment for attempted robbery with a deadly weapon. Appellant was convicted of two previous crimes of violence at the time of his sentencing, resulting in a minimum sentence of 25 years for his conviction for attempted second-degree murder. Md. Code, Criminal Law § 14-101 (formerly Article 27, § 643B). Critically, Hare

² Under Md. Rule 4-231(b), a defendant is entitled to be present at every stage of his trial, including sentencing. *Tweedy v. State*, 380 Md. 475, 490 (2004).

³ Appellant’s brief cites Md. Rule 4-342(e) as the rule that was allegedly violated, yet this rule addresses the right of *the victim* to address the court. Md. Rule 4-342(f) is the more applicable rule, as it states that a defendant must be given the right to present mitigating evidence prior to sentencing. In light of the fact that appellant is *pro se*, we will assume that appellant’s error was technical rather than substantive, and we will analyze the merits of appellant’s arguments under the more applicable Rule 4-342(f).

⁴ The State argues that appellant is not entitled to relief because his hearing was not a resentencing. *See Carroll v. State*, 202 Md. App. 487, 518 (2011). This argument has some merit, given that we vacated appellant’s sentences without remanding the case for resentencing. Despite our mandate, however, a hearing was held, so we will proceed with appellant’s claims on the merits. *See Jones v. State*, 414 Md. 686, 694 (2010).

does not contend that his sentences were not permitted for the convictions. Moreover, he does not maintain that there has not been a conviction warranting the sentences for the offenses. Instead, Hare’s claims relate to the procedural aspects of the January 23, 2003 hearing as opposed to the substance of his actual sentence.

Finally, appellant argues that his 2003 sentence was illegal because the trial judge (Judge Richard Sothoron) should have recused himself prior to appellant’s hearing in 2003. Appellant has offered no support for this claim other than the fact that the trial judge failed to merge his sentences (in 2001) and then failed to comply with the above-mentioned procedural rules at the January 23, 2003 hearing.

Indeed, appellant has offered no evidence of impartiality on the part of the judge. *Jefferson-El v. State*, 330 Md. 99, 107 (1993) (“To overcome the presumption of impartiality, the party requesting recusal must prove that the trial judge has ‘a personal bias or prejudice’ concerning him or ‘personal knowledge of disputed evidentiary facts concerning the proceedings.’”) (internal citations omitted). Moreover, our review of the record reveals that the trial judge did not exhibit any appearance of impropriety, as the court did little at the hearing other than state and impose the mandate of this Court. *Id.* at 107-108 (“Appearance of disinterestedness or impartiality is determined by ‘examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.’”) (internal citations omitted).

In essence, Hare’s complaint about the January 23, 2003 hearing is that the trial judge violated his right to be present or to be represented by counsel. This allegation of

error does not demonstrate any bias, but rather reflects that the trial judge's understanding that such a hearing was unnecessary. Moreover, the trial judge retired in 2008, and Hare's motion to correct an illegal sentence was heard by Judge Leo E. Green, Jr. who acted "in his capacity as the successor judge" to the trial judge. We, therefore, conclude that the trial court did not err in failing to recuse itself.

**JUDGMENTS OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**