

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1553

September Term, 2015

JOHN HENRY MARTIN

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 15, 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. *See* Md. Rule 1-104.

John Henry Martin, appellant, appeals the denial, by the Circuit Court for Baltimore City, of his motion to correct an illegal sentence. For the reasons to be discussed, we dismiss the appeal.

On May 25, 2007, Martin pleaded guilty to robbery, a crime he apparently committed while on probation. The court sentenced Martin to ten years' imprisonment, to run "concurrent with any other outstanding or unserved sentence" and to run "concurrent to any parole violation." The commencement date of the sentence was October 6, 2006.

As a result of the robbery conviction, on October 4, 2007, the circuit court revoked Martin's probation in an unrelated case (#595046019) and ordered him to serve a twenty-year term of imprisonment, to run consecutive to the ten-year sentence imposed in this case. Probation was also revoked in two other cases (#59436024 and #594346025) and Martin was ordered to serve time for each, with those sentences to run concurrent with the sentence imposed in case #595046019.

In April 2015, Martin filed a *pro se* motion to correct an illegal sentence in which he asserted that the ten-year sentence for robbery was illegal. The circuit court denied the motion. In July 2015, Martin filed a second motion to correct an illegal sentence in which he asserted that the robbery sentence was illegal because the sentencing terms of the plea agreement were "ambiguous." Martin explained:

[T]he court specifically identified the sentence as to start October 6, 2006, and run concurrent to anything you are serving, and a parole violation may occur. From the court's own language, ambiguity exists whether the parole commissioner will impose a consecutive sentence. No mention is made of a VOP [violation of probation] sentence.

Martin stated further stated that the “court’s suggestion the sentence would be imposed concurrent to a future sentence” rendered the plea terms ambiguous. He noted that, in order to run the sentence for robbery concurrently with the sentences in his other cases, sentencing for the robbery would had to have occurred after, not before, disposition in the other cases. *See DiPietrantonio v. State*, 61 Md. App. 528, *cert. denied*, 303 Md. 295 (1985).¹ He then suggested that the circuit court issue an “amended commitment” to have the robbery sentence run concurrently with the sentences in his other cases.

The circuit court denied the motion, noting that it had addressed this same issue in Martin’s first motion to correct an illegal sentence. The court, moreover, found that the

¹ In *DiPietrantonio*, this Court explained:

At whatever point we may be in the sentencing sequence, unless there is a sentence then being served (or unequivocally scheduled to be served)—a sentence the execution of which is *in esse* and not merely *in posse*—the adverbs ‘concurrently’ and ‘consecutively’ are but empty gestures. A judge cannot imbue the sentence he is then imposing, in any controlling fashion, with power over the future judicial actions of others. His sentence may not be consecutive to or concurrent with a term of confinement which is not then *in esse*. The first judge to impose an actual sentence of confinement, the execution of which is unsuspended, creates the *status quo* to which a later sentencing judge must explicitly or implicitly relate. The later sentencing judge may be imposing a totally new sentence upon a totally new conviction or he may be reimposing an earlier suspended execution of a sentence. In either event, he takes his place in the sequential batting order as of the moment he imposes (or reimposes) an actual sentence of incarceration to be executed.

61 Md. App. at 532-534 (footnotes omitted).

ten-year sentence for robbery was legal because it “was what was agreed to” pursuant to the plea agreement and it did not exceed the penalty permitted by statute. The court also found that there was “no evidence in the court record that the Court failed to follow the binding plea agreement when sentencing” Martin for robbery.

Martin then filed an application for leave to appeal, which was treated as a notice of appeal. Around this same time, Martin also sought leave to appeal from a decision in an inmate grievance case—docketed in this Court as No. 605, September Term, 2015—which this Court denied on January 7, 2016. Martin’s brief in this appeal, filed on February 1, 2016, addressed the inmate grievance matter and did not address the illegal sentence issue that is the subject of this appeal. Dismissal of the appeal is therefore warranted. *See* Rule 8-504 (requiring the appellant to file a brief which includes argument in support of the appellant’s position on each issue on appeal).²

Moreover, Martin has not provided this Court with the transcript from the May 25, 2007, plea and sentencing hearing. *See* Rules 8-411 and 8-413 (the appellant shall order a transcription of any proceeding relevant to the appeal and that transcript shall be made part of the record on appeal). Without the transcript of the plea proceeding, this Court cannot determine the terms of the plea agreement, whether the court agreed to be bound

² Martin did file a “Motion Requesting the Honorable Court to Grant the Appellant the Following Relief,” in which he set out the substance of his contentions made to the circuit court as a basis for relief from this Court. We denied this motion on June 13, 2016. Assuming that Martin’s brief, if he had filed one, would elaborate on the same contentions, we would affirm the judgment of the circuit court for the reasons expressed in the court’s August 4, 2015 Memorandum of Law and Order Denying Motion to Correct Illegal Sentence.

by the sentencing terms, and whether the court violated the agreement when it sentenced Martin for robbery. *See Cuffley v. State*, 416 Md. 568, 582 (2010) (“any question that later arises concerning the meaning of the sentencing terms of a binding plea agreement must be resolved by resort *solely* to the record established” at the plea proceeding). We therefore dismiss the appeal.

**APPEAL DISMISSED. COSTS TO
BE PAID BY APPELLANT.**