UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1772

SEPTEMBER TERM, 2014

SHANON NARODA WASHINGTON

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Kenney, James A. III
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: March 9, 2016

In 2005, after pleading guilty to two counts of manslaughter by motor vehicle, Shanon Naroda Washington, the appellant, was sentenced by the Circuit Court for Prince George's County to two concurrent ten-year terms of imprisonment, with all but two years suspended, to be followed by a five-year period of supervised probation. Following the appellant's release from prison, he violated the terms of his probation on three occasions. Upon the third violation, in 2009, the court ordered him to serve the remaining portion of the previously suspended sentence. In 2014, he filed a motion to correct illegal sentence, which the circuit court granted in part and denied in part.

The appellant noted an appeal from the circuit court's order, presenting one question for review, which we rephrase as follows: Did the circuit court impose an illegal sentence?[1] For the following reasons, we shall affirm the order of the circuit court.

FACTS AND PROCEEDINGS

As stated above, the appellant pled guilty to two counts of manslaughter by motor vehicle and was sentenced to two concurrent ten-year terms of imprisonment. The court suspended all but two years of the sentence, and ordered five years of supervised probation upon release.

[1] The verbatim question posed by the appellant is:

> Whether, the circuit court's imposition of a sentence of 6 years and 333 days, illegal, when at the time the circuit court imposed a one year sentence for prior violation of probation, the court failed to state for the record, whether it was closing the probation by imposing the one year sentence out of the remaining suspended portion or whether it was imposing one year and continuing the remaining suspended portion on probation?

In 2006, after his release from prison, the appellant violated the terms of his probation. He was given credit for 32 days served, and was placed back on probation. In 2007, he again violated the terms of his probation. At the violation of probation hearing, the following colloquy took place:

> THE COURT: You know what's going on here today?
>
> [THE APPELLANT]: Yes, sir.
>
> THE COURT: What do you think is going on?
>
> [THE APPELLANT]: I'm here because – I'm here for a violation of probation.
>
> THE COURT: Uh-huh. And you know **if you are found in violation, you can get your backup time, which is what; about eight years?**
>
> [THE APPELLANT]: **Yes, sir, Judge.**

(Emphasis added.) The State recommended that the court order the appellant to serve "at least a year" of the backup time. The court followed that recommendation:

> THE COURT: **I am going to give you your backup time. I will give you one year backup time.** Credit is for 19 days time you have served since June 11, and **then I'm going to continue you on your probation**.
>
> And so we're clear, Mr. Washington, this is – that's the second violation. Three strikes you're out. **[If] you're in violation of your probation again, you're getting the rest of your backup time, okay?**
>
> [THE APPELLANT]: **Yes, sir.**

(Emphasis added.)

Despite the court's warning, the appellant violated his probation a third time in 2009. The court ordered him to serve the remaining backup time, which it calculated to be 6 years and 333 days.

In 2014, the appellant, *pro se*, filed a motion to correct illegal sentence, asserting: 1) the court failed to give him credit for time served; and 2) the sentence of 6 years and 333 days was illegal because, as the appellant understood it, the court terminated his probation in 2007, when it ordered him to serve one year of his back up time; therefore, in 2009, he was found to be in violation of "a probation that did not exist[.]"

Following a hearing on the motion, at which the appellant was represented by counsel, the court granted relief on the first issue, finding that the appellant was entitled to credit for 150 days served. It ordered that the docket entry be corrected to show that the appellant's sentence should be 6 years and 183 days. The appellant's counsel did not present any argument on the illegal sentence issue. The court did not grant further relief, implicitly denying the illegal sentence challenge.

The appellant, *pro se*, noted a timely appeal.

DISCUSSION

The appellant asserts that, at the violation of probation hearing in June 2007, when the court directed him to serve one year of the unexecuted sentence, that meant "that the court had elected to only impose[] one year out of the remaining backup time," and therefore "at that point, there was no more time remaining in the suspended portion of the sentence." He complains that the court did not indicate at that hearing how much backup time remained on the original sentence, or how long he was to be on probation. Therefore, the court had "no authority or power to impose[] the 6 year . . . 333 day sentence," because it was "no longer in existence." He submits that "the failure of the court to specif[y] for

the record the period of time for which [he] was to be on probation effectively converted his sentence to the one year unsuspended portion imposed" in June 2007.

The State counters that the court "neither imposed nor reimposed sentence" at the June 2007 violation of probation hearing. It merely directed that the appellant serve one year of the sentence that previously had been suspended, and did not extinguish the remaining backup time.

Under Rule 4-345(a), "[t]he court may correct an illegal sentence at any time." For a sentence to be illegal, the "illegality must inhere in the sentence, not in the judge's actions." *State v. Wilkins*, 393 Md. 269, 284 (2006). "[T]he focus is not on whether the judge's 'actions' are *per se* illegal but whether the sentence itself is illegal." *Id*. Whether a sentence is illegal is a question of law that we decide *de novo*. *Carlini v. State*, 215 Md. App. 415, 443 (2013).

The concept of an "illegal sentence" is narrow. *See Tshiwala v. State*, 424 Md. 612, 619 (2012), and cases therein cited. A sentence is "illegal" when there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007), where the sentence imposed was not a permitted one, *id.*, or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews v. State*, 424 Md. 503, 514 (2012).

There was no "illegal sentence" in this case. In 2005, upon conviction by guilty plea of two counts of automobile manslaughter, the appellant was sentenced to two

concurrent terms of ten-years' imprisonment. The sentences did not exceed the maximum penalty permitted by statute,[2] and did not violate the terms of the plea agreement.

The appellant's contention is that, by ordering him to serve one year of his backup time at the 2007 violation of probation hearing, the court essentially imposed a new sentence, eliminating the remaining suspended portion of his original sentences. This is wrong. The court did not impose a new sentence upon the appellant's violation of his probation:

> If [a] defendant violates . . . probation, the court may revoke it and, at that time, direct execution of all or any part of the sentence. **The court does not, at that time, either impose or reimpose the sentence. The sentence has already been imposed.** All that is at issue is how much of the sentence previously imposed the defendant must now serve in prison by reason of the violation of probation.

Benedict v. State, 377 Md. 1, 8 (2003) (emphasis added).

The appellant's argument that, by the end of the 2007 violation of probation hearing, he understood that there was no more time remaining on the suspended portion of his sentences is irrelevant and, in any event, is completely unsupported by the record. At that hearing, the court reminded the appellant that he was facing the rest of his backup time, which the appellant agreed was about eight years. Then, after ordering one year of the backup time to be served, the court warned the appellant: "Three strikes you're out. [If] you're in violation of your probation again, you're getting the rest of your backup time, okay?" The appellant answered, "Yes, sir." It was clear that there was additional time

[2] A person who is convicted of manslaughter by motor vehicle is subject to imprisonment not exceeding 10 years or a fine not exceeding $5,000 or both. Md. Code, Criminal Law Article (2002 Repl. Vol), § 2-209(d).

remaining on the suspended portion of the sentence, and that, after the one year of backup time was served, the appellant would continue to be on probation.

Contrary to the appellant's assertion that the record was silent as to how long he was to be on probation, the original order for probation shows that the probationary period was five years following release. The appellant was originally released on probation in June 2005. Even without accounting for the one year and 32 days of prison time he later served for the first and second violations, there is no question that the appellant was still on probation in 2009, when he was found to have violated his probation for a third time.

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