

Circuit Court for Baltimore City
Case No. 111173016

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2308

September Term, 2016

CHRIS JOHNSON

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2017

*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.

On April 5, 2012, Chris Johnson, appellant, was convicted, by a jury sitting in the Circuit Court for Baltimore City, of (1) illegal possession of a firearm, and (2) wearing, carrying or transporting a handgun. That same day, Johnson was sentenced to five years’ imprisonment, without the possibility of parole, for the possession conviction, and a concurrent three-year term for carrying a handgun. In 2016, Johnson filed a motion to correct an illegal sentence, which the circuit court denied. Johnson now appeals from that order. We affirm.

Johnson seeks relief under Md. Rule 4-345(a), which provides that “[t]he court may correct an illegal sentence at any time.” An illegal sentence is defined as “one 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.’” *Colvin v. State*, 450 Md. 718, 725 (2016) (citations omitted). We review the denial of a motion to correct an illegal sentence under a *de novo* standard of review. *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

Johnson contends that the court illegally sentenced him on the possession count. Specifically, Johnson claims that he was convicted of a violation of § 5-133(b) of the Public Safety Article (“PS”) (2003, 2010 Supp.), which prohibits possession of a regulated firearm by a person who has previously been convicted of a “disqualifying crime.”¹ The penalty

¹ “Disqualifying crime” is defined in PS § 5-101(g) as “(1) a crime of violence; (2) a violation classified as a felony in the State; or (3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.”

for a violation of § 5-133(b) is “imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.” PS § 5-144(b). There is no mandatory minimum sentence, and no restriction on parole for a violation of § 5-133(b).² By comparison, at the time of the offense that led to the conviction at issue, § 5-133(c), which prohibits possession of a firearm by persons previously convicted of, *inter alia*, a “crime of violence[,]” carried a mandatory minimum sentence of five years’ imprisonment without the possibility of parole.³

As an initial matter, it appears that the issue on appeal may be moot. The five-year sentence at issue was imposed on April 5, 2012. Although it was to be served “consecutive to any sentence [Johnson was] presently obligated to serve[,]” it appears that he was not serving any other sentence at that time. According to the transcript of the sentencing hearing, Johnson was then on probation for an armed robbery conviction. We take judicial notice of the docket entries in that case, which indicate that, in May 2012, one month after the sentence at issue in this case was imposed, Johnson was found guilty of a violation of the terms of that probation and was sentenced to a term of seven years’ imprisonment.⁴

² Trial courts do not have the authority, unless statutorily given, to impose restrictions on parole eligibility. *DeLeon v. State*, 102 Md. App. 58, 73 (1994).

³ Effective October 1, 2011, PS § 5-133(c) was amended, and provides that the penalty for a violation of the subsection is subject to “imprisonment for not less than 5 years and not exceeding 15 years[,]” and provides that the person convicted “is not eligible for parole during the mandatory minimum sentence” (subject to a stated exception). PS § 5-133(c)(2).

⁴ Circuit Court for Baltimore City, Case No. 207141045.

Assuming that Johnson was not serving some other sentence on April 5, 2012, when the five-year sentence at issue in this case was imposed, Johnson began serving the sentence that he now claims is illegal on that date. *See DiPietrantonio v. State*, 61 Md. App. 528, 533 (1985) (“sentence may not be consecutive to or concurrent with a term of confinement which is not then *in esse*.”) Therefore, it appears Johnson has already served that five-year sentence, and the issue is moot. *See Barnes v. State*, 423 Md. 75, 79 (2011) (holding that motion to correct illegal sentence is moot once the sentence has been served).

Even if not moot, we find no merit in Johnson’s claim that the charging document and the jury’s verdict indicate that he was convicted of violating § 5-133(b). Contrary to Johnson’s suggestion that “the charging document did not charge [him] with being a person having been convicted of a crime of violence,” Count 1 of the indictment, which was the only possession count submitted to the jury, specifically charged Johnson with a violation of PS § 5-133(c)(1)(i) and plainly stated that Johnson had been previously convicted of “armed robbery . . . a crime of violence[.]”

Nor are we persuaded that the language of the verdict sheet indicates that the jury convicted him of a violation of § 5-133(b), and not § 5-133(c). The parties had stipulated at trial that Johnson had been “previously convicted of a crime that would prohibit his possession of a regulated firearm.” As to that stipulation, the court instructed the jury that “[t]hese facts are not in dispute and should be considered proven.” Therefore, the only question for the jury was whether Johnson possessed a firearm. The jury was not asked to find whether Johnson’s prior conviction was a “disqualifying crime” under § 5-133(b), or a “crime of violence” under § 5-133(c). Moreover, the definition of “disqualifying crime”

includes “a crime of violence.” *See* PS § 5-101(g). In sum, the language used in the agreed upon verdict sheet, which asked the jury to find Johnson “guilty” or “not guilty” of possession of a firearm “after having been convicted of a disqualifying crime” does not render his sentence illegal.

We decline to address, in this appeal from the denial of a motion to correct an illegal sentence, Johnson’s claim that the sentencing court did not give him full credit for the time he spent incarcerated while awaiting trial. As we have previously stated, “an error” in calculating credit for time served does not “amount to an ‘illegal sentence.’” *Howsare v. State*, 185 Md. App. 369, 398 (2009) (noting that the “proper remedy is to file a motion to correct the commitment order.”).

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