Circuit Court for Howard County
Case No. C–13–CR–20–000595

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1066

September Term, 2021

BENJAMIN ALEXANDER CHASE

v.

STATE OF MARYLAND

Wells, C.J.,
Berger,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: April 13, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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 May 25, 2021, Benjamin Alexander Chase, appellant, pled guilty in the Circuit Court for Howard County to first-degree assault following a physical altercation with a fellow inmate at the correctional facility where they were incarcerated. The court accepted his plea and sentenced Chase to a ten-year term of incarceration, to run "concurrent with any other outstanding or unserved sentence." The State subsequently filed a motion to correct an illegal sentence, wherein it asserted that Maryland Code (2002, 2021 Repl. Vol.), § 3-210 of the Criminal Law Article ("CR") required the court to impose a consecutive sentence. The court granted the State's motion and resentenced Chase to a two-year consecutive term of incarceration.

In this *pro se* appeal, Chase presents a single issue for our review, which we have rephrased as follows:

> Did the court err by granting the State's motion to correct an illegal sentence and resentencing him to a two-year consecutive term of incarceration?

We answer this question in the affirmative and will therefore vacate Chase's sentence and remand to reinstate the previously-imposed concurrent sentence.

BACKGROUND

On October 20, 2020, while serving a 25-year sentence at the Patuxent Institution, Chase stabbed James DeShields, a fellow inmate, in the neck with a pen. A grand jury indicted Chase on December 9, 2020, charging him with attempted first-degree murder, first-degree assault, and openly carrying a weapon with the intent to injure.

At a plea hearing held on May 25, 2021, the State advised the court that, in exchange for Chase pleading guilty to first-degree assault, it would recommend a ten-year term of incarceration, to be served consecutive to the 25-year sentence he was already serving. The defense, in turn, requested a ten-year concurrent sentence, with 169 days credit for time served. During *voir dire* of Chase, defense counsel explained the terms of his tentative guilty plea:

> [W]e are choosing to plead guilty to one count of first degree assault. First degree assault carries a maximum penalty of 25 years, and in your case the elements of first-degree assault are causing any offensive contact with the intent to do serious bodily injury, okay. Now, we are agreeing to plead guilty to first [de]gree assault[.] [I]n exchange[,] the State is asking for a 10-year consecutive sentence, but the [c]ourt has indicated after knowing a little bit preliminary about the case, that the [c]ourt will give you a 10-year concurrent sentence. If the [c]ourt is not able to impose that concurrent sentence, the [c]ourt will allow us to withdraw the plea[.] [W]e won't be pleading guilty anymore, and we'll move ahead to our trial date. But the main plan here is we plead guilty to first degree assault for a 10- year concurrent sentence that starts on the date of your indictment[.] [Y]ou have 169 days credit already.

Thereafter, Chase pled guilty to first-degree assault. After the court found that Chase's guilty plea was entered knowingly and voluntarily, the State set forth the following factual predicate for the plea:

> On October 20th, 2020 at approximately 0950 hours, inmate Benjamin Chase . . . would get into an argument with fellow inmate James DeShields in . . . the B-wing of the Patuxent Institution regarding use of a microwave. [Chase] would go to an area where bunks were located and retrieve an item and return to the location of where Mr. DeShields was and strike Mr. DeShields in the neck, causing Mr. DeShields to fall to the ground. [Chase] would then walk away from the scene and dispose of the item before it could be recovered. A correctional officer . . . observed the incident which was also recorded on video surveillance. The weapon was not located, but Mr. DeShields would sustain a puncture wound to the left side of his neck that required several

> sutures to close. Following the incident, [Chase] would admit to striking Mr. DeShields. Would indicate that he used a pen to commit the incident, but no pen was recovered. All events would occur in Howard County[.]

In response, Chase, through counsel, accepted the State's factual proffer with "no additions, corrections, or modification[s]." The court found the proffered facts sufficient to support a first-degree assault conviction. Accordingly, it accepted Chase's guilty plea and sentenced him to a ten-year concurrent term of confinement, with 169 days credit for time served. The State then nolle prossed the remaining charges.

On July 22, 2021, the State filed a motion to correct an illegal sentence pursuant to Maryland Rule 4-345(a). In that motion, the State asserted:

> [Chase] was sentenced to ten (10) years of active incarceration as a flat sentence to run concurrent to any sentence currently being served.
>
> Pursuant to Criminal Law Article 3–210(b):
>
> A sentence imposed under this section shall be consecutive to any sentence that the inmate was serving at the time of the crime or that had been imposed but was not yet being served at the time of sentencing.
>
> Consequently, the [c]ourt's sentence is illegal as it is not consecutive to any sentence being served.

(Paragraph numbering omitted). Defense counsel filed a "Response to State's Motion" that same day, wherein he rejoined:

> Although Mr. Chase pled guilty to an assault crime, the State remained required to prove beyond a reasonable doubt the factual predicate for the sentencing enhancement . . . in its factual proffer to the [c]ourt; and, the [c]ourt was required to find that factual predicate proved beyond a reasonable doubt. . . .

* * *

> The [c]ourt accepted the plea; however, it did not find beyond a reasonable doubt that Mr. Chase assaulted "an inmate" or "employee" of the [Division of Correction].
>
> Accordingly, Section 3-210(b) does not apply to Mr. Chase's sentence, rendering the sentence legal.

(Paragraph numbering omitted).

The court held a hearing on the State's motion on September 10, 2021. At that hearing, the State reiterated its assertion that Chase's sentence was illegal under CR § 3-210(b), arguing that its factual proffer at the plea hearing had established that Chase "was an inmate at the time this plea was entered." Defense counsel, in turn, maintained that the sentence was legal "because there was no finding beyond a reasonable doubt that would trigger the requirement that this be a consecutive sentence that Mr. Chase assaulted either an inmate or employee as the statute requires." Alternatively, the defense requested that the court depart below the sentencing guidelines so that the total term of Chase's incarceration would approximate the amount of time he would have served under his original sentence.

The court granted the State's motion and resentenced Chase to two years' incarceration "to run . . . consecutive with sentence currently serving." Ruling from the bench, the court stated:

> I do agree with the State that it was an illegal sentence. That I am required to sentence consecutively. But I also take into account that Mr. Chase had certain expectation[s] when he entered the plea. And although I was free to sentence him to 10 years consecutive, that was not the [c]ourt's intention that he serve an additional 10 years in addition to the sentence he's serving. And because [c]ounsel and the [c]ourt disregarded that statute, I don't think that

> Mr. Chase should be penalized beyond that which I felt was appropriate at the time of the sentencing.
>
> So[,] I think the guidelines fairies will be visiting me on this one, but they're only guidelines. But it seems to comply with the spirit, I would be comfortable with the two year consecutive[.]

We will include additional facts as necessary to our resolution of the question presented.

DISCUSSION

Chase's Contentions

In scattershot fashion, Chase raises an array of constitutional challenges to the court's decisions to grant the State's motion and to resentence him to a two-year consecutive term of incarceration. He claims that the court violated his rights to due process and equal protection, as well as the prohibitions against double jeopardy and cruel and unusual punishment. Alternatively, Chase contends that by imposing an increased sentence, the court violated Maryland Code (1973, 2020 Repl. Vol.), § 12-702 of the Courts and Judicial Proceedings Article ("CJP").[1]

[1] CJP § 12-702 governs resentencing after a successful appeal, and provides in pertinent part:

> (b) If an appellate court remands a criminal case to a lower court in order that the lower court may pronounce the proper judgment or sentence, or conduct a new trial, and if there is a conviction following this new trial, the lower court may impose any sentence authorized by law to be imposed as punishment for the offense. However, it may not impose a sentence more severe than the sentence previously imposed for the offense unless:
>
> (1) The reasons for the increased sentence affirmatively appear;

Standard of Review

Maryland Rule 4-345 governs a sentencing court's revisory power and provides, in pertinent part: "The court may correct an illegal sentence at any time." Md. Rule 4-345(a). "[I]t is well established that a court may correct an illegal sentence on its own initiative and at any time, even upon appeal." *Mateen v. Saar*, 376 Md. 385, 405 (2003); *see also Garner v. State*, 442 Md. 226, 250–51 (2015) ("The power of the court to correct an illegal sentence exists on appeal even where the illegality of the sentence was not raised in the trial court."); *State v. Griffiths*, 338 Md. 485, 496 (1995) ("[W]e have in the past *ex mero motu* directed the trial court to correct an illegal sentence upon remand.").

"An illegal sentence, for purposes of Rule 4-345(a), is one in which the illegality 'inheres in the sentence itself[.]'" *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). In other words, the Rule permits the correction of "'inherently illegal' sentences, not sentences resulting from 'procedural error[s].'" *State v. Bustillo*, 480 Md. 650, 665 (2022) (alteration in original) (quoting *Bailey v. State*, 464 Md. 685, 696 (2019)). Under Rule 4-345(a), a sentence is "inherently illegal" if "there has either 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[.]" *State v. Williams*,

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(2) The reasons are based upon additional objective information concerning identifiable conduct on the part of the defendant; and

(3) The factual data upon which the increased sentence is based appears as part of the record.

255 Md. App. 420, 439 (2022) (quoting *Rainey v. State*, 236 Md. App. 368, 374 (2018)). Once challenged, an inherently illegal sentence cannot stand, "regardless of whether [it] has been negotiated and imposed as part of a binding plea agreement." *State v. Crawley*, 455 Md. 52, 67 (2017).

"Whether a sentence is an illegal sentence under Maryland Rule 4-345(a) is a question of law." *Id.* at 66 (citing *Meyer v. State*, 445 Md. 648, 663 (2015)). Accordingly, we review a court's grant or denial of such a motion *de novo*. *Id.* (citing *Meyer*, 445 Md. at 663). In so doing, however, "we 'defer to the trial court's findings of fact, and will not disturb those findings unless they are clearly erroneous.'" *Rainey v. State*, 236 Md. App. 368, 374 (2018) (quoting *Kunda v. Morse*, 229 Md. App. 295, 303 (2016)).

Criminal Law Article § 3-210

As Chase's various arguments presume the legality of his initial ten-year concurrent sentence, we commence our analysis by addressing that underlying premise.

In support of its motion to correct an illegal sentence, the State in this case relied on CR § 3-210, which provides, in pertinent part:

> (a) An inmate convicted of assault under this subtitle on another inmate or on an employee of a State correctional facility, a local correctional facility, or a sheriff's office, regardless of employment capacity, shall be sentenced under this section.
>
> (b) *A sentence imposed under this section shall be consecutive to any sentence that the inmate was serving at the time of the crime* or that had been imposed but was not yet being served at the time of sentencing.

(Emphasis added).

In *Williams*, *supra*, we had occasion to interpret CR § 3-210(b). Looking to the plain language of that subsection, we determined that the General Assembly's use of the word "shall" "can only be interpreted as a mandatory directive." 255 Md. App. at 443. If the Legislature had merely intended to vest courts with the discretion to impose consecutive sentences pursuant to CR § 3-210(b), we reasoned, "it would have included a permissive term, such as 'may[.]'" *Id.* We found further support for our interpretation in the ensuing subsection, which similarly curtails sentencing judges' otherwise "'virtually boundless discretion' . . . when 'devising an appropriate sentence[.]'" *Id.* at 444 (quoting *Lopez v. State*, 458 Md. 164, 180 (2018)); *see also* CR § 3-210(c) ("A sentence imposed under this section may not be suspended."). Accordingly, we held that "CR § 3-210 imposes *additional sentencing requirements* for inmates convicted of assaulting corrections employees or other inmates . . . by requiring a mandatory consecutive sentence when an inmate is convicted of first- or second-degree assault under either CR § 3-202 or CR § 3-203."[2] *Williams*, 255 Md. App. at 444. Because a sentence that violates CR § 3-210 "is not the product of 'a procedural illegality or trial error antecedent to the imposition of

[2] CR § 3-202 sets forth the elements of first-degree assault and provides "[a] person may not intentionally cause or attempt to cause serious physical injury to another[,]" "[a] person may not commit an assault with a firearm[,]" and "[a] person may not commit an assault by intentionally strangling another." CR § 3-202(b). A person convicted of first-degree assault in violation of CR § 3-202 "is subject to imprisonment not exceeding 25 years." CR § 3-202(c). CR § 3-203(a), in turn, provides: "A person may not commit an assault." A person who violates that subsection "is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $2,500 or both." CR § 3-203(b).

sentence' but rather, 'inhere[s] in the sentence itself,'" we concluded that such a sentence cannot stand. *Id.* at 456 (alteration in original) (quoting *Carlini v. State*, 215 Md. App. 415, 425–26 (2013)).

Having determined that a sentence imposed in contravention of CR § 3-210 is inherently illegal, we turned to the appropriate remedy. We began by observing that "[g]uilty pleas that are not 'equally voluntary and knowing' are 'void.'" *Id.* (quoting *McCarthy v. United States*, 394 U.S. 459, 466 (1969)). Accordingly, "[t]o be valid, a plea of guilty must be made voluntarily and intelligently, with knowledge of the direct consequences of the plea." *Yoswick v. State*, 347 Md. 228, 239 (1997) (citation omitted)). Maryland Rule 4-242 embodies this due process principle and provides, in pertinent part:

> The court may not accept a plea of guilty . . . until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, *with understanding of* the nature of the charge and *the consequences of the plea*; and (2) there is a factual basis for the plea.

Md. Rule 4-242(c) (emphasis added). When a defendant pleads guilty to assaulting another inmate in reliance on an erroneous representation that the ensuing sentence will run concurrent with—rather than consecutive to—his or her prior sentences, we concluded that the proper remedy is to present the defendant with a choice of:

> (1) leaving the guilty plea in place, and accepting the State's . . . offer . . . to be served consecutive to the last sentence to expire of all outstanding and unserved sentences; or (2) withdrawing his guilty plea, with the understanding that the State is free to try him on all . . . of the original charges, or to negotiate another plea agreement.

Williams, 255 Md. App. at 456; *see also State v. Parker*, 334 Md. 576, 607 (1994). We held, however, that specific performance, even of an otherwise binding plea agreement, is not a permissible remedy. *Williams*, 255 Md. App. at 463 ("Mr. Williams seeks specific performance of the plea agreement as he understood it at the time of sentencing, but our courts lack the authority to offer such a remedy."); *see also Crawley*, 455 Md. at 66 ("[A] defendant cannot consent to an illegal sentence.").

Consistent with our holding in *Williams*, if the State had properly charged and Chase had knowingly and voluntarily pled guilty to assaulting another inmate of a State correctional facility in violation of CR § 3-210(b), we would not hesitate to hold that (1) his original sentence was inherently illegal and (2) absent any request to withdraw the guilty plea, the court had the authority to resentence him to a consecutive term of incarceration. The State did not, however, seek a sentencing enhancement on the basis of Chase's having assaulted another inmate in violation of CR § 3-210. Rather, the State expressly charged Chase with, among other things, first-degree assault in violation of CR § 3-202, and it was only to that unenhanced offense that Chase pled guilty.

In *Wadlow v. State*, 335 Md. 122 (1994), the Supreme Court of Maryland addressed an uncharged sentence enhancement akin to CR § 3-210(b).[3] In that case, a grand jury indicted Wadlow for, among other things, possession with intent to distribute "over 448

[3] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

grams of cocaine, in violation of Article 27, Section 286(a)(1)[.]" *Id.* at 126. A jury convicted Wadlow, and the court sentenced her to four years' imprisonment on that count. *Id.* Shortly thereafter, the State filed a motion to correct an illegal sentence, arguing that Article 27, § 286(f) "mandated the imposition of a sentence of five years without possibility of parole" where the defendant possessed "448 grams or more of cocaine." *Id*. at 126, 134. Following a hearing, the court granted the State's motion and resentenced Wadlow to five years' incarceration for that offense. *Id.* at 127.

The Supreme Court of Maryland reversed, holding that the circuit court impermissibly increased Wadlow's sentence. The Court reasoned:

> In Maryland . . . we have generally drawn a distinction between sentence enhancement provisions that depend upon prior conduct of the offender and those that depend upon the circumstances of the offense. In the former situation, involving recidivism, we have made it clear that determination of the requisite predicate facts is for the sentencing judge. . . .
>
> In the latter case, however, *where the* [*L*]*egislature has prescribed different sentences for the same offense, depending upon a particular circumstance of the offense, we have held that the presence of that circumstance must be alleged in the charging document*, and must be determined by the trier of fact applying the reasonable doubt standard.

Id. at 128–29 (emphasis added). The Court then held:

> [*W*]*hen the State seeks the enhanced penalties provided by § 286(f) it must allege the necessary fact concerning the amount*, and prove that fact beyond a reasonable doubt. The citation of the statute at the end of the count seeking enhanced penalties under subsection (f) would properly refer to Art. 27, § 286(a)(1) & (f), although a reference to Art. 27, § 286(f) alone would be sufficient, and if the State did not elect to include a separate count charging only a violation under § 286(a)(1), that charge would nevertheless be available as a lesser included offense under a count charging the offense and the additional circumstance of subsection (f).

Id. at 132 (emphasis added) (footnote omitted). Concluding that "[t]he original sentence of four years' imprisonment . . . was lawful," the Court vacated Wadlow's five-year sentence and remanded the case for the reinstatement of her original four-year sentence. *Id.* at 134.

In *Fisher v. State*, 367 Md. 218 (2001), the Supreme Court of Maryland reaffirmed the principles set forth in *Wadlow*. In that case, the State charged Mary Utley with, among other things, second-degree felony murder and child abuse in violation of then Art. 27 § 35(C).[4] *Id.* at 279. As to the latter count, the indictment alleged that "Utley 'did unlawfully cause abuse to . . . Rita Denise Fisher; contrary to the form of the Act of Assembly . . . (Child Abuse—Art. 27, Sec. 35C).'" *Id.* The charges arose from the alleged abuse of Utley's two minor daughters, which culminated in the death of the youngest, Rita Fisher. *Id.* at 226. At the time of Fisher's demise, "§ 35C(b)(1) authorized a maximum sentence of fifteen years for child abuse and § 35C(b)(2) authorized a maximum sentence of twenty years if the abuse resulted in the death of the victim." *Id.* at 279–80. The court imposed a twenty-year sentence for child abuse to run concurrent to a thirty-year sentence for second-degree felony murder. *Id.* at 279. On appeal, Utley challenged the former sentence, asserting that it "could not exceed fifteen years." *Id.* at 280.

[4] Utley was one of three co-defendants charged with crimes related to the abuse of Utley's daughters. *Fisher*, 367 Md. at 226. The sentencing issue was only raised on appeal as to Utley. *Id.* at 279.

The Supreme Court of Maryland vacated Utley's twenty-year sentence for child abuse and remanded for resentencing. Preliminarily, the Court observed that "§ 35C(b)(2) does not create a crime separate from child abuse as proscribed by § 35C(b)(1); rather, the former provides for enhancing the penalty for the offense described in the latter." *Id.* The Court then held:

> Count II of the Utley indictment did not allege the fact that the State needed to prove in order to enhance the penalty, *i.e.*, that the abuse caused death. Nor does the general reference at the conclusion of Count II to § 35C cure the problem, inasmuch as that reference gives no notice whether the State is seeking the enhanced penalty under § 35C(b)(2).

Id. at 281–82.

In the case at bar, although Chase's unqualified admission of the State's proffered facts sufficed to prove that he was eligible for a sentence enhancement pursuant to CR § 3-210, the indictment neither charged him pursuant to that section nor made mention of the fact that DeShields and he were inmates at a correctional facility at the time of the assault.[5] *See Tapscott v. State*, 106 Md. App. 109, 135 (1995) ("When the State delineate[s] the particular section of the statute [in an indictment], . . . it charge[s] only the conduct and circumstances proscribed by that section, and, absent appellant's consent, [is] barred from

[5] The State initially charged Chase by a statement of charges filed in the District Court for Howard County on November 13, 2020. Although an accompanying application for statement of charges notes that Chase and DeShields were inmates of the Patuxent Institution when the former assaulted the latter, the statement of charges itself makes no mention of that fact nor remotely suggests that the State intended to seek an enhanced sentence, pursuant to CR § 3-210 or otherwise. Moreover, Chase's plea in this case was made to a charge in a superseding indictment.

later amending the indictment to charge different circumstances."), *aff'd* 343 Md. 650 (1996). In fact, at the hearing on its motion to correct an illegal sentence, the State expressly acknowledged that it only learned of the CR § 3-210(b) sentencing enhancement after the court had imposed the initial ten-year concurrent sentence. Because the indictment neither charges a violation of CR § 3-210(b) nor alleges a fact that the State was required to prove before the court could impose a sentencing enhancement pursuant to CR § 3-210(b), the State deprived Chase of notice that it would seek such a sentence.

Consistent with the Supreme Court of Maryland's holdings in *Wadlow* and *Fisher*, we vacate the modified sentence and remand with instructions that the circuit court reinstate its original concurrent sentence of ten years' imprisonment.

SENTENCE VACATED. CASE REMANDED WITH INSTRUCTIONS THAT THE COURT REINSTATE ITS CONCURRENT SENTENCE OF TEN YEARS' IMPRISONMENT. COSTS TO BE PAID BY HOWARD COUNTY.