Circuit Court for Harford County
Case No.: C-12-CR-20-000662

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1438

September Term, 2022

DENNIS JAMES VASS

v.

STATE OF MARYLAND

Nazarian,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 26, 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.

Dennis James Vass, appellant, appeals the denial by the Circuit Court for Harford County of his motion to correct an illegal sentence. The State of Maryland, appellee, contends that the sentence—five years, all but 18 months suspended, for second-degree assault—is legal and, therefore, the circuit court did not err in denying the motion. For the reasons to be discussed, we agree with the State and shall affirm the judgment.

BACKGROUND

While serving a term of probation (case 12-K-16-001399), Mr. Vass incurred new criminal charges in two distinct cases (C-12-CR-20-000661 and C-12-CR-20-000662). On May 26, 2022, Mr. Vass appeared in the Circuit Court for Harford County (the Honorable Mickey J. Norman, presiding) and entered guilty pleas to possession of cocaine and driving while impaired by a controlled dangerous substance (case 661) and second-degree assault (case 662). The terms of the plea agreement provided that the State would recommend one-year, suspended sentences for the offenses in case 661 and five years, all but 18 months suspended, for the second-degree assault in case 662. Furthermore, the parties agreed that the Honorable Yolanda L. Curtin would impose sentence in case 661 and case 662 following a violation of probation hearing in case 1399.

On July 8, 2022, Mr. Vass appeared in court and admitted to violating his probation in case 1399. The court then sentenced him for the second-degree assault conviction in case 662 to five years' imprisonment, with all but 18 months suspended, to be followed by a three-year term of supervised probation. The court next imposed sentence in case 661: a one-year term, fully suspended, for possession of a controlled dangerous substance and a one-year term, fully suspended, for driving while impaired, with both counts to run

consecutively to each other and consecutively to the second-degree assault sentence, and a three-year term of probation. The court then revoked Mr. Vass's probation in case 1399 and ordered him to serve 10 years of previously suspended time in that case, to run consecutively to the sentence for second-degree assault.

When imposing sentence in the respective cases, the court did not announce on the record where Mr. Vass would serve his time. The Commitment Record issued in case 662, however, reflects that the 18 months of executed time for second-degree assault is to be served at the Harford County Detention Center, while the Commitment Record in case 1399 reflects that the 10-year term in the violation of probation case is to be served in the custody of the Division of Correction. Mr. Vass did not seek leave to appeal following sentencing in case 662.

On September 27, 2022, more than two months after sentencing, Mr. Vass filed a motion to correct the commitment order in case 662 in which he asserted he was "sentenced in this case [for second-degree assault] and two other cases as a packaged plea[,]" and the court had "failed to designate on the record whether the sentence was to be served locally or in the Division of Correction." He requested a "correct[ion]" to the "Commitment Order" to reflect service of the 18-month term for second-degree assault in the Division of Correction. The court summarily denied the request.

Mr. Vass did not appeal the court's ruling denying his request to correct the Commitment Record. Instead, he filed a motion to correct an illegal sentence in which he asserted that, by law, an 18-month sentence may be served in either a local facility or the Division of Correction and because the transcript in this case was "vague as to the facility"

where Mr. Vass's sentence for second-degree assault would be served, "the rule of lenity applies, and the vagueness operates in [his] favor[.]" He maintained that he "ought to have been sentenced to the custody of the Division of Correction."

The circuit court denied relief, stating:

> Court has previously denied request to change commitment to DOC. Sentence is not an illegal sentence as it is a sentence allowable by law. Defendant does not have legal right to serve sentence at location of his choice. 18 month sentence is a sentence that by statute can be served either at a local detention center or DOC. Had the Court intended for 18 month sentence to be served at DOC, instead of local detention center, the Court would have announced sentence to be served at DOC. The sentence the Defendant received in his VOP case is a sentence that by statute cannot be served at local detention center. Thus all sentences that are over 18 months must be served at DOC and there is no requirement to announce DOC commitment. Accordingly, request to change location of where sentence is to be served is DENIED.

Mr. Vass appeals that ruling.

DISCUSSION

On appeal, Mr. Vass points out that § 9-105 of the Correctional Services Article of the Maryland Code provides, in part, that "a judge may sentence an individual to a local correctional facility if . . . the sentence to be then executed is for a period of not more than 18 months[.]" And pursuant to Corr. Serv. § 9-104(b), generally, a judge may not sentence an individual to the Division of Correction ("DOC") for 12 months or less.[1] Accordingly, Mr. Vass maintains that the "18-month sentence [for second-degree assault], to which the

[1] A judge may, however, sentence an individual to the Division of Correction for 12 months or less where "(1) the sentence is for an offense committed by an inmate in a correctional facility under the jurisdiction of the Division; and (2) the inmate is still under the jurisdiction of the Division." Corr. Servs. § 9-104(b). That is not the situation here and Mr. Vass does not contend otherwise.

10-year sentence [in case 1399] was consecutive, could have been served *either* in local custody or the Division of Correction, so it was incumbent on the sentencing court to specify where it would be served." (Footnote omitted.) Because the transcript of the July 8, 2022 hearing "reflects that the court was silent regarding where Appellant's 18-month sentence was to be served," he contends "that the ambiguity must be resolved in his favor under principles of lenity." He further "submits that the rule of lenity dictates that the 18-month sentence should have been served in [the] Division of Correction rather than in the Harford County Detention Center, so the greater amount of diminution credits he *would have earned* serving the sentence in the Division of Correction should be applied to the sentence he is presently serving." Thus, he requests that this Court reverse the circuit court's denial of his motion to correct an illegal sentence so that the diminution credits he would have earned if the second-degree assault sentence had been served in the DOC can "be calculated and applied" to the sentence he is currently serving.

The State counters that the sentence for second-degree assault is not inherently illegal and, therefore, the circuit court did not err in denying the motion to correct it. We agree with the State.[2]

[2] The State also asserts that Mr. Vass's "confinement in the Harford County Detention Center was the result of *his* request that he be sentenced to the Harford County Detention Center so that he could 'remain in a sober environment.'" Thus, the State claims that although "confining Vass to the Division of Correction was permissible, the commitment record reflects Vass's preference at sentencing."

We note, however, that at the July 8, 2022 hearing, the defense urged the court to continue Mr. Vass on probation "or home monitoring[,]" rather than impose "a lengthy prison sentence" as the probation agent recommended in case 1399. But "[i]f the Court (continued)

Rule 4-345(a) provides that a court "may correct an illegal sentence at any time[,]" but the Rule is very narrow in scope and is "limited to those situations in which the illegality inheres in the sentence itself[.]" *Chaney v. State*, 397 Md. 460, 466 (2007). An inherently illegal sentence is one in which there "has been no conviction warranting any sentence for the particular offense[,]" *id.*, where "the sentence is not a permitted one for the conviction upon which it was imposed[,]" *id.*, where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012), or where the court "lacked the power or authority" to impose the sentence. *Johnson v. State*, 427 Md. 356, 370 (2012). Notably, however, a "'motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.'" *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)). Moreover, "only claims sounding in substantive law, not procedural law, may be raised through a Rule 4-345(a) motion." *Id*. at 728. Appellate court review of the circuit

were to lock him up," defense counsel urged the court "to consider a Harford County Detention Center sentence" so that he could "remain in a sober environment."

In our view, this exchange reflects that the defense advocated for the continuation of probation in case 1399 or, if time were imposed in *that* case, a sentence that could be served at the local detention center. We see nothing in the transcript indicating that Mr. Vass had asserted any preference regarding where he would serve the 18-month sentence for second-degree assault. But in any event, Mr. Vass has not argued that serving his sentence for second-degree assault in the custody of the DOC was a term of his plea agreement and, therefore, whether Mr. Vass preferred the local detention center over the DOC is irrelevant to whether his sentence is inherently illegal.

court's ruling on a motion to correct an illegal sentence is *de novo*. *Bratt v. State,* 468 Md. 481, 494 (2020).

Here, Mr. Vass's complaint is that the circuit court, when imposing the sentence for second-degree assault, failed to announce on the record whether the sentence was to be served at the local detention center or in the Division of Correction. In other words, his complaint is one of procedure, not substantive law, and, therefore, not the proper subject of a Rule 4-345(a) motion to correct an illegal sentence. *See State v. Bustillo*, 480 Md. 650, 655 (2022) (holding that the sentencing court's failure to announce the length of a term of probation was a procedural defect in the sentencing proceeding, which did not render the sentence inherently illegal for purposes of Rule 4-345(a)). Moreover, Mr. Vass's primary concern is the alleged loss of diminution credits he could have earned if he had served the 18-month sentence in the DOC. As the Supreme Court of Maryland has held, however, a motion to correct an illegal sentence is not the proper mechanism for addressing a sentencing credit issue. *Bratt*, 468 Md. at 496-502.[3] Accordingly, the circuit court did not err in denying Mr. Vass's motion to correct an illegal sentence.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[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.