Circuit Court for Wicomico County
Case No. 22-K-10-000728

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 32 & 361, ALA No. 65

September Term, 2018

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DAVID SERRANO

v.

STATE OF MARYLAND

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Berger,
Nazarian,
Arthur,

JJ.

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Opinion by Nazarian, J.

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Filed: July 9, 2020

In 2010, David Serrano pleaded guilty to second-degree rape and to commission of a sexual offense in the first degree. The Circuit Court for Wicomico County sentenced him to forty-five years' incarceration, ordered extended sexual offender parole supervision under Md. Code (2001, 2008 Repl. Vol.), § 11-723 of the Criminal Procedure Article ("CP"), and ordered him to register as a Tier III sex offender under the Maryland Sex Offender Registration Act ("MSORA") (CP § 11-701, *et seq.*).

Ever since, and on multiple occasions, Mr. Serrano has sought resentencing or to withdraw his guilty plea. His challenges have included variations of the same arguments he makes here—that his sentence breached the binding plea agreement, which he asserts did not include a supervision requirement, and that his plea was not knowing and voluntary because the circuit court did not inform him of, or ask whether he understood, that his sentence included supervision. He also raises a new argument—that his sentence is illegal because the circuit court purportedly ordered him to register under the 2010 amendments to MSORA, which he asserts did not apply to him. In this appeal, his fourth, we answer three questions:

> (1) Does the law of the case bind us to our earlier decision that the sentence did not breach the plea agreement, and if not, was Mr. Serrano's sentence rendered illegal by the imposition of supervision?
>
> (2) Should this Court grant Mr. Serrano's application for leave to appeal the circuit court's denial of his motion to withdraw his guilty plea, in which he argued that his plea was not knowing and voluntary because the circuit court allegedly failed to inform him of the supervision requirement before he pled guilty? and
>
> (3) Did the circuit court err in denying Mr. Serrano's motion to correct an illegal sentence, in which he argued that the circuit court erred in classifying him as a Tier III sex offender under the 2010 amendments to MSORA?

We affirm the denials of his motions to correct and deny Mr. Serrano's application for leave to appeal.

## I. BACKGROUND

Although it started with a guilty plea, this case has a lengthy procedural history with a déjà vu quality to it.

### A. Mr. Serrano's Guilty Plea.

Mr. Serrano was charged with sexually assaulting two young sisters in separate incidents that occurred when each girl was eight or nine years old. On November 19, 2010, he pleaded guilty to first-degree sexual offense committed between February 1 and August 2, 2010 and second-degree rape committed between October 1, 2008 and April 30, 2009. At the start of the plea hearing, the State indicated that in exchange for Mr. Serrano's guilty plea, it would *nol pros* the remaining counts, and it asked the court "to be bound to a sentence of a 25 year mandatory minimum as to count 5 [first-degree sexual offense against B.B.] and 20 years consecutive [] as to count 13 [second-degree rape of E.N.]." Neither the State nor the court mentioned extended sexual offender parole supervision at that point.

From there, the court engaged in an exchange with Mr. Serrano about the rights he was waiving, the terms of incarceration, and his mental state. After that, the court determined that Mr. Serrano "knowingly and voluntarily waive[d] his right to a jury trial." Mr. Serrano then pleaded guilty on the record, and the prosecutor stated that Mr. Serrano would have to register as a Tier III sex offender for life and be subject to lifetime supervision. Here are the relevant excerpts:

THE COURT: And you heard earlier, Mr. Serrano, this is a

binding plea agreement, in other words we've discussed, meaning I and the attorneys have discussed this previously and I have agreed to be bound by the proposed sentence. But just for the record you should know that under the facts of this case first degree sexual offense otherwise would carry a sentence of life in prison without parole. Second degree rape carries a maximum penalty of 20 years. Do you understand the proposed sentence if you're found guilty?

THE DEFENDANT: Yes, sir.

THE COURT: You also have to understand that later, after your guilty plea is accepted and you're found guilty, you cannot attempt to withdraw those guilty pleas simply because you're not happy with the sentence. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: You have to do this voluntarily, you have to do this knowingly. If you don't have a complete understanding or if you have any questions just stop me and ask [defense counsel] and he'll explain it to you.

Now it's a two step process. First if you wish to plead guilty you must give up or waive your right to a jury trial and I'm going to ask you if you're under the influence of drugs, medication or alcohol. Are you under the influence of any type of medication today?

THE DEFENDANT: No, sir.

THE COURT: Drugs or alcohol? Alcohol or other drugs I should say.

THE DEFENDANT: No, sir.

THE COURT: How old are you?

THE DEFENDANT: 27.

THE COURT: Did you ever finish high school?

THE DEFENDANT: No, sir.

THE COURT: What's the highest grade you completed?

THE DEFENDANT: I got my GED.

THE COURT: You got your GED.

Were you on parole or probation during the period of time alleged in these events?

THE DEFENDANT: No, Sir.

THE COURT: And you're familiar with the events that the State is going to tell me about, correct?

THE DEFENDANT: Yes, sir.

THE COURT: Do you wish to give up your right to a jury trial?

THE DEFENDANT: Yes, sir.

THE COURT: The Defendant knowingly and voluntarily waives his right to a jury trial.

Has anybody forced you against your will to plead guilty to these two charges?

THE DEFENDANT: No, sir.

THE COURT: Have they promised you anything other than what [] the prosecutor, said constitutes the binding plea agreement in this case?

THE DEFENDANT: No, sir.

THE COURT: Are you pleading guilty to committing a first degree sexual offense on [B.B.] sometime between February and August of 2010 because you are guilty of that crime?

THE DEFENDANT: Yes, sir, I am.

THE COURT: Are you pleading guilty to second degree rape on [E.N.] during the period of October 2008 through April of 2009 because you are guilty of that crime?

THE DEFENDANT: Yes, sir, I am.

THE COURT: The Defendant knowingly and voluntarily enters guilty pleas to Counts 5 and 13, he understands the nature of the charges and the consequences of his guilty pleas.

Is there anything else I should ask the Defendant prior to my hearing the facts from the State []?

[THE STATE]: I don't believe so, Your Honor.

As a result of the Defendant's convictions he will have to register as a tier three sex offender for life and be subject to lifetime supervision by the sex offender management team. . . .

The State read into the record the statement of anticipated evidence. The girls' mother offered a victim impact statement. The court and the State stated again

Mr. Serrano's previous criminal convictions and the term of incarceration the State was seeking ("as to count five, the 25 year mandatory minimum, and as to count 13, 20 years in the Division of Corrections"). The Court told Mr. Serrano that he "know[s] what the sentence is going to be," asked Mr. Serrano whether he wanted to say anything, and Mr. Serrano offered his own statement.

When Mr. Serrano was done speaking, the court stated that the "first thing" it would do is sign the "requirement of lifetime sexual offender registration and supervision." Both the State and Mr. Serrano's defense attorney assisted the court in filling out the applicable form, with no objection from Mr. Serrano's counsel:

> THE COURT: All right. The first thing I'm doing is signing the requirement of lifetime sexual offender registration and supervision.
>
> THE CLERK: Judge, you have to make those findings on the record, check whatever it is.
>
> THE COURT: All right, do both of you have this document as far as what block should be checked off?
>
> [THE STATE]: No, Your Honor.
>
> [DEFENSE COUNSEL]: I do not.
>
> THE COURT: Is he a sexually violent predator?
>
> [THE STATE]: Your Honor, no, I don't believe, he would just be a tier three offender.
>
> [THE STATE]:[1] The second block would be checked because it's 3-305, I believe.
>
> [THE STATE]: Yes, Your Honor.
>
> THE COURT: 3-602 as well?
>
> [THE STATE]: No, Your Honor. That's the sex abuse of a

[1] The transcript indicates that this statement was made by the State; we think the court is more likely to have said this, but we reproduce the transcript *verbatim*.

> minor, he did not plead guilty to that.
>
> THE COURT: I thought the child was nine years old under count five.
>
> [THE STATE]: She is, Your Honor, but he plead [*sic*] guilty to the first degree sex offense as to her.
>
> THE COURT: All right. How about the next block?
>
> [THE STATE]: No, Your Honor.
>
> THE COURT: So it's just the one block that's checked?
>
> [THE STATE]: Yes, Your Honor.
>
> THE COURT: Any objection, [Defense Counsel]?
>
> [DEFENSE COUNSEL]: No Your Honor.

The court then stated Mr. Serrano's sentence: twenty-five years for count five and twenty (consecutive) years for count thirteen.

### B. Mr. Serrano's Initial Applications For Leave To Appeal.

Mr. Serrano didn't appeal directly, but later filed a petition for post-conviction relief. In February 2012, the post-conviction court denied his petition for relief, but granted him leave to file a belated notice of appeal as to certain issues. Mr. Serrano filed an application for leave to appeal from the denial of his post-conviction petition and an application for leave to appeal from his guilty plea. We denied both applications summarily.

### C. Mr. Serrano's *First* Motion To Correct An Illegal Sentence And Our Decision In *Serrano I*.

In April 2012, Mr. Serrano, acting *pro se*, filed his *first* motion to correct an illegal sentence. He argued that sex offender supervision and registration were not included in the sentence he would receive as part of the plea agreement and that the court breached the plea agreement by imposing those requirements. Citing *Cuffley v. State*, 416 Md. 568

(2010), he argued that the terms of the plea agreement had to be made on the record in his presence *before* he entered his guilty plea, and in his case the terms of supervision and registration were not made on the record until *after*. As a result, he claimed, his sentence breached the plea agreement, was illegal, and must be vacated.

The circuit court denied the motion and Mr. Serrano appealed. In an unreported opinion, we affirmed, holding that the circuit court did not breach the plea agreement by ordering lifetime registration and supervision. *David Serrano v. State of Maryland*, No. 2125, Sept. Term 2012, slip op. at 6 (Md. App. Aug. 15, 2014) ("*Serrano I*"). We reasoned that sexual offender registration and supervision were "implied term[s]" of the plea agreement because both were "unavoidable" consequences of the conviction—that is, each was required by statute. *Id.* at 6–7 (citing CP §§ 11-701, 11-707(a)(4) Md. Code (2001, 2008 Repl. Vol.) (lifetime registration requirement); CP §§ 11-701(f), 11-723 (2001, 2008 Repl. Vol.) (extended sexual offender parole supervision requirement)). We observed as well that the prosecutor had stated on the record that Mr. Serrano would be subject to lifetime registration and supervision *before* the court accepted Mr. Serrano's plea and that the defense had not objected. *Id.* at 7.

### D. Mr. Serrano's *Second* Motion To Correct An Illegal Sentence And Our Decision In *Serrano II*.

Meanwhile, in May 2013, Mr. Serrano filed a *second* motion to correct an illegal sentence, again *pro se*. This time, he challenged only the imposition of supervision (not registration) on the ground that *lifetime* supervision was illegal under the applicable version of CP § 11-723, which required the sentence of certain sexual offenders to include a *term*

of extended parole supervision that was "a minimum of three years to a maximum of a term of life." CP § 11-723(b)(1). The requirement of *lifetime* supervision arose under a later version of CP § 11-723, enacted in 2010 (2010 Md. Laws Chs. 176, 177), and applied only to crimes committed *after* October 1, 2010. (Mr. Serrano committed his crimes before then). After a series of postponements resulting from, among other things, waiting for our decision in *Serrano I*, the circuit court denied the second motion to correct about two years after it was filed, at a hearing on April 17, 2015 (at which Mr. Serrano was represented by counsel).

Mr. Serrano appealed, and the State agreed that Mr. Serrano's sentence was illegal insofar as the circuit court had imposed *lifetime* supervision because his crimes were committed before October 1, 2010 (and thus the post-2010 version of CP § 11-723 didn't apply). We found that because the circuit court had stated expressly at the plea hearing that lifetime supervision was mandatory, it had sentenced Mr. Serrano under the wrong law. We reversed the circuit court's denial of the motion to correct and vacated the portion of Mr. Serrano's sentence requiring lifetime extended parole supervision. *David Serrano v. State of Maryland*, No. 203, Sept. Term 2015, slip. op. at 3 (Md. App. May 6, 2016) ("*Serrano II*"). And we remanded to the circuit court for resentencing "in accordance with" the applicable version of CP § 11-723:

> Upon remand, the circuit court shall revise the supervision portion of [Mr. Serrano's] sentence in accordance with the law.

In a footnote, we also observed that "[t]he State maintains that [Mr. Serrano] is subject to sentencing as an extended parole supervision offender under CP section 11-723."

### E. Mr. Serrano's *First* Motion To Withdraw Guilty Plea, His *Third* Motion To Correct An Illegal Sentence, And Our Decision In *Serrano III*.

On August 12, 2016, the circuit court resentenced Mr. Serrano. At the resentencing hearing, the State interpreted *Serrano II* to require the court to impose a definite term of extended parole supervision of between three years and life:

> [THE STATE]: Your Honor, what the Court [of Special Appeals in *Serrano II*] specifically said is before October 1, 2010, which is the time period we're talking about, the term of extended parole supervision was a minimum of three years to a maximum term of life. So they sent it back to be supervised in that period of time.

But instead of ordering a definite term of *supervision*, the court ordered a definite term (twenty-five years) of *registration* and to such supervision "as deemed appropriate":

> THE COURT: The Court will order the Defendant to register as a sexual offender, [and] it will be for a period of 25 years with such supervision as deemed appropriate."

At the same resentencing hearing, the court considered a pleading that Mr. Serrano had filed, again *pro se*,[2] on May 26, 2016. In that pleading (we'll call it his "first" motion to withdraw guilty plea), Mr. Serrano moved to withdraw his guilty plea. He argued again that the imposition of supervision breached the plea agreement and that his plea was not knowing and voluntary because the court did not ask him whether he understood that he would be subject to lifetime supervision. The circuit court denied the motion.

After the hearing, on August 22, 2016, Mr. Serrano filed a *third* motion to correct

[2] Although he filed the motion himself, Mr. Serrano was represented by counsel at the hearing.

an illegal sentence, this time through counsel. Once again, he challenged the imposition of supervision on the ground that it was not part of the plea agreement. Again citing *Cuffley*, he argued as well that adding supervision to the sentence agreed in his plea deal violated his due process rights. The circuit court denied the motion.

So Mr. Serrano doubled down: he filed an application for leave to appeal the motion to withdraw his guilty plea and a direct appeal from the denial of the motion to correct an illegal sentence. We denied the application to for leave to appeal and affirmed the circuit court's denial of his motion to correct an illegal sentence. *David Serrano v. State of Maryland*, No. 1574 & 1575, September Term, 2016, slip op. at 7–10 (Md. App. Aug. 2, 2017) ("*Serrano III*"). We reasoned that the substantive issue underlying both—*i.e.*, whether the imposition of supervision breached the plea agreement—had been decided in *Serrano I*, and the law of the case doctrine precluded Mr. Serrano from raising the issue again.

Although we affirmed the circuit court's denial of Mr. Serrano's motion to correct, we nevertheless vacated portions of Mr. Serrano's sentence and remanded the case to the circuit court for a second resentencing. *Serrano III*, slip op. at 12–13. Specifically, we vacated the portion of the sentence addressing the duration of sexual offender supervision, "such supervision as deemed appropriate," on the ground that it did not comply with the mandate of *Serrano II* because it was, "at best, ambiguous." *Serrano III*, slip op. at 11. We directed the circuit court to impose a term of supervision of at least three years and not more than life, as CP § 11-723 requires:

> To the extent that the circuit court did not implement the mandate of *Serrano II*, we vacate the portion of Serrano's sentence imposing sexual offender supervision, and remand the case to the circuit court with instructions to impose sexual offender supervision pursuant to CP 11-723 for not less than three years and not more than life.

*Serrano III*, slip op. at 11.

We also vacated the portion of the sentence requiring twenty-five years of sexual offender registration because *Serrano II* had not vacated the portion of Mr. Serrano's sentence concerning registration, so the circuit court was not authorized to make that change. *Id.* at 11–12.

### F. This Appeal: Mr. Serrano's *Second* Motion to Withdraw Guilty Plea and *Fourth* and *Fifth* Motions To Correct An Illegal Sentence.

That brings us to the present. The circuit court held a resentencing hearing on February 22, 2018 and imposed a ten-year term of sexual offender supervision. The court made no explicit oral ruling addressing registration, but the amended commitment record reflected that the court ordered Mr. Serrano to register as a sexual offender for a period of life.

At the same hearing, the circuit court also ruled on motions that Mr. Serrano had filed in September 2017, shortly after we decided *Serrano III*: a September 26, 2017, motion to correct an illegal sentence and a September 27 supplement to that motion (collectively, Mr. Serrano's fourth motion to correct). He filed those pleadings *pro se*, but was represented by counsel at the hearing. He argued again, among other things, that his sentence is illegal because the term of supervision breached the plea agreement. He argued

further that the law of the case doctrine did not bar consideration of that argument because the law had changed since *Serrano I* was decided: in *Ray v. State*, 454 Md. 563 (2017), he says, the Court of Appeals "clarif[ied]" the law concerning interpretation of plea agreements as it had been set forth in *Cuffley*, 416 Md. 568. Conceding that supervision is mandatory, he sought to withdraw his plea. Mr. Serrano also filed a *pro se* motion to withdraw his guilty plea on September 26, 2017 (his second motion to withdraw). He argued, among other things, that his plea was not knowing and voluntary because neither the circuit court nor his attorney informed him before he pleaded guilty that he would be subject to extended parole supervision in addition to his forty-five-year sentence.

After hearing argument (Mr. Serrano was represented by counsel), the circuit court denied both the fourth motion to correct and the second motion to withdraw summarily.

On February 26, 2018, Mr. Serrano filed, *pro se*, a fifth motion to correct an illegal sentence that reiterated his earlier arguments. He also added new arguments, including that the court erred in ordering him to register as a Tier III sex offender. The circuit court denied that motion summarily.

Mr. Serrano filed a timely notice of appeal from the denial of his motions to correct an illegal sentence and filed an application for leave to appeal the denial of the motion to withdraw his guilty plea. We supply additional facts as appropriate below.

## II. DISCUSSION

The labyrinthine procedural history of the case and the myriad motions Mr. Serrano has filed over the years give this appeal a Groundhog Day feel. Recognizing that this

opinion is *Serrano IV*, we have reviewed the issues the parties listed in their briefs[3] against our prior opinions, and three questions remain. *First*, does the law of the case doctrine bind us to our decision in *Serrano I* that the imposition of extended sexual offender parole supervision under CP § 11-723 (the 2006–2010 version) did not violate Mr. Serrano's plea

[3] Mr. Serrano phrases the Questions Presented as follows:

> 1. Did the circuit court impose an illegal sentence when it imposed a term of sexual offender supervision where: (a) the plain language of the agreement did not include sexual offender supervision; and (b) the State breached the plea agreement by requesting that the court order supervision?
>
> 2. Did the circuit court impose an illegal sentence when it ordered Mr. Serrano to register as a Tier III offender where the statute creating registration tiers applies retroactively only to individuals who were in the custody of a supervising authority prior to the effective date of the statute and Appellant does not meet this requirement?
>
> 3. Did the circuit court err in denying Appellant's motion to withdraw his guilty plea where Appellant was not informed by the court or trial counsel that sexual offender supervision would be a direct consequence of his plea?

The State phrases the Questions Presented as follows:

> 1. Where the prosecutor stated on the record at Serrano's guilty plea hearing that Serrano would be subject to "lifetime supervision by the sex offender management team" as a consequence of his plea, and where this Court has previously held that lifetime supervision was a term of Serrano's guilty plea, did the circuit court properly deny Serrano's Rule 4-345(a) motion to correct an illegal sentence?
>
> 2. Was Serrano's sentence not rendered illegal by the circuit court's order requiring him to *register* as a Tier III offender?
>
> 3. Did the circuit court properly exercise its discretion when it denied Serrano's motion to withdraw his guilty plea?

agreement, and if no, did the circuit court err in denying Mr. Serrano's fourth motion to correct an illegal sentence on that ground? *Second*, should we grant Mr. Serrano's application for leave to appeal the denial of his motion to withdraw his guilty plea, and if yes, did the circuit court err in denying that motion in which Mr. Serrano argued his plea was not knowing and voluntary? *Third*, did the court err in denying Mr. Serrano's fifth motion to correct an illegal sentence, in which Mr. Serrano argued that the circuit court erred in ordering him to register as a Tier III sex offender?

As to the *first* question, we hold that the law of the case doctrine binds us to our earlier decision. Even if it didn't, we would hold that imposing extended sexual offender parole supervision did not violate the plea agreement and did not render Mr. Serrano's sentence illegal. *Second*, we deny Mr. Serrano's application for leave to appeal his guilty plea because it was not properly before the circuit court. And again, even if we were to consider the merits, we would reject his argument that his plea was not entered voluntarily and knowingly. *Finally*, we hold that the circuit court did not err in denying Mr. Serrano's fifth motion to correct an illegal sentence because the court's classification of Mr. Serrano as a Tier III sex offender is not a sentence, and may not be challenged in a Rule 4-345(a) motion to correct an illegal sentence.

### A. The Law Of The Case Binds Us To Our Earlier Decision That The Imposition Of Extended Sexual Offender Parole Supervision Did Not Violate The Plea Agreement.

In this appeal, Mr. Serrano presents the same issue he raised in *Serrano I* and *Serrano III*: whether the term of extended sexual offender parole supervision the court

imposed violated his plea agreement and rendered his sentence illegal. Because we addressed this question in *Serrano I* (we held that his sentence is not illegal), we need to determine whether we're bound by that decision. And we are: the law of the case doctrine applies here. But even if we were to consider the merits afresh, we would affirm the circuit court's denial of Mr. Serrano's motion to correct an illegal sentence.

The only evidence we have of the terms of Mr. Serrano's plea agreement is the State's description at the start of the November 19, 2010 plea hearing. Extended sexual offender parole supervision was not mentioned in that description (although, as we discuss further, it was discussed later in the hearing in Mr. Serrano's presence):

> [THE STATE]: Your Honor, this matter is set for motions today. Defense counsel and I met with Your Honor in chambers yesterday regarding a binding plea.
>
> THE COURT: Madam Clerk, can I have docket entries for the Serrano case, apparently they are not in the file.
>
> [THE STATE]: Your Honor, it's the State's understanding the Defendant will plead guilty to count 5, first degree sex offense as to [B.B.], and count 13, second degree rape as to [E.N.] Upon a finding of guilt on those counts the State will nol pros the remaining counts.
>
> As to sentencing, the State will withdraw its notice to seek a sentence of life imprisonment without the possibility of parole. And recommends and is asking the Court to be bound to a sentence of a 25 year mandatory minimum as to count 5 and 20 years consecutive to count five as to count 13 [*sic*].
>
> [DEFENSE COUNSEL]: That's correct, Your Honor.
>
> [THE STATE]: That's the agreement, Your Honor.

The parties' arguments here proceed from the assumption that extended sexual offender parole supervision was not included explicitly as a term of the plea agreement, and we'll

go with that.

The law of the case doctrine binds lower courts to the rulings made by an appellate court on a particular issue in the same case. *Scott v. State*, 379 Md. 170, 183–84 (2004). Future appeals at the same appellate level are bound by the law of the case as well unless one of the following three exceptions applies:

> (1) the evidence in a subsequent trial is substantially different from what was before the court in the initial appeal; (2) a controlling authority has made a contrary decision in the interim on the law applicable to the particular issue; or (3) the original decision was clearly erroneous and adherence to it would work a manifest injustice.

*Baltimore Cty. v. Fraternal Order of Police, Balt. Cty. Lodge No. 4*, 449 Md. 713, 730 (2016); *see also Scott*, 379 Md. at 183–84.

Recently, in *Nichols v. State*, 461 Md. 572, 589 (2018), the Court of Appeals explained how the law of the case doctrine applies to motions to correct an illegal sentence. Rule 4-345(a) permits a court to correct an illegal sentence "at any time," even if the defendant did not object to the sentence initially, even if the defendant consented to it, and even if the sentence was not challenged on direct appeal:

> If a sentence is illegal within the meaning of Maryland Rule 4-345(a)—that is, the illegality inheres in the sentence itself—then the defendant may file a motion in the trial court to correct it, notwithstanding that: (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal or at some other previous procedural juncture.

*Id.* (*quoting Smith v. State*, 453 Md. 561, 576 (2017) (cleaned up). Even so, *Nichols* explained that the law of the case doctrine *does* bar a court from considering an issue

bearing on the legality of a sentence if an appellate court has already resolved the same issue. *Id.* at 593 ("The law of the case doctrine prevents relitigation of an 'illegal sentence' argument that has been presented to, and rejected by, an appellate court.") (*quoting State v. Garnett*, 172 Md. App. 558, 562–63 (2007)). The law of the case doctrine does *not* bar a court from considering an issue as to the legality of a sentence that an appellate court has not resolved or that a defendant could have raised, but failed to raise, in a previous appeal. *Nichols*, 461 Md. at 593. If the issue is the same as an issue previously raised and decided, we are bound by our earlier decision unless one of the three exceptions applies; if the issue is different, the law of the case does not apply, even if Mr. Serrano could have raised the issue previously.

Mr. Serrano argues, *first*, that the law of the case doctrine does not apply because the issue he raises now is *not* the same as the issue he raised in previous proceedings. We disagree. He argues that the question presented now is whether the sentence is illegal because the *State*, as opposed to the *circuit court*, breached the plea agreement. He asserts that we have not considered the question of the State's breach previously. But the existence or not of a breach isn't affected by whether the State requested the supervision or whether the court imposed it. *See Solorzano v. State*, 397 Md. 661, 667–68 (2007) ("[W]hen either the prosecution breaches its promise with respect to a plea agreement, or the court breaches a plea agreement that it agreed to abide by, the defendant is entitled to relief. . . . [W]here the plea agreement is breached, and it was not caused by the defendant, the general remedy for the breach is to permit the defendant to choose either specific performance or

withdrawal of the plea."). It's a distinction without a difference—the substantive issue raised here is identical to the issue we decided previously, so the law of the case doctrine binds us to that decision unless one of the three exceptions applies.

*Second*, Mr. Serrano attempts to invoke two of the three exceptions: he argues that (1) our decisions in *Serrano I* and *Serrano III* were wrongly decided and (2) the Court of Appeals made "a subtle, but significant modification" of the law governing the interpretation of plea agreements after *Serrano III*, in *Ray v. State*, 454 Md. 563 (2017), and that that modification changes the outcome here.[4] Neither argument succeeds.

Mr. Serrano argues that our decision in *Serrano I* was wrongly decided based on our reliance on *Barnes v. State*, 195 Md. App. 1 (2010), *vacated as moot*, 423 Md. 75 (2011). In *Barnes*, this Court observed, among other things, that "[sex offender] registration was an automatic consequence of a conviction for a child sex offense regardless of whether [the defendant] was ordered by the sentencing court to do so." 195 Md. App. at 17. In *Serrano I*, we cited that case in support of our conclusion that both sex offender *registration* and extended sexual offender parole *supervision* were "implied terms" of the plea agreement. Mr. Serrano argues that *Barnes* applied only to registration and that the court there did not address whether the imposition of registration breached a plea agreement.

But nothing about *Barnes* convinces us that our decision in *Serrano I* was wrong.

[4] *Serrano III* was filed on August 2, 2017, four days after *Ray* was filed on July 28, 2017. Neither the parties nor the court considered the implications of *Ray* on the issues raised there.

Sex offender registration and supervision are distinct, *see Arias-Rivera v. State*, -- Md. App. --, No. 3223, Sept. Term 2018, slip op. at 2, 4–5 (filed July 2, 2020), but as we observed in *Serrano II*, slip op. at 9, their distinctions do not affect the outcome in this context. As we explained in *Serrano I*, the mandatory and unavoidable status of supervision is established by statute, and that status made supervision an implicit term of his plea agreement:

> Although sexual offender registration and supervision was arguably not an express term of the plea agreement, it was, in effect, an implied term of that agreement, as it was understood by both parties to be an inevitable and unavoidable consequence of the plea[]. In *Barnes v. State*, 195 Md. App. 1, 17 (2010), *rev'd as moot*, *Barnes v. State*, 423 Md. 75 (2011), we noted that sexual offender registration "was an automatic consequence of a conviction for child sex offense regardless of whether [the defendant] was ordered by the sentencing court to do so." The same was true here.
>
> Serrano was convicted of second-degree rape (a violation of Crim. Law, § 3-304) and sex offense in the first degree (a violation of Crim. Law, § 3-305) involving victims under the age of fifteen. (In fact, the record indicates that one of the victims was about 10 years old at the time of the offense.) As such, Serrano was deemed a "child sexual offender." Crim. Proc., § 11-701 (2008 Repl. Vol.) (a "child sexual offender" includes a person convicted of "violating any of the provisions of the rape or sexual offense statutes under §§ 3-303 through 3-307 of the Criminal Law Article for a crime involving a child under the age of 15 years[.]"). He also met the definition of a "sexually violent offender" because he committed crimes deemed "sexually violent offenses." Crim. Proc. § 11-701(j) & (k). Serrano, therefore, was required by statute to register as a sex offender and to do so for life. Crim. Proc. § 11-707(a)(4) (2008 Repl. Vol.).
>
> With regard to sexual offender supervision, Crim. Proc. § 11-723 (2008 Repl. Vol.), mandated a "term of extended sexual offender parole supervision" ranging from "a minimum of

> 3 years to a maximum of a term of life." An "extended parole supervision offender" was defined as a person who had been convicted of certain offenses, including second-degree rape and first-degree sex offense. Crim. Proc. § 11-701(f). Hence, sexual offender supervision, like sexual offender registration, was unavoidable in this instance.

*Serrano I*, slip op. 6–7. We cited *Barnes* as support, but the decision was grounded in the statute, and nothing about *Barnes* renders *Serrano I* wrong. And, as we explain further below, we discern no error in our conclusion that supervision was an implicit term of the plea agreement here.

Mr. Serrano argues next that an intervening change in the law since *Serrano I* and *Serrano III* compels a different answer to the common question. His argument is grounded in the law concerning the interpretation of plea agreements, as set forth in *Cuffley*, 416 Md. 568 and *Baines v. State*, 416 Md. 604 (2010) and later clarified by the Court of Appeals in *Ray*, 454 Md. 563.

A little background. *Cuffley* and *Baines*, along with *Matthews v. State*, 424 Md. 503 (2012), are often referred to as the "*Cuffley* trilogy." *See, e.g.*, *Ray v. State*, 230 Md. App. 157, 175 (2016), *aff'd*, 454 Md. 563. That trio of cases recognized, for the first time in the context of a Rule 4-345(a) motion to correct an illegal sentence, that "a binding plea bargain, agreed to by a judge, [is] an effective modality for establishing an upper limit on a sentence." *Id.* at 178. In other words, a sentence imposed in violation of the maximum sentence identified in a binding plea agreement may be challenged as an inherently illegal sentence under Rule 4-345(a). *Ray*, 454 Md. at 572 (citing *Matthews*, 424 Md. at 519).

*Cuffley* went on to explain that questions about how to interpret binding plea

agreements must be resolved by examining the record from the Rule 4-243[5] plea proceeding and determining "what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding." 416 Md. at 582; *accord Baines*, 416 Md. at 615. But the *Cuffley* trilogy left some uncertainty about "the criteria to be used in deciding which of two or more possible interpretations of a plea agreement is the legally binding one." *Ray*, 230 Md. App. at 178. Until *Ray*, when the Court of Appeals analogized plea agreements to contracts and defined a three-step process for interpreting them:

> *First*, we must determine whether the plain language of the agreement is clear and unambiguous as a matter of law. If the plain language of the agreement is clear and unambiguous, then further interpretive tools are unnecessary, and we enforce the agreement accordingly. *Second*, if the plain language of the agreement is ambiguous, we must determine what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be, based on the record developed at the plea proceeding. If examination of the terms of the plea agreement itself, by reference to what was presented on the record at the plea proceeding before the defendant pleads guilty, reveals what the defendant reasonably understood to be the terms of the agreement, then that determination governs the agreement. *Third*, if, after we have examined the agreement and plea proceeding record, we still find ambiguity regarding what the defendant reasonably understood to be the terms of the agreement, then the ambiguity should be construed in favor of the defendant.

454 Md. at 577–78 (cleaned up) (emphases added). Mr. Serrano argues that the analysis here ends at the first step, that the plain language of his plea agreement is unambiguously

[5] Maryland Rule 4-243 governs plea agreements. *See Cuffley*, 416 Md. at 478–79.

silent about supervision and, therefore, supervision was not included.

But we are not yet to the merits: getting there depends upon whether the other exception to the law of the case doctrine applies—that is, whether the decision in *Serrano I* is inconsistent with controlling principles announced by the Court of Appeals in *Ray*, 454 Md. 563. *Fraternal Order of Police*, 449 Md. at 730; *Scott*, 379 Md. at 183–84. We hold that they are not. Although *Cuffley* and *Baines* were decided before we issued our decision in *Serrano I*, we didn't rely on either case in reaching our decision. We rejected Mr. Serrano's attempt to reassert those cases in *Serrano III*. And the Court of Appeals's decision in *Ray* does not control here either.

We held in *Serrano I* that the term of supervision did not breach the plea agreement because it was required by statute and, therefore, implicit in the plea agreement. Nothing in *Cuffley*, *Baines*, or *Ray* renders that decision erroneous. To the contrary, those cases set the standard interpreting the *express* terms of plea agreements. *See State v. Crawley*, 455 Md. 52, 67 (2017) (observing that *Cuffley*, *Baines*, and *Matthews* "dealt with resolving *ambiguous* sentencing terms of a plea agreement") (emphasis in original). They don't address questions about the court's or the State's breach of *implicit* terms of plea agreements. And as we explain further below, an "implicit" term of a plea agreement, where the term sets forth a statutorily required sanction such as supervision, is valid. *Carlini v. State*, 215 Md. App. 415, 455 (2013); *Lafontant v. State*, 197 Md. App. 217, 236 (2011); *Rankin v. State*, 174 Md. App. 404, 410, 411–12 (2007). We decline to extend *Ray*'s requirement to "determine whether the plain language of the [plea] agreement is

clear and unambiguous as a matter of law," 454 Md. at 577, to mean that implicit terms of plea agreements are invalid. The *Cuffley* trilogy and *Ray* addressed different circumstances—*i.e.*, disputes over the length of incarceration—and *Ray* does not conflict with or apply to our decision in *Serrano I*. In other words, *Ray* is not intervening controlling authority, so the law of the case binds us to our earlier decision that the imposition of supervision did not render Mr. Serrano's sentence illegal.

But even if the law of the case doctrine did not apply, we still would hold that the imposition of supervision did not violate this plea agreement. Mr. Serrano brought his motion to correct under Maryland Rule 4-345(a), which allows a court to correct an illegal sentence "at any time." Whether a sentence is an illegal sentence is a question of law that we review *de novo*. *Crawley*, 455 Md. at 66. An "illegal sentence" is "limited to those situations in which the illegality inheres in the sentence itself." *Chaney v. State*, 397 Md. 460, 466 (2007). And a sentence imposed in excess of the maximum sentence agreed to in a plea agreement is an inherently "illegal sentence." *Matthews*, 424 Md. at 524; *Carlini*, 215 Md. App. at 428 (*citing Dotson v. State*, 321 Md. 515, 522–23 (1991)).

Mr. Serrano argues that his sentence is illegal because the imposition of supervision exceeded the sentencing cap set forth in the plea agreement, *i.e.*, forty-five years' incarceration. But statutorily required sanctions such as sexual offender supervision are implied in plea agreements and a plea agreement's silence about them does not render the sentence illegal. For example, in *Rankin*—a decision issued *before* Mr. Serrano was sentenced initially—we held that a period of statutorily required probation "was implicit

in the terms of the plea agreement," and, therefore, that the trial court's addition of a period of probation to the sentence did not render it illegal. 174 Md. App. at 410, 411–12. We relied on the status of probation as a statutory requirement, just as supervision is required here: "because a period of probation must be attached to a suspended sentence, we hold that the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence."). *Id.* at 411–12.

We also have held that restitution (a statutorily required criminal sanction) is appropriate even when a plea agreement did not include it expressly. In *Carlini*, the unavoidability of probation in a suspended sentence automatically implied the possibility of restitution as a condition of probation, especially where it had been discussed on the record and the defendant had agreed to a proffer indicating that victims were entitled to restitution. 215 Md. App. at 454. We concluded that the "failure of a plea agreement to mention restitution by no means implies that there is an agreed-upon sentencing cap that precludes restitution." *Id.*; *accord Lafontant*, 197 Md. App. at 236 (circuit court did not breach plea agreement when it ordered defendant to pay restitution, even though restitution was not part of the plea agreement).

Like the probationary period in *Rankin* and the restitution requirements in *Carlini* and *Lafontant*, the supervision requirement here was an implicit term of Mr. Serrano's plea agreement. It was a statutorily required criminal sanction, it was discussed at the plea hearing, and Mr. Serrano did not object to it.

Indeed, had the circuit court omitted the supervision from Mr. Serrano's sentence,

Mr. Serrano's sentence would have been illegal for that reason. *See Arias-Rivera v. State*, -- Md. App. --, slip op. at 2, 4–5 (CP § 11-723 extended sexual offender parole supervision, as required by the version of the statute that applies to Mr. Serrano, is part of a defendant's sentence). And a defendant cannot agree to an illegal sentence. *Crawley*, 455 Md. at 67 ("The principle that a substantively illegal sentence must be corrected applies regardless of whether the sentence has been negotiated and imposed as part of a binding plea agreement"); *Holmes v. State*, 362 Md. 190, 196 (2000) ("A defendant cannot consent to an illegal sentence."). Had the circuit court failed to impose supervision, the proper remedy would have been to vacate the sentence and remand for the imposition of a legal sentence that included supervision (and that could have been added at the end without reducing the period of active incarceration). *Crawley*, 455 Md. at 55; *Greco v. State*, 427 Md. 477, 512–13 (2012); *Holmes*, 362 Md. at 191.

To summarize, the law of the case doctrine binds us to our earlier decision the imposition of supervision did not breach Mr. Serrano's plea agreement. Supervision was an implied term of that agreement. And had we reviewed the merits anew, we would affirm the denial of Mr. Serrano's fourth motion to correct an illegal sentence all the same.

**B. Mr. Serrano's Application for Leave Is Denied.**

We deny Mr. Serrano's application for leave to appeal the circuit court's denial of his motion to withdraw his guilty plea. But even if we were to reach the merits, we would reject Mr. Serrano's argument.

Mr. Serrano's motion to withdraw raises a different challenge to the inclusion of

supervision than the challenge he raised in his motion to correct. Here, he does not argue that the inclusion of supervision breached the plea agreement. Instead, he argues that his plea was not knowing and voluntary because he was not informed of the supervision requirement before entering the plea. He argues that he should be allowed to withdraw his guilty plea because CP § 11-723 extended sexual offender parole supervision (as required by the version of that law in effect from 2006 to 2010) is "part of the sentence for a crime," or at the very least is a direct consequence of his conviction, and that the circuit court did not comply with Rule 4-242(c)'s requirement that the court inform him of the maximum sentence before accepting his guilty plea. In the alternative, he argues that the circuit court should have held a hearing to determine whether attorney error contributed to Mr. Serrano's alleged misunderstanding of the consequences of his plea.

As an initial matter, Mr. Serrano's motion to withdraw fails as a matter of procedure. Rule 4-242(h) allows a defendant to move to withdraw a plea, and differentiates between withdrawal before and after sentencing:

> At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c) or (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere.

Although the Rule references withdrawals before and after sentencing, pleas actually "pass through three phases of revocability." *Custer v. State*, 86 Md. App. 196, 200 (1991). "First, prior to trial, plea bargains may generally be revoked by the parties without any reason." *Id.* Second, "after a plea is accepted but before the sentence is imposed, the decision whether to grant a request to withdraw the plea is discretionary with the trial judge." *Id.* at 201 (*citing Harris v. State*, 299 Md. 511, 515 (1984)). And third, "once a sentence is imposed and the judgment is thereby rendered final, a plea may be revoked only upon a showing that it was involuntary or that the State neglected to fulfill a material promise." *Id.* at 201 (citations omitted).

Here, Mr. Serrano asserts that his motion was filed at the second stage, after his plea was accepted but before the sentence is imposed. We disagree. He argues that our decision in *Serrano III*, which vacated the terms of his supervision and registration, turned back the clock so that his current motion to withdraw precedes his sentence. In support, he cites *Harris*, in which the Court of Appeals held that the predecessor[6] to Rule 4-242(h) did not preclude a defendant from moving to withdraw his plea where the sentence (in that case, the death penalty) had been vacated on appeal and the case remanded to the circuit court

[6] *Harris*, 299 Md. at 514 n.1, indicated that the predecessor rule, Maryland Rule 731 f., provided as follows:

> f. Withdrawal of Plea.
>
> 1. Before Sentencing.
>
> When justice requires, the court may permit a defendant to withdraw a plea of guilty or *nolo contedere* and enter a plea of not guilty at any time before sentencing.

for resentencing. 299 Md. at 516. The Court reasoned there that vacating Mr. Harris's sentence had the effect of putting him in the same position he had been in after being found guilty but before sentencing:

> Maryland Rule 731 f. 1. gives a court the authority to "permit a defendant to withdraw a plea of guilty . . . and enter a plea of not guilty at any time before sentencing." When this Court vacated Harris's death sentence and remanded the case to the trial court for a new sentencing proceeding, *it had the effect of placing Harris in the same position he had been after being found guilty of murder but prior to initial sentencing* . . . . Consequently, as Harris stood convicted of murder but not yet sentenced for that offense, the motion to withdraw the guilty pleas could be made under the plain language of Rule 731 f. 1. There is nothing in the language of Rule 731 f. 1., nor in our cases applying the rule, which would indicate an intention to exclude from coverage a motion to withdraw a guilty plea made before resentencing following reversal on appeal.

*Harris*, 299 Md. at 516 (emphasis added).

The State does not dispute that *Harris* allows Mr. Serrano to file his motion to withdraw. But the *Harris* defendant's circumstances are distinguishable from his. In this case, after the remand ordered in *Serrano III*, Mr. Serrano was *not* in the same position he had been in before his original sentencing. *Serrano III* did not vacate his term of incarceration, his term of supervision, or the requirement of registration. All that *Serrano III* vacated was the *duration* of both the supervision and registration because the circuit court had failed to comply with our mandate in *Serrano II*. Mr. Serrano cites no authority for the proposition that he may move to withdraw his plea after only *part* of a sentence was vacated, and we deny his application for leave to appeal for that reason. Furthermore, because his motion was not timely, he was not entitled to a hearing on his

motion under Rule 4-242(h), which requires the court to "hold a hearing on any *timely* motion to withdraw a plea of guilty . . ." (emphasis added).[7]

But even if we were to reach the merits, we would reject the argument that Mr. Serrano makes now, a legal contention grounded solely in the record of the plea hearing. Mr. Serrano argues that his plea was unknowing and involuntary because, he says, the court and the State failed to inform him of the supervision requirement before he pleaded guilty. He argues that the *sequence* in which they provided this information about the consequences of his conviction at the hearing renders his plea unknowing and involuntary. We disagree.

Rule 4-242(h) authorizes the court to permit a defendant to withdraw a guilty plea if the defendant proves that the requirements of Rule 4-242(c) were not met. Rule 4-242(c) governs the trial court's *acceptance* of pleas and provides that a court may not accept a guilty plea until it determines both that the defendant "is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea" *and* that there is a "factual basis for the plea":

> The court may not accept a plea of guilty, including a conditional 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

[7] The court did offer Mr. Serrano the opportunity to argue his motion to withdraw at the February 2018 hearing. And at that hearing, Mr. Serrano proffered no facts or evidence in support of his argument that "attorney error" contributed to his alleged misunderstanding of the supervision requirement.

> of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

Rule 4-242(c) requires that the defendant be informed of the maximum sentence he can receive under a plea agreement before pleading guilty. *See Bryant v. State*, 47 Md. App. 551, 555 (1981). Only after the defendant is so informed *and* the court determines there is a factual basis for the plea does the court has the authority to accept the guilty plea. *Custer*, 86 Md. App. at 203 ("A factual basis for the plea must be determined by the court before a plea of guilty can be accepted and judgment entered."); *see also State v. Smith*, 244 Md. App. 354, 374 (2020) ("[B]efore a plea may be finally accepted, Rule 4-242(c)(2) requires the court to determine that 'there is a factual basis for the plea.'").

And in this case, Mr. Serrano was informed of the maximum sentence he could receive before the court accepted his plea. The transcript of the plea hearing demonstrates that the court did not accept—indeed had no authority to accept—Mr. Serrano's plea until after Mr. Serrano was informed of the supervision requirement. Although the State does not explicate its position fully, we agree that in making this argument, Mr. Serrano "artificial[ly] draw[s] a bright line through his guilty plea proceedings." The trial court *stated* that Mr. Serrano "knowingly and voluntarily enters guilty pleas to Counts 5 and 13, he understands the nature of the charges and the consequences of his guilty pleas" *before* Mr. Serrano was informed of the supervision requirement, and the court did not *accept* the plea until after the State read the facts into the record and it had determined, based on those

facts, that a factual basis for the plea existed. *Custer*, 86 Md. App. at 203; *see Smith*, 244 Md. App. at 374; *see also Gross v. State*, 186 Md. App. 320, 334 (2009) (in determining whether a plea is knowingly and voluntarily entered, it is "viewed under the 'totality of the circumstances as reflected in the entire record.'" (*quoting State v. Priet*, 289 Md. 267, 276 (1981)).

### C. The Circuit Court Did Not Err In Denying Mr. Serrano's Motion To Correct An Illegal Sentence With Regard To His Classification As A "Tier III" Sex Offender.

Mr. Serrano and the State talk past each other with respect to sex offender registration. Mr. Serrano agrees that he is subject to lifetime sex offender registration and not to a term of just twenty-five years, as the circuit court had ordered at his August 2016 resentencing. He takes issue in this appeal is his classification as a Tier III sex offender. He argues that he does not meet any of the three definitions in the 2010 amendments to MSORA of a person to whom those amendments apply retroactively. Specifically, he argues that he is not a person who:

> (1) [was] under the custody or supervision of a supervising authority on October 1, 2010;
>
> (2) was subject to registration under this subtitle on September 30, 2010; or
>
> (3) [was] convicted of any crime on or after October 1, 2010, and has a prior conviction for an offense for which registration as a sex offender is required under this subtitle.

*See* CP § 11-702.1(a), Md. Code (2001, 2008 Repl. Vol., 2010 Supp.).

The State does not address this argument other than to observe that "the registration order in place now (the one he asks this Court to strike as illegal) is silent as to whether he

would be required to comply with the MSORA in effect at the time of his crimes or as amended in 2009/2010." But the State does not develop that observation into an argument. Instead, the State addresses the argument it believes Mr. Serrano made in his fifth motion to correct. The State characterizes Mr. Serrano as arguing that the court violated *ex post facto* prohibitions when it classified him as a Tier III sex offender because the 2010 amendments imposed more burdensome restrictions than those to which he would have been subject under the earlier version of the law:

> As near as the State can discern, in his motion to correct, which was not argued at the February 2018 hearing, Serrano asserted that the court's registration order was illegal because the lifetime registration order in place reclassified[8] him as a Tier III registrant and was punitive because it was more burdensome than when he committed his crimes, i.e., it requires him to register more frequently and to provide more information.

The State then asserts that the requirements of Tier III registration under the 2010 amendments—which require more frequent registration and more information from registrants—would not violate *ex post facto* laws. But the State doesn't develop that argument fully either and, as noted above, doesn't address in any depth the argument that Mr. Serrano actually made in his motion in the circuit court and now on appeal.

In his *fifth* motion to correct, filed *pro se*, Mr. Serrano asserted the following (reproduced *verbatim*):

[8] Mr. Serrano was not "reclassified" as a Tier III sex offender in 2018. He had been classified as a Tier III sex offender in 2010 when he was sentenced initially, as the November 19, 2019 hearing transcript and his November 24, 2010 commitment record reveal.

> Lastly, Mr. Serrano take exception to the Court of Special Appeals' dicta statement that he is a Tier III, Sexual offender. While he agrees that under the law in effect at the time of his alleged crimes, he had to register for life. He does not agree that the 2010 statute would permit this Court to sentence him under a Tier III. The new statute effective 10-1-2010 expressly state that the statute applies to persons whom were already subject to registration on 9-30-2010. Mr. Serrano was not subject to registration until he was convicted of the crimes for which he is required to register and that was on 11-19-2010. Therefore, any sentence of supervision under the new statute would be an illegal sentence as it is not permitted under the statute.

On appeal, through counsel, Mr. Serrano develops that argument further, as noted above.

But the procedural posture dooms Mr. Serrano's Rule 4-345 challenge to the registration requirement. Both he and the State acknowledge that sex offender registration is a collateral consequence of a conviction, notwithstanding case law, in other contexts, that characterizes sex offender registration as "punitive" in nature. *Rogers v. State*, 468 Md. 1, 39 (2020). And Mr. Serrano did not cite, and we did not find, any reported cases in which a court order imposing a sex offender registration requirement was challenged successfully via a Rule 4-345(a) motion to correct an illegal *sentence*. The only reported cases we have found that allowed a challenge to sex offender registration through a motion to correct an illegal sentence are cases in which—in contrast to this case—the registration requirement was imposed *as a condition of probation*. *Cain v. State*, 386 Md. 320, 326 (2005); *Barnes*, 195 Md. App. at 7. The propriety of challenging the registration requirement by way of a motion to correct an illegal sentence was neither raised nor addressed in *Cain*. But it was raised and addressed expressly in *Barnes* (which was later

vacated as moot, 423 Md. 75), in which we held that because probation is part of a sentence, the registration requirement could be challenged under Rule 4-345(a). 195 Md. App. at 7.

Other cases reveal that challenges to a sex offender registration requirement often arise in the context of a civil case, in which an individual who is required to register (usually after release from incarceration) seeks a declaratory judgment that they are not subject to the sex offender registration requirement. *See, e.g., Rogers*, 468 Md. at 3–4 (individual convicted of human trafficking and sentenced to a plea agreement that did not include a registration requirement was required to register after he was released from prison, and then challenged that requirement by filing in the circuit court a complaint for declaratory judgment). Other cases confirm that sex offender registration is challenged properly by way of a civil declaratory judgment action. *See Rodriguez v. State*, 221 Md. App. 26, 39 (2015) (holding that we had no authority to instruct the circuit court to remove the appellant from the sex offender registry, that "registration remains a collateral consequence of criminal punishment, and thus appellant can seek removal from the sex offender registry only through a civil action for declaratory judgment"); *Sinclair v. State*, 199 Md. App. 130, 139 (2011) (dismissing defendant's motion, filed in his criminal case, seeking declaration that he was not required to register as a child sex offender because "a petition for declaratory judgment may not be filed in a criminal cause").

This makes sense, considering that sex offender registration is a collateral consequence of a conviction, and not a sentence itself. *See Arias-Rivera*, -- Md. App. -- slip op. at 7 n.6. And Rule 4-345(a) allows the correction of a *sentence* at any time.

*See Carlini*, 215 Md. App. at 442 ("In Rule 4–345(a), the key verb is 'correct.' The only thing subject to correction, moreover, is 'an illegal sentence.'"). The Rule does not, by its express terms, allow the court to correct collateral consequences of a conviction. And indeed, Mr. Serrano would be subject to sex offender registration whether or not the circuit court had ordered him explicitly to register. *See Arias-Rivera*, -- Md. App. --, slip op. at 6–7; *Barnes*, 195 Md. App at 17 (holding that the requirement to register "is not triggered by a trial court order, but simply by a conviction for child sexual offense"). Accordingly, we affirm the circuit court's denial of Mr. Serrano's February 26, 2018 motion to correct an illegal sentence because sex offender registration is not a "sentence" and cannot be the subject of a Rule 4-345(a) motion to correct.[9]

**JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. APPELLANT TO PAY COSTS.**

[9] Mr. Serrano points to our opinion in *Serrano III* and argues that we should apply Rule 4-345(a) to address the merit of his challenge to the registration requirement, as he asserts we did in that case. In *Serrano III*, while we affirmed the court's denial of Mr. Serrano's motion to correct, we vacated the portion of the sentence subjecting Mr. Serrano to twenty-five years of registration and remanded to the circuit court for the purpose of (re)imposing *lifetime* sex offender registration. Our decision in *Serrano II* had mandated that the portion of the sentence requiring lifetime *supervision* be vacated—but said nothing about vacating the order for lifetime *registration*. *Serrano II*, slip. op. at 3. On remand, the trial court reduced the term of *registration* from lifetime to twenty-five years, which we determined "it lacked any authority under our mandate in *Serrano II*" to do. *Serrano III*, slip op. at 12. The State had not appealed that portion of the circuit court's order, and our opinion in *Serrano III* did reference the authority of an appellate court to correct an illegal sentence on its own initiative under Rule 4-345. *Serrano III*, slip. op. at 12 (*citing State v. Griffiths*, 338 Md. 485, 496 (1995)). But we read *Serrano III* not as correcting an illegal sentence, but as vacating a procedural mistake that the circuit court made on remand after *Serrano II*. And in any event, Mr. Serrano does not dispute that he is subject to lifetime registration.