Circuit Court for Wicomico County
Case No.: 22-K-13-000810

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 75

September Term, 2022

DAVID MYRON SUIRE

v.

STATE OF MARYLAND

Graeff,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 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.

David Myron Suire, appellant, appeals from the denial of a motion to correct an illegal sentence. For the reasons to be discussed, we shall affirm the judgment.

Suire was charged, tried, and convicted in three separate cases in the Circuit Court for Wicomico County for theft and related offenses against elderly persons who had hired him to perform home improvement services.[1] Following a jury trial in October 2013 in case no. K-13-00411 ("411"), Suire was convicted of forgery and counterfeiting, theft under $1,000, and two counts of issuing a false document. The victim in the case was 92-year-old Melvin Bradley.

Case No. K-13-00410 ("410") involved charges stemming from the theft of property—specifically jewelry—belonging to 89-year-old Bertha Waller and her 71-year-old daughter, Kelsie Mattox. Following a jury trial in November 2013, Suire was convicted of theft under $1,000 and was sentenced to 18 months' imprisonment.

In December 2013, Suire was charged with additional theft and conspiracy offenses in Case No. K-13-00810 ("810") related to checks that Suire was alleged to have stolen from Ms. Mattox and Ms. Waller and which were used to withdraw money from their joint checking account. Following a jury trial in June 2014, Suire was convicted of theft scheme ($1,000 to under $10,000); theft ($1,000 to under $10,000); and theft under $1,000. For the theft scheme, the court sentenced him to 10 years' imprisonment, to run consecutive to

[1] We shall not set forth in any detail the facts of the cases. A summary of the facts may be found in this Court's unreported opinion in *Suire v. State*, No. 1984, Sept. Term, 2013, No. 2697, Sept. Term, 2013, & No. 877, Sept. Term, 2014 (filed on May 19, 2016).

any sentence he was then serving. The court merged the other convictions for sentencing purposes.

Suire appealed the convictions in all three cases, which this Court consolidated. We vacated a sentence in case no. 411 and otherwise affirmed the judgments in all three cases. *Suire v. State*, No. 1984, Sept. Term, 2013, No. 2697, Sept. Term, 2013, & No. 877, Sept. Term, 2014 (filed on May 19, 2016).

In February 2022, Suire, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in case no. 810. He seemed to claim that because the victims in case no. 410 and case no. 810 were the same, "the State made multiple errors in filing the charging documents as to the crimes alleged." He asserted that he "should have been able to have a fair trial and the State not allowed to seek multiple case(s) out of one set of docket/criminal information/charging documents and have (2) two bites out of the apple." The State filed a response disputing the claim, noting, among other things, that "the alleged stolen property and the dates of the alleged offense are different, thus making them separate and distinct acts that would not give rise to double jeopardy." The circuit court summarily denied the motion.

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

In this appeal, Suire asserts that case no. 410 and case no. 810 "are both from the same charging documents and both the same thefts [so] merger is required." He maintains that, after his trial in case no. 410, the State should not have been "allowed to retry" him in case no. 810 on "different charges than the original charging document." He also seems to claim that he was sentenced in case no. 810 for the same crimes he was convicted of in case no. 410. He states: "Just look at the crime and the victim. I cashed 2 checks under $1,000.00 $563.00 one event same date, same theft, same everything, except sentences 18 months county 1st in 410 case and 10 years consecutive to 410 in 810 case."

The State responds that Suire's sentence is not inherently illegal and, therefore, the court did not err in denying his motion. The State further points out that Suire's argument is, in essence, the same one he made on direct appeal in which he maintained that the charges in case no. 810 were barred by double jeopardy. In rejecting that contention on direct appeal, we stated:

> [D]ouble jeopardy principles did not 'bar' the prosecution of appellant for stealing the checks despite the fact that he had already been prosecuted for – and convicted of – stealing the rings. Appellant's argument in his brief – that 'double jeopardy as a matter of law' attached 'because Mr. Suire had already been convicted of stealing property from Mrs. Waller and Mrs. Mattox's home on or about April 13, 2013' – glosses over the fact that the two cases dealt with different property, stolen at different times. The evidence was sufficient to prove that separate and distinct thefts were committed.

Slip op. at 51.

In sum, Suire's sentence is not inherently illegal and, therefore, the court did not err in denying his motion to correct it.

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