Circuit Court for Baltimore County
Case No. 91CR1785

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 96

September Term, 2017

DUANE JONES

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 28, 2018

Duane Jones appeals from the February 1, 2017 order, of the Circuit Court for Baltimore County, denying his Petition for Declaratory Judgment and Relief. We affirm.

In 1992, Jones was convicted by a jury of robbery, second-degree rape, second-degree sexual offense, and related offenses. The court imposed the following sentence:

> As to Count Six, which is the robbery Count, it is the judgment and sentence of the Court that you be committed to the jurisdiction of the Department of Corrections for a period of twenty-five years without possibility of parole. That sentence is to be consecutive to any sentence you're presently serving.
>
> Count Two [second-degree rape], it is the judgment and sentence of the Court that you be committed to the jurisdiction of the Department of Corrections for a period of twenty years consecutive to the sentence imposed in Count Six.
>
> As to Count Four [second-degree sexual offense], it is the judgment and sentence of the Court that you be committed to the jurisdiction of the Department of Corrections for a period of twenty years concurrent with the sentence imposed in Count Two.[1]

Jones challenged the legality of his sentence on direct appeal, asserting that the court abused its discretion in imposing a mandatory minimum sentence on the robbery count. *Jones v. State*, 336 Md. 255, 260 (1994) ("*Jones I*"). We upheld the sentence in an unreported opinion, and the Court of Appeals affirmed. *Id.* at 260, 265-66.

[1] After announcing the sentence, the court told Jones that "in effect, I've given you forty-five years consecutive to any sentence you're now serving." In making this statement, the Court did not, as Jones claims, "lump" his consecutive sentences into one sentence. The court was merely commenting that the sentence imposed on the three convictions added up to a total of 45 years.

In May 2007, Jones filed a motion to correct an illegal sentence, in which he questioned "whether the predicate convictions relied upon by the State to obtain an enhanced sentence were separate convictions." *Jones v. State*, No. 820, Sept. Term 2007 (filed November 24, 2008), slip op. at 2, *cert. denied*, 409 Md. 45 (2009). The circuit court denied the motion on May 21, 2007, and Jones appealed. *Id.* We affirmed, holding that the issue was previously decided in *Jones I* and that the law of the case doctrine precluded further review. *Id.*, slip. op. at 3-4.

In the petition for declaratory judgment that is the subject of this appeal, Jones claimed that the sentencing court did not specify when the two consecutive sentences were to begin, and therefore, those sentences should be deemed to be concurrent; (2) the Division of Correction had improperly aggregated his sentences into a single term of confinement; and (3) the Maryland Parole Commission had incorrectly calculated the date he would become eligible for parole.[2] The court denied the petition for relief, stating "[t]his Court previously denied Petitioner's Motion to Correct Illegal Sentence on May 21, 2007." The court added that it had "no jurisdiction over the Parole Commission and its actions."

We begin by noting that a petition for declaratory judgment may not be filed in a criminal case. *See Sinclair v. State*, 199 Md. App. 130, 139 (2011). The State cites *Sinclair* in support of its contention that the court lacked authority to award declaratory relief and, therefore, correctly denied the petition seeking such relief. Although captioned as a

[2] According to the Parole Commission, Jones became eligible for parole in February 2017. As that date has passed, the issue is now moot.

petition for declaratory judgment, the court apparently treated the pleading, which Jones filed *pro se*, as a motion to correct an illegal sentence, and so we shall do the same.

"Although an illegal sentence may, of course, be challenged on direct appeal, some illegal sentences . . . may be challenged long after the time for noting an appeal has run out," even where the defendant 1) failed to object to the sentence at trial, 2) consented to the sentence, or 3) failed to challenge the sentence in a direct appeal. *Carlini v. State*, 215 Md. App. 415, 423 (2013). This exemption, which is set forth in Maryland Rule 4-345, is a "narrow one, available only for a limited species of sentence illegalities." *Id.* at 425. To be subject to correction pursuant to the rule, the illegality must "inhere[] in the sentence itself; i.e., there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful." *Id.* at 426 (quoting *Chaney v. State*, 397 Md. 460, 466 (2007) (emphasis omitted)).

The nature of the claims presented by Jones in his petition do not fall into either category. Rather, Jones appears to claim, first, that his consecutive sentences are ambiguous because the sentencing court did not specify when those sentences were to begin.[3] Even if a claim that a sentence is ambiguous was cognizable under Rule 4-345, this claim is without merit. The sentencing court clearly announced that the sentence for robbery was to be served consecutive to any sentence Jones was then serving, and that the

[3] This theory is different than the argument raised on direct appeal, where Jones challenged the application of the mandatory minimum penalty to his robbery conviction.

sentence for second-degree rape was to be served consecutive to the sentence for robbery. Moreover, the commitment record indicates that the sentence for robbery was to be served consecutive to the "present sentence" which is further identified in the commitment record as "the sentence imposed in case No. 88CR1089."[4] *See Dutton v. State*, 160 Md. App. 180, 193 (2004) (any potential ambiguity in the sentence as announced orally is removed by unambiguous commitment record), *cert. denied*, 385 Md. 512 (2005).

Jones next asserts that the "DOC authorities" "negated" the order of the sentencing court by "arbitrarily" giving all of his consecutive sentences the same starting date, resulting in an unauthorized "lumping" of his consecutive sentences into "one whole sentence" of 47 years and five months. Jones appears to be taking issue with a memorandum he received from the Maryland Parole Commission dated March 17, 2009, which he attached as an exhibit to his petition. That memorandum states that Jones's "aggregate sentence is 47 years and 5 months from 2.12.1992, 25 years of that sentence is to be served without parole" and explains that "[i]t is Parole Commission policy to begin parole eligibility on an aggregate sentence that includes a sentence without parole from the earliest start date which would be 2.12.92." We interpret Jones's contention to be that the Parole Commission did not have authority to aggregate his sentences for purposes of parole eligibility, and note that this is not a claim of illegal sentence for purposes of Rule 4-345. And, as the circuit court noted, it has no jurisdiction over the actions of the Parole

[4] We take judicial notice of the fact that, in that case, Jones was convicted of burglary.

Commission. *See Lomax v. Warden*, 120 Md. App. 314, 337 ("Maryland statutory and administrative law provide the Parole Commission, an executive agency, with exclusive jurisdiction over parole."), *aff'd*, 356 Md. 569 (1998).

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