Circuit Court for Prince George's County
Case No. CT881164X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 162

September Term, 2017

WILLIAM ANDREW HEBB, JR.

v.

STATE OF MARYLAND

Woodward,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 8, 2018

In 1988, appellant, William Andrew Hebb, Jr., appeared with counsel in the Circuit Court for Prince George's County and entered an *Alford* plea to felony murder and use of a handgun in the commission of a crime of violence. He was sentenced to life imprisonment for murder and to a consecutive twenty-year term for the handgun offense. This Court granted his application for leave to appeal and affirmed the judgments. *William A. Hebb, Jr. v. State of Maryland*, No. 1768, September Term, 1988 (filed June 26, 1989). His attempts at post-conviction relief have been unsuccessful.

In May and June of 2016, Hebb filed motions to correct an illegal sentence, which the circuit court denied in a single order. Hebb appeals that ruling and raises the following questions for our review, which we quote:

1. Is Mr. Hebb's sentence illegal because there was no proper conviction to which a sentence could be given since he did not knowingly and voluntarily enter into the *Alford* plea because the circuit court did not strictly adhere to the dictates of Rule 4-242?

2. Is Mr. Hebb's sentence illegal because he consented to the sentence of a crime that did not exist nor happened?

3. Is Mr. Hebb's sentence illegal because his sentence exceeds the sentence agreed to between him and the State?

4. Should the lower court have recused itself because the existence of the appearance of impropriety mandated a *sua sponte* recusal during the consideration of the illegal sentence motion?

For the reasons to be discussed, we affirm the judgment of the circuit court. [1]

[1] In its brief filed in this Court, the State moves to dismiss the appeal "because grounds for the instant appeal . . . were not advanced in the motion filed in, and decided by, the circuit court." The State, however, appears to have overlooked the fact that Hebb filed two motions to correct an illegal sentence in the circuit court: the first on May 16, 2016, and the second on June 1, 2016. The only issue raised on appeal not raised below (continued)

BACKGROUND

In 1988, Hebb was charged with first-degree murder, conspiracy to commit murder, kidnapping, and use of a handgun in the commission of a crime of violence. The victim was his wife. On July 29, 1988, pursuant to a plea agreement with the State, the State amended the murder charge to felony murder and Hebb entered an *Alford* plea to that offense and to the handgun charge. In exchange for the plea, the State agreed to withdraw its notice of intent to seek the death penalty and its notice of intent to seek a sentence of life without the possibility of parole and, following sentencing, to *nol pros* the conspiracy and kidnapping charges. The parties acknowledged that the court could impose "the maximum penalties allowed under law" and that, "if the court so desired," the "sentences could run consecutively," but the defense was free to seek "less than the statutory allowed sentencing."

The State proffered the following facts in support of the plea:

> Were the State to proceed with the testimony one of the witnesses that would be presented by the State would be an individual known as Joseph Scott Shaw. Were Mr. Shaw to testify he would testify that approximately 30 days or so prior to the 18th day of March, 1988 he met the Defendant, William Andrew Hebb, Jr. Apparently Mr. Hebb worked at the 7-Eleven Store and in the manner of conversing Mr. Hebb indicated to Mr. Shaw that he desired to kill his wife.
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> As that conversation progressed there were numerous other conversations within the 30-day period of time prior to the 18th of March, 1988 in which the manner and method of the killing was to take place.

(continued)
was the ruling judge's failure to *sua sponte* recuse herself from considering Hebb's motions. Accordingly, we shall deny the State's motion to dismiss this appeal.

The facts would show were Mr. Shaw to testify he would testify that Mr. Hebb indicated that his wife in fact had an insurance policy, that it was his desire to collect the proceeds of the insurance policy, and that once those proceeds were collected Mr. Shaw would receive the amount of $25,000 for helping him in the murder of his wife.

The facts would show that on the 17th day of March, the evening hours, of 1988, all of this occurring in Saint Mary's County, Maryland, Mr. Hebb and Mr. Shaw got together. They went to an establishment known as Mister Doughnut located in Lexington Park, Saint Mary's County, at which time they again conversed about the murder. Mr. Hebb indicated to Mr. Shaw that tonight is in fact the night that the murder would be committed.

The two of them left Mister Doughnut, drove to an area known as Hewitt Road, which is located in Saint Mary's County, Maryland. On this road is located the house where Sonya Hebb resided.

Sonya Hebb woke up that morning, supposed to leave for her work, working in Washington, about 4:00 o'clock in the morning. The plans, Mr. Shaw would testify to, between he and Mr. Hebb is that the car that they were in they would pretend that it was broken down. In furtherance of that the car that they were in was parked adjacent to a power line substation on Hewitt Road in close proximity to the home of Ms. Sonya Hebb, the wife of Mr. Hebb. The plans were that the battery cables were to be removed. That Mr. Hebb would walk to the house, would indicate to his wife that the car was broken down, and he in fact needed his wife and her car for the purposes of shining lights on his car so the mechanical difficulties could be corrected.

Ms. Hebb at this point in time after being confronted by Mr. Hebb complied with the request. Mr. Hebb and Ms. Hebb entered into her car, drove to the vicinity of the power line, at which time Mr. Hebb opened the hood on his car and pretended to be working on it.

Mr. Shaw would testify that the pre-planned, pre-arranged scheme of events would be that he would then go to the car of Ms. Hebb, wherein she was sitting, and induce her out of the car, and then murder her. After several times getting her out of the car he commenced cutting her with a straight razor about the neck and face for the purposes of killing her while Mr. Hebb was continuing to be pretending to work on the mechanical difficulties with his car.

Were Mr. Shaw to testify he would testify that at one point in time Ms. Hebb broke away from him, ran and subsequent evidence gathered by the police would show that there was a blood trail from the point of where the cars were parked traversing approximately 320-some feet along the roadway, and to verify that Mr. Shaw would testify that when Ms. Hebb broke away she proceeded running on the road. Mr. Shaw ran after her. At this point in time Mr. Hebb came up. Mr. Shaw kicked her, apparently rendering her unconscious, at which time – and during this process Mr. Shaw will testify that Mr. Hebb joined to the extent of holding the legs of Ms. Hebb still while Mr. Shaw continued cutting her and kicked her in the head rendering her unconscious. At which time she was drug back to the car forcefully by both parties.

When they reached the trunk of the car the trunk was opened by Mr. Hebb. Her body was to be placed in the trunk for the purposes of further disposal.

The facts would show that at that point in time apparently Ms. Hebb regained consciousness and started crying out her husband's name. At which time the Defendant, Mr. Hebb, walked around to his car, obtained a .38 caliber handgun, walked back around the car, put it to the back of the head of Ms. Hebb and fired one shot. Thusly, rendering the immediate death of Ms. Hebb.

Ms. Hebb was then placed in the trunk of the car. Both individuals having two cars at this point in time, Mr. Shaw and Mr. Hebb. They drove both of the cars south on roadways of Saint Mary's County for approximately 20 miles to what is known as the First District Park located in the Saint Ingioes area of Saint Mary's County. Once they were there they both conversed as to how he would dispose of the body of Ms. Hebb. They waited until approximately daylight, at which time they both then drove their respective cars to the house northbound on Maryland Route 5 to Leonardtown. Then eastward on what is known as the Leonardtown/Hollywood Road to the house of Mr. Hebb, Jr. At that point in time both cars were parked in the yard of the house. Both individuals, Mr. Shaw and Mr. Hebb, entered into the house. During this period of time Mr. Hebb penned a note. The note basically acknowledging that he, Mr. Hebb, in fact fired one bullet into the head of Ms. Hebb. At that point in time Mr. Shaw left the premises. Mr. Hebb driving the smaller car, the car that was originally driven by Ms. Hebb to the power substation. It was then driven to what is known as Dorsey Park, which is on the same Leonardtown/Hollywood Road that by way of driving is probably no more than a two or three-minute drive.

In this period of time Mr. Hebb, Sr., apparently arrived home and found the note that was penned by Mr. Hebb indicating that a serious injury had occurred to Ms. Hebb and that he was in fact contemplating suicide. Mr. Hebb took that note to the Sheriff's Department, turned it over to Sergeant Kerr, who then turned it over to the Criminal Investigative Division. At this point in time the police became involved in the investigation.

The car of Ms. Hebb was located parked at Dorsey Road. Ms. Hebb's body was found in the trunk of the car. At which time Mr. Hebb came walking out of the woods. Officer Kwiatkowski apprehended Mr. Hebb. At which time he made a spontaneous statement that he had never seen an individual, a person killed before.

After that point in time the Medical Examiner came from Saint Mary's County and pronounced Ms. Hebb dead. Her body was taken to the morgue in Baltimore. The manner of death described to Ms. Hebb was a bullet wound to the head causing her death.

The facts would show that Mr. Hebb was then taken to the Criminal Investigative Unit. He was read his Miranda warnings. He voluntarily elected to waive his Miranda warnings. He in fact indicated to Officers Haynie and Carter that he in fact fired the bullet into the head of his wife.

After that point in time he was arrested, charges were brought, he was incarcerated in the Saint Mary's County Jail.

Subsequent to that point in time he wrote a letter to a young lady by the name of Lorraine Morgan. That letter in fact stated by him that he in fact killed his wife.

Further, after certain plea negotiations were negotiated with Mr. Shaw for his testimony here, a note was produced. That note was written by Mr. Hebb, was given to a trustee in the jail by the name of Michael Thomas. That note was delivered directly to Mr. Shaw. That letter basically indicates to Mr. Shaw that whatever he does he should not say that it was planned, that would automatically entail the death penalty and that all he would have to do was to plead insane.

The facts would show that on this particular night Mr. Hebb went to the house of Ms. Hebb for the purposes of fraudulently inducing her to the location where she would be killed; that she was in fact forcefully drug

> over 300 feet down the road against her will, without her consent, without her knowledge, and she was then subsequently removed from the scene.
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> The facts would further show that the handgun utilized in the commission of the crime was in fact the handgun belonging to Mr. Hebb, the Defendant. The ballistics would show that the bullet retrieved from the head of Ms. Hebb was in fact fired by that gun.
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> The Federal Bureau of Investigation would testify that in fact the handwriting on all the notes was in fact the handwriting of Mr. Hebb's. That would be the State's case.

Transcript of July 29, 1998, Plea Hearing, p. 12-19.

A sentencing hearing was held on November 1, 1988. In arguing for a sentence less than the maximum permitted, defense counsel acknowledged that, under the plea agreement, the murder charge had been amended from first-degree premeditated murder to felony murder and stated that, "we had amended it to felony murder because we believed the Parole Board might consider that less harshly than first degree murder." In advocating for the maximum permitted sentence, the prosecutor stated that "the underlying felony" was kidnapping, and reminded the court that Hebb had "enticed" and "lured" his wife "to the very location of her death." The prosecutor further reminded the court that, after the victim was cut with a razor blade and rendered unconscious, Hebb and Shaw dragged her to the car to put her in the trunk and, when she then regained consciousness, Hebb shot her in the back of the head.

The court sentenced Hebb to "the Division of Corrections for the period of his natural life" for the felony murder and to a consecutive twenty-year term for the handgun offense.

DISCUSSION

Rule 4-345(a) provides that a court "may correct an illegal sentence at any time," even if the defendant failed to object at the time the sentence was imposed. *See Bryant v. State*, 463 Md. 653, 662 (2014). The rule is very narrow in scope, however, and "only applies to sentences that are 'inherently' illegal." *Id.* (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). An "inherently illegal" sentence is one in which "'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[.]'" *Bryant*, 436 Md. at 663 (quoting *Chaney,* 397 Md. at 466). A sentence has also been deemed "inherently illegal," and thus subject to correction under Rule 4-345(a), when it exceeds the sentencing terms of a binding plea agreement. *Matthews v. State,* 424 Md. 503, 519 (2012). In one unusual instance, the Court of Appeals addressed and vacated as "inherently illegal" a sentence imposed for a crime for which the defendant had never been indicted. *Johnson v. State,* 427 Md. 356 (2012).

With the very narrow scope of a Rule 4-345(a) motion in mind, we turn to Hebb's contentions on appeal.

1. The Sentence Is Illegal Because There Was No Proper Conviction

Hebb asserts that there was "no valid conviction to which a sentence could be given because he did not knowingly and voluntarily enter into the *Alford* plea." He bases this contention on the fact that, at the plea hearing, no one specifically inquired whether he understood "the amended charge of felony murder," and he now claims that he did not understand the "nature and elements" of that crime.

Hebb is indirectly attacking his sentence by challenging his plea to felony murder. That, however, is something he should have done in his direct appeal. As the Court of Appeals recently reiterated, a Rule 4-345(a) motion to correct an illegal sentence is very narrow in scope and is clearly "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) (quotation omitted). Hebb does not dispute that a life sentence is a permissible sanction for felony murder. Thus, his sentence is not "inherently illegal" and, therefore, the claim he is raising here is not the proper subject of a Rule 4-345(a) motion to correct an illegal sentence.

In any event, Hebb raised this same issue in a petition for post-conviction relief and the post-conviction court concluded it had no merit. The post-conviction court reviewed the transcript from the plea hearing and found that, although "there was no overt discussion of the elements of the crime of felony murder or the underlying crime of kidnapping[,]" the totality of the circumstances supported its finding that Hebb understood the nature of felony murder. *Memorandum Opinion And Order (filed August 8, 2015), p. 15.* The post-conviction court noted that Hebb had responded in the affirmative when the trial court had asked him whether he had read the indictment; responded in the affirmative when asked whether he had gone over the indictment with defense counsel; and responded in the affirmative when asked whether, after reading the indictment and discussing it with counsel, he understood the charges against him. *Id.* at 15-16. The post-conviction court further noted that Hebb's attorney "made several indications that he [had] discussed with Petitioner how well the evidence that would be

presented to the court matched with the elements of the charged crimes." As examples, the court pointed to "Plea Hr'g. Tr. 19:18-21 ('We agree the elements are indeed there.'); *see also* Plea Hr'g. Tr. 20:2-5 (After denying many of the facts proffered by the State, defense counsel admits that any denial by Petitioner 'does not go to the elements of the crimes and we understand that.')." *Id.* at 16. The post-conviction court also considered:

> The State did engage in a discussion of the fact that Petitioner induced the victim to the location of his vehicle by fraudulently telling her that his car was not operating and that he needed her vehicle to help him repair it. Plea Hr'g. Tr. 18:21-19:2. Furthermore, the State made mention of the fact that Petitioner delivered a note to his co-defendant Scott Shaw that advised Mr. Shaw to not admit that the murder was planned because it would open up the possibility of the death penalty being sentenced. Plea Hr'g. Tr. 18-12-20. As stated *supra*, the *Priet* Court [*State v. Priet*, 289 Md. 275 (1981)] explicitly recognized that a trial court can properly consider the fact that the elements of the crime were discussed as part of the State's proffer of evidence in its determination of whether the defendant understood the nature of the crime he is charged with. *See also Daughtry* [*v. State*, 419 Md. 35 (2011)] at 74 (stating that "it is possible that the factual basis proffered to support the court's acceptance of the plea may describe the offenses charged in sufficient detail to pass muster under the Rule [4-242(c)]"). Accordingly, the State's discussion of Petitioner's kidnapping of his wife, as well as his note to Mr. Shaw, can properly lend considerable weight to the determination that Petitioner understood that kidnapping was the underlying felony and that premeditation was the crucial element elevating the homicide to first degree murder.

Id. at 16.

This Court denied Hebb's application for leave to appeal the post-conviction court's denial of his petition for post-conviction relief. *William Andrew Hebb v. State,* No. 1467, September Term, 2015 (filed March 8, 2016). If the issue were properly before us in this appeal - which it is not - we would find no error in the reasoning and conclusion of the post-conviction court.

2. The Sentence Is Illegal Because Hebb Consented To A Crime That Did Not Exist Nor Happened

Hebb next contends that his "sentence is illegal because he erroneously consented to a crime that never happened or did not exist." Specifically, he asserts that "there was no design nor intent to commit a kidnapping" and, therefore, "there was no felony murder." He also maintains that there was "nothing in the recital of the State's facts which points to a kidnapping."

This issue, like the first, is not the proper subject of a Rule 4-345(a) motion to correct an illegal sentence. Hebb is clearly attacking the conviction, not the sentence. Moreover, Hebb overlooks the fact that kidnapping may be "by force or fraud." *See* Section 3-502 of the Criminal Law Article of the Md. Code (formerly Art. 27, § 337). The proffer of facts certainly established that Hebb fraudulently induced his wife to leave her home and go with him, using the ruse that his vehicle had broken down. The proffer also indicated that, after the victim had escaped from Shaw, Shaw and Hebb restrained her and dragged her back to the car. After hearing the State's proffer of facts, the defense informed the court that "[w]e agree the elements" of the crimes "are indeed there." Although the defense would have disputed some minor details in the State's proffer, defense counsel stated that those details did "not go to the elements of the crime and we understand that."

3. The Sentence For Felony Murder Exceeds The Agreed Upon Sentence

Hebb asserts that his sentence to prison for felony murder for "the balance of his natural life" is illegal "because the court issued a sentence which exceeds the sentence

agreed to." Hebb bases this contention on the belief that his sentence is a sentence to life imprisonment *without the possibility of parole*. Hebb is mistaken. His sentence for felony murder, although pronounced as a sentence for "the balance of his natural life," was, in fact, a sentence to imprisonment for life, without any restriction on his eligibility for parole. The State does not contend otherwise.

The plea agreement provided that the State would withdraw both its notice of intent to seek the death penalty and its notice of intent to seek a sentence of life without the possibility of parole, which it in fact did. There was no other agreement as to sentencing and thus, no breach of the plea agreement.

4. The Circuit Court Judge Erred In Not Sua Sponte Recusing Herself From Ruling on the Motion To Correct An Illegal Sentence

Finally, Hebb maintains that Judge Krystal Alves should have *sua sponte* recused herself from ruling on his Rule 4-345(a) motion to correct an illegal sentence. He bases his position on his claims that, in 1991-1992 Judge Alves was a law clerk to Judge William Missouri, the judge who had accepted his plea and sentenced him in 1988; that Judge Missouri "mentored" Judge Alves; that Judge Alves later became a prosecutor in Prince George's County; that when Judge Alves became a circuit court judge, she "took over" Judge Missouri's cases upon his retirement; and that Judge Alves presided over the hearing on his petition for post-conviction relief and denied it. Hebb maintains that these

circumstances created an "appearance of impropriety" and warranted Judge Alves's "disqualification" from ruling on his Rule 4-345(a) motion. This contention has no merit.

APPELLEE'S MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.