Circuit Court for Baltimore City
Case Nos. 190250016, 18

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 179

September Term, 2020

CONRAD GAINES

v.

STATE OF MARYLAND

Shaw Geter,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 4, 2021

*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.

In 1991, Conrad Gaines, appellant, was convicted by a jury in the Circuit Court for Baltimore City of felony murder, robbery with a dangerous weapon, and carrying a handgun. The court merged the robbery conviction into the felony murder conviction and sentenced appellant to life in prison. The court imposed a three-year sentence for carrying a handgun, to run consecutive to his life sentence. This Court affirmed his convictions on direct appeal. *Gaines v. State*, No. 724, Sept. Term 1991 (filed January 30, 1992). Appellant was subsequently granted post-conviction relief and the court resentenced him in 1995. At resentencing, the court merged appellant's three-year sentence for carrying a handgun into his life sentence for murder.

In 2020, appellant, representing himself, filed a motion to correct illegal sentence claiming that his life sentence was illegal because the indictment did not charge him with felony murder. He also contended that the re-sentencing court failed to award him credit for time served against his life sentence. The court denied the motion without a hearing. On appeal, appellant raises the same claims as he did in his motion to correct illegal sentence. For the first time, he also appears to challenge the court's jury instruction with respect to felony murder on the grounds that the "judge never stated on record the degree of felony murder." For the reasons that follow, we shall affirm.

The Court of Appeals has explained that there is no relief, pursuant to Rule 4-345(a), where "the sentences imposed were not inherently illegal, despite some form of error or alleged injustice." *Matthews v. State*, 424 Md. 503, 513 (2012). A sentence is "inherently illegal" for purposes of Rule 4-345(a) where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not a permitted one, *id.*; or

where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews*, 424 Md. at 514. A sentence may also be "inherently illegal" where the underlying conviction should have merged with the conviction for another offense for sentencing purposes, where merger was required. *Pair v. State*, 202 Md. App. 617, 624 (2011). 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) (quotation marks and citation omitted).

With those principles in mind, we conclude that, even if true, appellant's claim regarding the court's felony murder jury instruction would not render his sentence inherently illegal. Similarly, in *Bratt v. State*, 468 Md. 481 (2020) the Court of Appeals held that the failure to "award appropriate credit for time served" is an alleged "defect in sentencing *procedure* that does not render the sentence itself inherently illegal." *Id.* at 499. Therefore, any issues relating to the calculation of time are not subject to attack as an illegal sentence. *Id.* Instead a motion to correct the commitment record pursuant to Rule 4-351 is the "appropriate vehicle" for addressing a credit issue. *Id.* at 506-07 ("[P]rocedural errors" on the commitment record, such as failure to include a sentencing start date and the appropriate credit for time served, may be remedied by filing a motion pursuant to Rule 4-351, not Rule 4-345.)[1]

[1] We note that appellant appears to be under the impression that, if the court had awarded him the credit he requested, it would have somehow diminished or reduced his life sentence. This is incorrect. Simply put, there is no maximum expiration date of a life sentence from which to subtract any credit. *See Witherspoon v. Maryland Parole Commission*, 149 Md. App. 101, 106 (2002) ("An inmate serving a parolable life sentence cannot obtain early release (continued)

Finally, appellant's claim that he was never charged with felony murder and that the court constructively amended the indictment after jeopardy attached so as to charge him with that offense is cognizable in a motion to correct illegal sentence. *See Johnson v. State*, 427 Md. 356 (2012) (holding that the appellant's sentence for assault with intent to murder was illegal because he had not been charged with that offense in the original indictment and the rule governing amendment of indictments precluded the State from amending the indictment to add that charge once jeopardy had attached). However, this contention lacks merit.

Pursuant to an indictment, appellant was charged with nine offenses, including one count of murder using the "short form" indictment, a "formula" first established by the legislature in 1906. *See Ross v. State*, 308 Md. 337, 342-343 (1987). Specifically, the charge read as follows:

> The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath do present that the aforesaid Defendant(s) . . . on or about the date(s) of the offense set forth above, at the location set forth above, in the City of Baltimore, State of Maryland, feloniously, willfully and of deliberately premediated malice aforethought did kill and murder one Timothy Dean Davis contrary to the form of the Act of Assembly, in such case made and provided, and against the peace, government and dignity of the State (Art. 27, Section 407 & Common Law).

Several years before appellant was indicted, the Court of Appeals in *Ross*, *supra*, noted that "a charge of murder," using the short-form indictment for murder, "may be made out by proof of premeditated murder or proof of felony murder[.]" 308 Md. at 347. The Court further stated that, although "murder in the first degree may be proved in more than one way[,] [t]here

based on diminution of confinement credits[,]" but those credits are taken into account when determining when the inmate is eligible for parole.)

is no requirement . . . that a charging document must inform the accused of the specific theory on which the State will rely." *Id*. at 344. Accordingly, the Court rejected Ross's claim that the State's use of the short form indictment for murder deprived him of his constitutional right of fair notice and due process when the State successfully tried him for felony murder. *Id.* at 347.

Here, appellant's indictment conformed in every relevant way with the statutory short form specified in former Md. Code Ann., Art. 27 § 616 (1992 Repl. Vol). Thus, as *Ross* makes clear, there is no merit to appellant's claim that he was wrongfully convicted of felony murder because he was not explicitly charged with that specific offense. Consequently, the circuit court did not err in denying appellant's motion to correct illegal sentence.

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