

Circuit Court for Baltimore County  
Case No. K93-0526

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 315

September Term, 2017

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ROBERT BERRY

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Graeff,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: May 7, 2018

\*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.

Following an August 1993 jury trial in the Circuit Court for Baltimore County, Robert Berry was convicted of felony murder, use of a handgun in the commission of a crime of violence, multiple robbery counts, and manslaughter. On October 28, 1993, the court sentenced Berry to life imprisonment for felony murder and to a consecutive twenty-year term for the handgun offense. (The remaining convictions were merged for sentencing purposes.) The sentencing court awarded Berry credit for the 287 days he had spent in custody prior to sentencing, which was reflected in the fact that his sentence was ordered to begin on January 14, 1993 (287 days before the sentencing date). This Court affirmed the judgments. *Berry v. State*, No. 1731, September Term, 1993 (filed August 22, 1994).

In March 2017, Berry filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a), which permits a court to “correct an illegal sentence at any time.” In his motion, Berry asserted that “pretrial credits cannot be placed in front of a life sentence or any other sentence that falls under Art. 27 § 638C(a).”<sup>1</sup> He argued that the application of his “pretrial credits” to the beginning of his term of incarceration failed to “diminish” his life sentence, thus creating “a serious due process violation.” Berry requested a hearing on

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<sup>1</sup> Art. 27 § 638C(a) of the Code of Maryland (1992) provided, in pertinent part:

Any person who is convicted and sentenced shall receive credit against the term of a definite or life sentence or credit against the minimum and maximum terms of an indeterminate sentence for all time spent in the custody of any state, county or city jail, correctional institution, hospital, mental hospital or other agency as a result of the charge for which sentence is imposed or a result of the conduct on which the charge is based, and the term of a definite or life sentence or the minimum and maximum terms of an indeterminate sentence shall be diminished thereby.

his motion. The court summarily denied the motion, without a hearing. Berry appeals that ruling. He contends that the court erred in denying relief, and in doing so without first holding a hearing. Because the court did not err, we affirm.

As the Court of Appeals has repeatedly explained, there is no relief under 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. None of these situations apply here. In short, Berry’s sentence is not “inherently illegal.” Moreover, given the fact that he is serving a life sentence, with no time suspended, the sentencing court made no error in the manner in which it applied the credit for the time Berry was in custody prior to sentencing.

Finally, the court was not required to hold a hearing before denying Berry’s motion. The rule upon which Berry relies to support his position that a hearing was required, Md. Rule 2-311, is a rule of civil procedure. The applicable rule is Md. Rule 4-345(f), which requires a hearing only where the court modifies, reduces, corrects, or vacates a sentence; the rule does not require a hearing before a court may *deny* a motion to correct an illegal sentence.

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