

Circuit Court for Baltimore County
Case No. K-09-0169

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 416

September Term, 2018

EMMIT WOODROW STOKES

v.

STATE OF MARYLAND

Meredith,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 1, 2019

*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.

Emmit Woodrow Stokes appeals the denial, by the Circuit Court for Baltimore County, of his motion to correct an illegal sentence, which he filed pursuant to Maryland Rule 4-345(a). We shall affirm.

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*, 436 Md. 653, 662 (2014). The rule is very narrow in scope, however, and “only applies to sentences that are ‘inherently’ illegal.” *Id.* An “inherently illegal” sentence is one as to 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[.]’” *Id.* at 663 (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). In contrast, “where a matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a).” *Tshiwala v. State*, 424 Md. 612, 619 (2012).

In February 2010, Mr. Stokes was convicted of two counts of armed robbery. At sentencing, the State introduced evidence that Mr. Stokes had three prior convictions for crimes of violence and had served separate periods of incarceration for each.¹ Accordingly, the court imposed a sentence of life without parole, pursuant to § 14-101(c) of the Criminal

¹ As no transcripts were included in the record before us, we take some background facts from our unreported opinion in the direct appeal filed by Mr. Stokes. *Stokes v. State*, No. 2804, Sept. Term 2009 (June 11, 2011).

Law Article, which provides a mandatory sentence of life without parole upon a fourth conviction for a violent crime.²

Mr. Stokes contends that his sentence is illegal because the State did not give timely notice, pursuant to Maryland Rule 4-245, of its intention to seek the imposition of the mandatory sentence of life without the possibility of parole.³ The State asserts that the notice required by Rule 4-245 was served on defense counsel within the time prescribed in the Rule, as evidenced by (1) the certificate of service on the notice that was filed with the court, (2) defense counsel’s lack of objection when the prosecutor informed the court that notice had been given, and (3) defense counsel’s on-the-record acknowledgment, on the first day of trial, that Mr. Stokes was subject to a life sentence.⁴

² Section 14-101(c) of the Criminal Law Article provides that “on conviction for a fourth time of a crime of violence, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence shall be sentenced to life imprisonment without the possibility of parole.”

³ Maryland Rule 4-245(c) provides:

When the law prescribes a mandatory sentence because of a specified previous conviction, the State’s Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State’s Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement.

⁴ As noted, the record before us does not include transcripts of the trial or sentencing hearing. Because we conclude that Mr. Stokes’s claim does not amount to an “illegal sentence” within the meaning of Rule 4-345, however, review of the transcripts is not necessary for us to resolve the issue on appeal.

Mr. Stokes does not dispute that he was subject to an enhanced sentence as a subsequent offender, nor does he challenge the validity of the predicate convictions that served as the basis for his sentence. He claims, instead, that his sentence is illegal because of an alleged procedural error in the sentencing proceeding, which is not a basis for relief under Rule 4-345(a).⁵ *See Tshiwala, supra*. Accordingly, the court did not err in denying the motion to correct an illegal sentence.

Mr. Stokes also contends that his sentence was unconstitutional in light of *Johnson v. State*, ___ U.S. ___, 135 S.Ct. 2551 (2015) and *Welch v. State*, ___ U.S. ___, 136 S.Ct. 1257 (2016). Those cases, however, are inapposite, as they relate specifically to a portion of a federal enhanced sentencing statute that the United States Supreme Court declared unconstitutionally vague and therefore violative of due process rights. *Johnson*, 135 S.Ct at 2557; *Welch*, 136 S.Ct at 1265. Because Mr. Stokes was not sentenced pursuant to the federal statute at issue in *Johnson* and *Welch*, those decisions have no bearing on the issue before us.

⁵ In any event, we note that Maryland Rule 4-245(c) requires the State to serve notice of prior convictions on the defendant or counsel within 15 days of sentencing. Consistent with that Rule, the certificate of service on the “State’s Notice Under Maryland Rule 4-245” indicates that the notice was sent to defense counsel via first-class mail on April 24, 2009, more than nine months before the sentencing hearing on February 16, 2010. *See* Md. Rule 1-323 (“a certificate of service is prima facie evidence of service.”).

Pursuant to Rule 4-245(d), the notice is filed with the clerk and presented to the court after conviction. Here, consistent with the Rule, the notice was stamped by the “Criminal Department” on February 17, 2010, after Mr. Stokes was convicted on February 4, 2010.

Finally, Mr. Stokes asserts that the court erred in denying his Rule 4-345 motion without a hearing. That Rule, however, requires a hearing only when the sentence is modified, reduced, corrected, or vacated. Md. Rule 4-345(f). Because the court denied the motion, no hearing was necessary.

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