Circuit Court for Anne Arundel County
Case No. C-02-CR-17-001524

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 470

September Term, 2019

ARTHUR ANTONIO WIGGINS

v.

STATE OF MARYLAND

Fader, C.J.,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: May 28, 2020

A jury sitting in the Circuit Court for Anne Arundel County convicted Arthur Antonio Wiggins, the appellant, of a violation of § 3-602(b)(1) of the Criminal Law Article (2012 Repl.), which makes it a felony for a "parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor" to sexually abuse the minor. The court sentenced Mr. Wiggins to 25 years of incarceration, with all but 20 years suspended, and five years of supervised probation, and ordered that sentence to run consecutively to any sentence that Mr. Wiggins was then serving. Mr. Wiggins contends that: (1) although the victim is his biological daughter, the evidence was insufficient to establish that he is her parent for purposes of § 3-602(b)(1); and (2) his sentence is illegal because the court ordered it to be served consecutively to a sentence that was not then in existence.

Because Mr. Wiggins did not renew his motion for judgment of acquittal at the close of all the evidence, his challenge to the sufficiency of the evidence was not preserved for appellate review. We also see no inherent illegality in Mr. Wiggins's sentence. We will therefore affirm the judgment.

BACKGROUND

Trial

The chief witness for the State was the victim, M.N., who testified that Mr. Wiggins is her father. She never lived with Mr. Wiggins, but she visited him, and he called her on the phone "every day."

From the time that M.N. was 12 years old, Mr. Wiggins would often talk to her on the phone about having sex with her. When M.N. was 14 and 15 years old, Mr. Wiggins

sent her numerous letters that contained pornographic images and sexually explicit writing, some of which alluded to a sexual relationship between M.N. and Mr. Wiggins. M.N. read some of the letters, but not all of them, because she "already knew what was in them and [she] didn't want to read it." She said that she felt "weird" when she read the letters, explaining, "that's not something that my father should be writing to me."

M.N. told her mother about the phone calls and letters, but her mother did nothing. M.N. then told her therapist about the letters.

Sharon Kelly, M.N.'s therapist, testified that M.N. gave her letters and photographs that M.N. received from Mr. Wiggins. After reviewing them, Ms. Kelly contacted the Department of Social Services. The letters and photographs were admitted into evidence.

Also admitted into evidence were photographs, non-sexual in nature, showing Mr. Wiggins and M.N. together at various stages of M.N.'s childhood. On the back of some of the photographs were notes addressed to M.N., by her name or by one of the nicknames that Mr. Wiggins called her. The notes were signed "Papa," "Your Daddy," or "Your Father."

At the close of the State's case-in-chief, Mr. Wiggins, who represented himself at trial, moved for judgment of acquittal. He asserted that the State had not demonstrated that he was a "parent" within the meaning of § 3-602(b)(1), because although he was M.N.'s biological father, he was never married to M.N.'s mother, he had been in prison almost all

of M.N.'s life, and, therefore, he never had legal or physical custody of M.N.[1] The court denied the motion.

Mr. Wiggins took the witness stand. He testified that he and M.N.'s mother "became an item" after she helped him to edit his first book. After M.N was born, Mr. Wiggins and M.N.'s mother "split," but they remained in contact. Mr. Wiggins acknowledged having sent the sexually explicit letters, but testified that he had intended them only for M.N.'s mother, not for M.N., and that they were related to a book he was working on that "dealt with subject matters that are taboo, unconventional, [and] erotic." He claimed that the pornographic photos in evidence were also for his book, that they were sent to M.N.'s mother, and that he did not intend for M.N. to see them. Mr. Wiggins did not call any additional witnesses and he did not renew his motion for judgment of acquittal at the close of all the evidence.

The court instructed the jury that, pursuant to the parties' stipulation, it was a proven and undisputed fact that Mr. Wiggins is the biological father of M.N., and that Mr. Wiggins wrote the letters that were entered into evidence. After an hour of deliberation, the jury returned a verdict of guilty.

Sentencing

At the sentencing hearing, the prosecutor advised the court that, in 1988, Mr. Wiggins was convicted of rape and murder, and was sentenced to life in prison, with all but 40 years suspended. M.N. was conceived during Mr. Wiggins's incarceration.

[1] There was no evidence before the jury regarding Mr. Wiggins's incarceration.

Mr. Wiggins was in prison when he sent M.N. the sexually explicit letters and pornographic images. In 2016, after serving 28 years of his sentence, Mr. Wiggins was released on parole. At the time of the sentencing hearing, Mr. Wiggins was facing charges that he had raped M.N. five months after being released from prison; trial was scheduled for the following week.

The prosecutor read a victim impact statement from M.N., in which she stated that "[she] was subjected to the emotional and physical abuse of [her] father for about 13 years." She "held in this shameful secret for years," but finally disclosed the abuse to her therapist when she learned that Mr. Wiggins would be "coming home and finally acting out his plans for [her]." M.N. was placed in foster care but, a year or two later, when her "father came home," on her 17th birthday, Mr. Wiggins raped her.

The prosecutor asked the court to impose the maximum sentence of 25 years, and to order that the sentence be served consecutively to any additional time Mr. Wiggins would face when his parole from the earlier term of confinement was revoked. The court sentenced Mr. Wiggins to a prison term of 25 years, all but 20 years suspended, and five years of probation. The court ordered the sentence to be served consecutively to any sentence Mr. Wiggins was "currently serving." Mr. Wiggins noted a timely appeal.

DISCUSSION

I. MR. WIGGINS'S CLAIM OF INSUFFICIENCY OF THE EVIDENCE WAS NOT PRESERVED FOR APPELLATE REVIEW.

Section 3-602(b) of the Criminal Law Article provides that:

> (1) a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.
>
> (2) A household member or family member may not cause sexual abuse to a minor.

To obtain a conviction for a violation of § 3-602(b), the State must prove "(1) that the defendant is a parent, family or household member, or had care, custody, or responsibility for the victim's supervision; (2) that the victim was a minor at the time; and (3) that the defendant sexually molested or exploited the victim by means of a specific act." *Scriber v. State*, 236 Md. App. 332, 343 (2018) (quoting *Schmitt v. State*, 210 Md. App. 488, 496 (2013)). The State charged Mr. Wiggins under subsection (b)(1) of the statute, as M.N.'s parent.

Although he concedes that he is M.N.'s biological father, Mr. Wiggins contends that the evidence at trial was insufficient for the jury to find that he is her "parent." He claims that he was "never in a position to be a parent" to M.N. because he was incarcerated when she was conceived and he remained incarcerated up to and during the time of the offense. He argues that the statute does not apply to him because he was never married to M.N.'s mother, was "never in a position of trust or authority over M.N.," and "never had the legal rights, duties, or responsibilities of a parent."

Because Mr. Wiggins did not renew his motion for judgment of acquittal at the close of all the evidence, he has not preserved his challenge to the sufficiency of the evidence. A motion for judgment of acquittal made at the close of all of the evidence is a prerequisite to a claim of evidentiary insufficiency on appeal. *Haile v. State*, 431 Md. 448, 464 (2013)

(citing § 6-104 of the Criminal Procedure Article and Maryland Rule 4-324). Where, as in this case, "a criminal defendant moves for judgment of acquittal at the close of the State's evidence, the motion is denied, and the defendant proceeds to offer his own evidence, the defendant, in effect, has withdrawn his motion." *Haile*, 431 Md. at 464. "[F]ailure to renew [the] motion for judgment of acquittal at the close of all the evidence . . . effectively preclude[s] the trial court from considering [the] insufficiency contention. Consequently, there [is] nothing for the [appellate court] to consider."[2] *Id.* at 464-65 (quoting *Ennis v. State*, 306 Md. 579, 587 (1986)).

Even if Mr. Wiggins had preserved his claim of insufficiency by renewing his motion for judgment of acquittal at the close of all the evidence, his argument would fail. Evidence is legally sufficient to sustain a conviction if, upon "viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Roes v. State*, 236 Md. App. 569, 582 (2018) (quoting *Grimm v. State*, 447 Md. 482, 494-95 (2016)).

Our statutory analysis begins "with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology." *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (quoting *Schreyer v. Chaplain*, 416 Md. 94,

[2] Mr. Wiggins's pro se status does not exempt him from complying with procedural rules. Maryland courts "have long held that a defendant in a criminal case who chooses to represent himself is subject to the same rules regarding reviewability and waiver of questions not raised at trial as one who is represented by counsel." *Hyman v. State*, 463 Md. 656, 674-75 (2019) (quoting *Grandison v. State*, 341 Md. 175, 195 (1995)).

101 (2010)). Unless the text is ambiguous, "it is our duty to interpret the law as written and apply its plain meaning to the facts before us." *In re S.K.*, 466 Md. 31, 53 (2019).

The stipulation that Mr. Wiggins is M.N.'s biological father, without more, was sufficient as a matter of law to establish that Mr. Wiggins is M.N.'s "parent," as that term is ordinarily and popularly understood in the English language. There is nothing in the unambiguous text of the statute, or in its context or apparent purpose, that creates an exemption from prosecution for a parent who sexually abuses his or her child. Moreover, although Mr. Wiggins was incarcerated for most of M.N.'s life, she testified that she had regular contact with him, including visiting him and speaking with him regularly by phone. It was thus Mr. Wiggins's status as her parent that created the opportunity for the sexual abuse to occur.

II. MR. WIGGINS'S SENTENCE IS NOT INHERENTLY ILLEGAL.

Mr. Wiggins asserts that the court imposed an illegal sentence when it ordered that his sentence be served consecutively to any other sentence he was "currently serving," because he was not then serving any other sentence. The State contends that Mr. Wiggins points to no illegality in his sentence that would be subject to correction by this Court. We agree with the State.

Pursuant to Maryland Rule 4-345(a), a "court may correct an illegal sentence at any time." Whether a sentence is illegal is a question of law that we review without deference. *Bailey v. State*, 464 Md. 685, 696 (2019). A sentence is illegal for purposes of Rule 4-345 if the illegality "inheres 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." *State v. Bratt*, ___ Md. ___, 2020 WL 2028264, at *6 (Apr. 28, 2020) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). "[W]here the sentence imposed is not inherently illegal, and where the 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).

Mr. Wiggins does not contend that he was not convicted of the offense for which his sentence was imposed, or that his sentence is not permitted by law. That the court ordered Mr. Wiggins's sentence to be served consecutively to any sentence he was then serving, when he was apparently not serving any other sentence at that time, does not make the sentence itself inherently illegal.[3] Accordingly, Mr. Wiggins is not entitled to relief under Rule 4-345(a).

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

[3] If Mr. Wiggins believes that there is an error or omission in the commitment record that requires correction, the proper remedy is to file a motion pursuant to Maryland Rule 4-351(b). *See Bratt*, 2020 WL 2028264, at *10-*11.