

Circuit Court for Baltimore City
Case No: 193126035

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 479

September Term, 2018

MORRIS KENNETH GARY

v.

STATE OF MARYLAND

Fader, C.J.,
Meredith,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 29, 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.

In 1993, a jury sitting in the Circuit Court for Baltimore City convicted Morris K. Gary of conspiracy to commit murder. The court sentenced Mr. Gary to life imprisonment.¹ This Court affirmed the judgments, *Gary v. State*, No. 614, September Term, 1994 (filed March 9, 1995), and upon further review, the Court of Appeals held that Mr. Gary’s sentence was legal. *Gary v. State*, 341 Md. 513, 521 (1996).²

In 2018, Mr. Gary filed a motion to correct an illegal sentence in which he asserted that his sentence was illegal because the trial court “instructed the jury incorrectly with regard to the definitions of first and second degree murder” and “then referenced these improper instructions to explain conspiracy to commit murder to the jury.” He maintained, therefore, that the conviction for conspiracy to commit murder was a nullity and hence, the sentence illegal.

The circuit court concluded that the legality of the sentence was “already determined” by the Court of Appeals and, therefore, reconsideration of the issue was barred by the law of the case. Mr. Gary appeals and contends that the law of the case is inapplicable because the Court of Appeals did not address the argument he raised in his motion to correct the sentence. The State moves to dismiss the appeal, claiming the issue

¹ The jury failed to reach a verdict on charges of first and second-degree murder, and a mistrial was granted on those counts. Mr. Gary later pleaded guilty to two counts of second-degree murder and two counts of use of a handgun in the commission of a crime of violence and was sentenced to a total term of 30 years’ imprisonment, all but 10 years suspended, to run concurrently with the life sentence for conspiracy to commit murder.

² The issue before the Court of Appeals was whether a sentence to life imprisonment for *conspiracy* to commit murder was a legal sentence. Mr. Gary contended that a ten-year term was the maximum permitted. The Court of Appeals disagreed.

is not cognizable in a Rule 4-345(a) motion to correct an illegal sentence. In other words, the State insists that there is nothing inherently illegal about Mr. Gary’s sentence. We agree with the State.

The Court of Appeals has explained that 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” 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. 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). None of those scenarios are present in this case.

Mr. Gary is challenging the validity of his conviction for conspiracy to commit murder based on his allegation that the jury instructions were flawed – an issue that is not the proper subject of a Rule 4-345(a) motion to correct an illegal sentence. As we recently noted, the “Court of Appeals has consistently and austerely limited Rule 4-345(a) review to those cases where the illegality lies not in a flaw in the procedural process antecedent to the sentence but to those limited instances where the illegality is inherent in the sentence itself.” *McKinney v. State*, 239 Md. App. 297, 315 (2018), *cert. denied*, 662 Md. 573 (2019). And the Court of Appeals continues to state that 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) (quoting *Wilkins v. State*, 393 Md. 269, 273 (2006)).

Accordingly, we grant the State’s motion to dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE
PAID BY APPELLANT.**