Circuit Court for Baltimore City
Case Nos: 103149031, 032, 033

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 541

September Term, 2020

JAY ANTHONY JONES

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 2, 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.

Jay Anthony Jones appeals from the denial of his motion to correct an illegal sentence, which he had filed in the Circuit Court for Baltimore City. We shall affirm the judgment denying relief because we agree with appellee, the State of Maryland, that the issue he is raising was previously rejected by this Court and, therefore, the issue is barred by the law of the case doctrine. But even if the issue is not barred, we find no merit to Mr. Jones' claim that his sentence is inherently illegal.

BACKGROUND

In 2003, three separate indictments were filed against Mr. Jones following the assault and robbery of two victims by Mr. Jones and two accomplices. Following a jury trial, Mr. Jones was convicted of various offenses under each indictment, including first-degree assault and use of a handgun in the commission of a crime of violence (indictment 103149**031**); robbery with a deadly weapon, theft under $500, use of a handgun in the commission of a crime of violence, and conspiracy to commit armed robbery (indictment 103149**032**); and robbery with a dangerous weapon, theft under $500, use of a handgun in the commission of a crime of violence, and conspiracy to commit armed robbery (indictment 103149**033**). The court sentenced Mr. Jones to a total term of 65 years' incarceration, running some sentences consecutively and merging others.[1] On direct

[1] In *Jones v. State*, No.1369, September Term, 2011 (filed October 10, 2012) (*Jones III*), this Court stated:

Initially, the circuit court sentenced appellant to twenty-five years for first degree assault (031-Count III); twenty years for use of handgun in the commission of a crime of violence (031–Count VI), to run consecutive to first degree assault (031-Count III); twenty years for robbery with a deadly weapon (032-Count I); twenty years for use of a hand[gun]

(continued)

appeal, this Court held that the convictions for first-degree assault (Count III under indictment 031) and robbery with a deadly weapon (Count I under indictment 033) should have merged for sentencing purposes and, therefore, vacated the sentences for those offenses and remanded the case to the circuit court "for imposition of new sentence in accordance with the views expressed in this opinion[.]" *Jones v. State*, No. 366, September Term, 2005 (filed July 17, 2007) (*Jones I*).

On October 15, 2007, a re-sentencing hearing was held. Mr. Jones requested the opportunity to present mitigating evidence prior to the imposition of sentence, but the court indicated that it was unnecessary because there was nothing to mitigate. The court then sentenced Mr. Jones to a total term of 60 years' imprisonment—five years less than the original total. Mr. Jones appealed, arguing that the court abused its discretion in precluding him from presenting mitigating evidence. This Court affirmed the judgment. *Jones v. State*, No. 1989, September Term, 2007 (filed June 17, 2009) (*Jones II*). The Court of Appeals reversed, holding that Mr. Jones was permitted to present mitigating evidence at the re-sentencing hearing, noting that the "remand hearing was for the purpose of 'resentencing' the petitioner." *Jones v. State*, 414 Md. 686, 701 (2010).

in the commission of a crime of violence (032-Count V), to run consecutive to robbery with a deadly weapon (032-Count V); twenty years for robbery with a deadly weapon (033-Count I), to run consecutive to use of a handgun in the commission of a crime of violence (032-Count I); and twenty years for use of a handgun (033-Count V), to run consecutive to first-degree assault (031-Count III), and concurrent to use of a handgun in the commission of a crime of violence (031-Count VI). *Slip op*. at 13.

In January and August 2011, the case came before the circuit court once again for resentencing. At those hearings, defense counsel argued that the original sentence—a total term of 65 years' imprisonment—was actually a total term of less than 65 years because the original sentencing judge ran the sentence for robbery with a deadly weapon (Count 1 under indictment 033) consecutive to use of a handgun in the commission of a crime of violence (Count V under indictment 032) *before* pronouncing sentence on the handgun offense, thereby rendering those sentences concurrent. In short, defense counsel maintained that, taking into consideration that the sentencing structure of the original sentencing package was faulty and accounting for the merger mandated by this Court on direct appeal, upon resentencing the court could impose a total new sentence not exceeding 20 years because all the sentences must run concurrently with each other. The court rejected counsel's argument that the structure of the original sentence was faulty and once again resentenced Mr. Jones to a total term of 60 years' imprisonment. Once again, Mr. Jones appealed. *Jones v. State*, No. 1369, September Term, 2011 (filed October 10, 2012) (*Jones III*).

On appeal, Mr. Jones raised two questions: (1) "Did the sentencing court fail to reconsider the sentence imposed in connection with Case No. 103149032 and simply re-impose the sentence imposed by the original sentencing judge?" and (2) "Did the sentencing court err in imposing a sentence of 60 years' incarceration rather than the 40 years' incarceration based on the merger of the first degree assault sentence into the robbery

with a deadly weapon sentence?"[2] In addressing those questions, we stated that Mr. Jones was arguing that: "(1) the circuit court failed to reconsider the sentence for 032-Count I, and (2) his sentence was illegally structured." *Slip op.* at 7. We rejected both contentions. First, we concluded that "it was not necessary for the circuit court to reconsider any sentence under 032."

In addressing the second contention, we noted that "appellant maintains that the circuit court was unable to sentence him for more than twenty years incarceration" and that he "highlights the following arguments that were presented to the sentencing court: (1) the imposition of consecutive sentences was impossible because the original sentences were imposed out of order; (2) the sentences that were consecutive to the first degree assault were consecutive to sentences that no longer existed; and (3) the sentence for use of a firearm during the commission of a crime of violence (032-Count V & 033 Count-V) was rendered concurrent because there was no sentence in which it could be consecutive." *Jones III*, *slip op.* at 12. In short, we noted that "Appellant contends that the original structure of the sentence demonstrates that a sentence of more than twenty years is not possible." *Id*. at n. 4.

We rejected Mr. Jones' contention regarding the structure of his original sentence, stating: "Our recitation of the sentence [as initially imposed] represents a logical sequence. Appellant asserts that the circuit court imposed the sentences out of order. Our

[2] Counsel for Mr. Jones seems to alternate between maintaining that the maximum aggregate term of imprisonment that could be imposed upon resentencing was 20 years and 40 years.

reorganization is not an acceptance of that argument." *Slip op*. at 13 n. 5. We also found no merit to Mr. Jones' claim that his sentence was improperly structured upon resentencing, stating:

> Once the circuit court merged first degree assault (031-Count III) into robbery with a deadly weapon (033-Count I), and the two use of a handgun in the commission of crime of violence sentences (031-Count VI & 033-Count V) were merged, use of a handgun in the commission of a crime of violence (033-Count V) had no sentence in which it could run concurrent or consecutive. However, the court remedied that situation, articulating that use of a handgun in the commission of a crime of violence (033-Count V) would run concurrent to robbery with a deadly weapon (033-Count I). This was apparently done for 'clarity' purposes. Nevertheless, nothing about the court's actions, in our opinion, suggests that there was an abuse of discretion. *See Parker v. State*, 193 Md. App. 469, 494-96 (2010) (a court is permitted to reconsider sentence and restructure it as it deems necessary).

Jones III, slip op. at 15. And we concluded that the 60-year aggregate sentence imposed upon resentencing "was within statutory parameters." *Id*. In 2016, the circuit court denied Mr. Jones' motion for modification of sentence.

In 2018, Mr. Jones—representing himself—filed a "Motion to Correct Illegal Sentence and/or Mistakenly Imposed Sentence and for Other Appropriate Relief." In his motion, and in an accompanying memorandum of law in support thereof, Mr. Jones argued that, when this Court upon direct appeal (*Jones I*) vacated the sentence for first-degree assault (Count III under indictment 031), "the sentences that were previously imposed as consecutive to that Count became by operation of law concurrent to the other sentences imposed." He, therefore, maintained that his aggregate sentence upon resentencing was impermissibly increased because "a court has no authority to impose a sentence as consecutive to a sentence which does not exist." He insisted that, "[a]t the new sentencing

hearing the court needed only vacate the sentence imposed under count 31" [sic] (Count III under indictment 031—first-degree assault) and "[t]he other sentences which were ordered to run consecutive to that count could not under Maryland law be changed to then run consecutive to other counts, if that was not the original intended sentence." He also reiterated his counsel's earlier argument that the original sentence was "imposed out of order."

The circuit court summarily denied Mr. Jones' motion by order dated July 15, 2020. Mr. Jones appeals that ruling.

DISCUSSION

On appeal, Mr. Jones centers his contention of sentence illegality on the proposition that a court may not run a sentence consecutively to a sentence that is not then in existence. He asserts: "The issue before the Court now is that since the first degree assault conviction was vacated, and because the manner in which the original sentencing Court imposed the sentences, the sentences that were ordered to be serve[d] consecutive to that sentence, were effectively no longer consecutive for the evident reason that, that sentence was no longer in existence." He maintains that the issue in this appeal is distinct from prior arguments before this Court because his argument now is that the sentence imposed upon resentencing was "not a permitted one." In other words, he seems to be arguing that the resentencing court did not have the authority to run his sentences consecutively because (1) the original sentencing court had announced that the sentence for robbery with a deadly weapon (Count 1 under indictment 033) would run consecutive to use of a handgun in the commission of a crime of violence (Count V under indictment 032) before pronouncing sentence on the

handgun offense and (2) when the first-degree assault sentence was vacated by this Court in *Jones I,* by "operation of law" his remaining sentences were rendered concurrent.

We agree with the State that the arguments Mr. Jones is making in this appeal are essentially the same arguments before this Court in *Jones III* and, therefore are barred by the law of the case doctrine. *Nichols v. State*, 461 Md. 572, 593 (2018) ("the law of the case doctrine bars a trial court from considering under Maryland Rule 4-345(a) an issue as to the legality of a sentence where an appellate court has previously resolved the same issue.")

But even if Mr. Jones' present argument may be construed to be somehow different from the arguments raised and resolved in *Jones III,* we find no merit to his contention that his sentence is inherently illegal and hence correctable pursuant to a Rule 4-345(a) motion.

Rule 4-345(a) provides that a court "may correct an illegal sentence at any time," but the Rule is very narrow in scope and is "limited to those situations in which the illegality inheres in the sentence itself[.]" *Chaney v. State,* 397 Md. 460, 466 (2007). An inherently illegal sentence is one in which there "has been no conviction warranting any sentence for the particular offense," *id.*, where "the sentence is not a permitted one for the conviction upon which it was imposed," *id.,* where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012), or where the court lacked the power or authority to impose the sentence. *Johnson v. State*, 427 Md. 356, 368 (2012). 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) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)).

As the Court of Appeals explained in *Bryant v. State*, 436 Md. 653, 663 (2014),

> The distinction between those sentences that are "illegal" in the commonly understood sense, subject to ordinary review and procedural limitations, and those that are "inherently" illegal, subject to correction "at any time" under Rule 4-345(a), has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings. *See Tshiwala v. State*, 424 Md. 612, 619, 37 A.3d 308, 312 (2012) ("[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)."); *State v. Wilkins*, 393 Md. 269, 284, 900 A.2d 765, 774 (2006) ("[A]ny illegality must inhere in the sentence, not in the judge's actions. In defining an illegal sentence the focus is not on whether the judge's 'actions' are *per se* illegal but whether the sentence itself is illegal.").

Here, Mr. Jones' argument centers on the allegation that the original sentencing court erred in ordering that the sentence for robbery with a deadly weapon (Count I under indictment 033) would run consecutive to use of a handgun in the commission of a crime of violence (Count V under indictment 032) before pronouncing sentence on the handgun offense. While it is true that a court may not run a sentence consecutive to a sentence not then in existence, that prohibition, as the State points out, generally applies when one judge is imposing a sentence that is consecutive to a sentence that a later judge in a distinct case has not yet imposed. In contrast, in this case, when the court originally ordered that the sentence for Count I under indictment 033 was to run consecutive to Count V under indictment 032, it had not yet pronounced sentence for the latter count—but the court did so moments thereafter. In our view, at best, if there was any error it was procedural in

nature and not substantive and, hence, the issue Mr. Jones is raising is not the proper subject of a Rule 4-345(a) motion. *Tshiwala*, *supra*, 424 Md. at 619 ("A sentence does not become an illegal sentence because of some arguable procedural flaw in the sentencing procedure.") (quotation marks and citations omitted)); *Wilkins, supra*, 393 Md. at 275 ("An error committed by the trial court during the sentencing proceeding is not ordinarily cognizable under Rule 4-345(a) where the resulting sentence or sanction is itself lawful.").

We also agree with the State that, pursuant to *Twigg v. State*, 447 Md. 1 (2016), upon this Court's vacating the sentence for first-degree assault and remanding for resentencing, the trial court had the discretion to sentence Mr. Jones to a total term of incarceration not exceeding the original 65 years and could achieve that goal by restructuring the sentences in the manner it did—something we clearly concluded in *Jones III*. *See also Nichols*, *supra*, 461 Md. at 610 (Upon resentencing after one sentence was vacated upon appeal, the trial court had the discretion to make the defendant's "new sentences either concurrent with or consecutive to each other" so long as the new aggregate sentence did not exceed the term of the original sentence).

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