Circuit Court for Montgomery County
Case No: 125157C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 566

September Term, 2019

SHELDON COOK

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E. Jr.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 1, 2020

In 2014, a jury sitting in the Circuit Court for Montgomery County found Sheldon T. Cook, appellant, guilty of distribution of cocaine. The State then filed a notice of its intent to seek an enhanced sentence predicated on prior CDS convictions incurred by Mr. Cook. On March 3, 2015, the court sentenced him to 40 years' imprisonment, without the possibility of parole, as a fourth-time subsequent offender. This Court affirmed the conviction. *Cook v. State,* No. 1569, Sept. Term, 2015 (filed February 23, 2016).

In 2017, Mr. Cook filed a motion to correct an illegal sentence, which the circuit court granted. It appears that the circuit court concluded that the State had not proven at the original sentencing hearing that Mr. Cook had served three separate terms of confinement on the predicate convictions. At a hearing held on December 18, 2017, the court vacated the 40-year, no parole, sentence and imposed 25 years' imprisonment, with the possibility of parole, pursuant to the third-time subsequent offender provisions, as amended by the Justice Reinvestment Act. *See* Md. Code, Criminal Law § 5-609(c) (2012 Repl. Vol.) (2018 Supp.). He did not appeal that sentence, but he did seek review by a three-judge sentencing review panel of the circuit court which made no changes to the sentence.

In 2019, Mr. Cook filed a second motion to correct an illegal sentence, which the court denied. He appeals that ruling and asserts that his sentence is illegal because the court erred in re-sentencing him as a third-time subsequent offender. We disagree and shall affirm.

When Mr. Cook was originally sentenced in 2015 for distribution of cocaine (an offense he had committed in 2014), the penalty for distribution of CDS was a sentence of

imprisonment not exceeding 20 years, as it is today. *See* Crim. Law, § 5-609(a) (2012 Repl. Vol.) (2014 Supp.; 2018 Supp.) The penalty, however, for a third-time subsequent CDS offender was a sentence of imprisonment of *not less than* 25 years, to be served without parole. Crim. Law, § 5-609(c) (2012 Repl. Vol.) (2014 Supp.). Pursuant to the Justice Reinvestment Act, effective October 1, 2017, the penalty for a third-time offender was amended to a *maximum* term of 25 years' imprisonment, with the possibility of parole. Crim. Law § 5-609(c) (2012 Repl. Vol.) (2018 Supp.). Hence, when the circuit court granted Mr. Cook's first motion to correct an illegal sentence and re-sentenced him to 25 years (with parole possibility) as a third-time offender, the court sentenced him in accordance with the amended and more lenient penalty for a third-time offender.

Mr. Cook does not dispute that he met the requirements for a third-time subsequent CDS offender, but he maintains that he should have been re-sentenced to a maximum term of 20 years' imprisonment pursuant to Crim. Law Crim. Law § 5-609(a) because, upon the granting of his 2017 motion to correct an illegal sentence, the State did not re-notify him that it intended to seek an enhanced penalty as required by Rule 4-245(c). The State responds that it was not required to file a second notice of an intent to seek an enhanced penalty, citing *Gantt v. State*, 73 Md. App. 701, 703-04 (1988) (holding that the enhancement notice carried over to a resentencing where a sentence had been reversed on appeal). But even if a second notice was required, the State maintains that its failure to provide one did not render Mr. Cook's sentence inherently illegal. The State relies on *Bailey v. State*, 464 Md. 685, 697 (2019) wherein the Court of Appeals stated that "the imposition of a sentence enhancement despite the State's failure to timely serve the notice

for the enhanced sentence does not qualify as an illegal sentence pursuant to Maryland Rule 4-345(a)."

We agree with the State that Mr. Cook's sentence is not inherently illegal and, therefore, we hold that the circuit court did not err in denying his Rule 4-345(a) motion to correct an illegal sentence. In short, *Bailey* is dispositive of Mr. Cook's claim on appeal. Moreover, under the circumstances here, we fail to perceive how he was in any way prejudiced by the State's failure to re-notify him of its intent to seek an enhanced penalty.

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