Circuit Court for Worcester County
Case No.: C-23-CR-18-000158

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 576

September Term, 2024

BRENT S. WHITE

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 4, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Brent S. White appeals two judgments rendered by the Circuit Court for Worcester County**:** (1) the denial of his motion to correct an illegal sentence and (2) the denial of his Health-General §§ 8-505 and 8-507 request for substance abuse evaluation and commitment. The State maintains that the court correctly denied the motion to correct an illegal sentence and asserts that the decision denying the request for substance abuse evaluation and commitment is not appealable. We agree with the State.

In 2018, White pleaded guilty in this case (C-23-CR-18-000158) to distribution of a controlled dangerous substance ("CDS") (oxycodone), a violation of Md. Code Criminal Law § 5-602(a)(1), and was sentenced to 10 years' imprisonment, with credit for 233 days' time served, to run concurrently with any outstanding sentence. White also pleaded guilty to distribution of CDS (fentanyl) and possession with intent to distribute CDS (heroin / fentanyl mix) in case no. C-23-CR-18-000329 and was sentenced in that case to a total term of 20 years' imprisonment, to run consecutively to the sentence in this case.

On March 18, 2024, White, representing himself, filed the same Rule 4-345(a) motion to correct an illegal sentence in both cases. He claimed that his "sentence is illegal because he was convicted and sentence[d] for (heroin) which was determine[d] to be inconclusive by the forensic experts[.]" The court denied the motions and White appealed.[1]

[1] White's appeal of the rulings in case no. C-23-CR-18-000329 was docketed in this Court as No. 571, September Term, 2024. This Court dismissed that appeal on September 20, 2024 after White failed to respond to this Court's order directing him to show cause as to why the appeal should not be dismissed for failure to produce all relevant transcripts. Thus, the appeal presently before us addresses only the judgments rendered in case no. C-23-CR-18-000158.

On appeal, White maintains that his "sentence is illegal" because "according to the expert forensic all charge of drugs in [his] case was insufficient / inconclusive" and yet he "was still illegally convicted for all the drugs and given 30 years which is not permitted by law."

We hold that the court did not err in denying White's Rule 4-345(a) because his sentence in this case of 10 years' imprisonment for distribution of CDS (oxycodone) is legal. *See* Crim. Law §5-608(a) ("Except as otherwise provided in this section [dealing with repeat offenders], a person who violates a provision of §§ 5-602 through 5-606 of this subtitle with respect to a Schedule I or Schedule II narcotic drug is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years[.]"). Oxycodone is a Schedule II narcotic drug. *See Burke v. Maryland Board of Physicians*, 250 Md. App. 334, 341 n.1 (2021) (observing that oxycodone is a Schedule II drug). *See also* https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf (identifying oxycodone as a Schedule II drug).

Moreover, White is clearly attacking the sufficiency of the evidence to support the conviction, which is beyond the scope of a Rule 4-345(a) motion. *Colvin v. State*, 450 Md. 718, 725 (2016) ("'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.'" (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)).

In support of his position that the court erred in denying his Health General request for substance abuse evaluation and commitment, White asserts that he is "in dire need [of] drug treatment" and maintains that "by law" he is "entitle[d]" to it if he voluntarily

"accept[s] the program" regardless of how much time he is serving. The court, after noting that it had considered the request, denied it without explanation.

Health-General § 8-505(a)(1) and § 8-507(a)(1) provide that a court, pursuant to certain conditions, "may" order an evaluation for substance abuse and "may" commit a defendant for treatment. As such, whether to grant relief is left to the court's discretion. In other words, contrary to White's position, evaluation and commitment under the statutes is not an entitlement. And neither statute requires a court to set forth its reasons for denying a request for an evaluation or commitment for treatment, and neither statute provides the right to an appeal from an adverse decision. Here, the court clearly indicated that it had considered White's request. Accordingly, the court's order denying White's request for substance abuse evaluation is not appealable. *See Fuller v. State*, 397 Md. 372, 380 (2007) ("the denial of a petition for commitment for substance abuse treatment pursuant to Section 8-507 of the Health-General Article is not an appealable order."). We see no reason why the denial of a petition for a substance abuse evaluation pursuant to Health-General § 8-505 would be treated differently than the denial of a request for treatment pursuant to Health-General § 8-507 for appeal purposes.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY DENYING MOTION TO CORRECT AN ILLEGAL SENTENCE AFFIRMED.

APPEAL OF ORDER DENYING REQUEST FOR EVALUATION AND TREATMENT PURSUANT TO HEALTH GENERAL § § 8-505 AND 8-507 DISMISSED.

COSTS TO BE PAID BY APPELLANT.