

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0605

September Term, 2012

JOSEPH NOLAN-EL

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: August 31, 2015

*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 1978, a jury sitting in the Circuit Court for Baltimore City found Joseph Nolan-El, appellant, guilty of first-degree murder, kidnapping, and extortion. He was thereafter sentenced to life imprisonment for murder and to ten years for extortion, to run consecutive to his life sentence. But he received no sentence for kidnapping, as the kidnapping offense merged with murder for sentencing purposes. A year later, his judgments of conviction were affirmed by this Court. *Joseph Nolan v. State of Maryland*, No. 171, September Term, 1979 (filed October 31, 1979), *cert. denied*, 286 Md. 750 (1980).

More than thirty years later, Nolan-El filed a *pro se* motion to correct an illegal sentence in which he claimed that the ten-year sentence for extortion was illegal because the circuit court, in imposing that sentence, did not state a specific date upon which the sentence was to begin. When the circuit court denied the motion, Nolan-El noted this appeal.¹ For the reasons that follow, we affirm.²

¹ While the appeal of the denial of his motion to correct an illegal sentence was pending, this Court granted his application for leave to appeal the circuit court’s denial of his motion to re-open his closed post-conviction petition and remanded the case with instructions to vacate his convictions and award a new trial based on *Unger v. State*, 427 Md. 383 (2012). *Joseph Nolan-El v. State of Maryland*, 1307, September Term, 2012 (filed September 3, 2014). The State’s petition for writ of certiorari is presently pending before the Court of Appeals. If the Court of Appeals denies certiorari, or grants certiorari and affirms our decision, the instant appeal would be moot.

² The State moves to dismiss the appeal on the grounds that Nolan-El “failed to provide a complete transcript” of his trial proceedings. Because the trial transcripts are not necessary to resolve the appeal, we deny the State’s motion to dismiss.

DISCUSSION

For a sentence to be subject to correction by motion filed under Rule 4-345(a), the “illegality must inhere in the sentence, not in the judge’s actions.” *State v. Wilkins*, 393 Md. 269, 284 (2006). In other words, “the focus is not on whether the judge’s ‘actions’ are *per se* illegal but whether the sentence itself is illegal.” *Id.* Thus, a sentence is “illegal” for purposes of Rule 4-345(a) 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 v. State*, 424 Md. 503, 514 (2012). In contrast, as noted, “‘a trial court error during the sentencing proceeding is not ordinarily cognizable under Rule 4-345(a) where the resulting sentence or sanction is itself legal.’” *Montgomery v. State*, 405 Md. 67, 74-75 (2008) (quoting *Evans v. State*, 382 Md. 248, 279 (2004), *cert. denied*, 543 U.S. 1150 (2005))

With those principles in mind, we turn to Nolan-El’s claim. He asserts that his sentence for extortion was illegal because it was made to run consecutive to the life sentence imposed for murder and because there is no definitive end date for the life sentence, there is no definitive start date for the extortion sentence. He points out that Rule 4-351(a)(5) provides that a commitment record shall include “[a] statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with

reference to termination of the preceding term or to any other outstanding or unserved sentence[.]”

In sentencing Nolan-El, the sentencing judge stated:

[W]ith respect to the felony murder, I sentence you to the Commission of Correction for the balance of your natural life. That sentence is to run from May 1, 1978. With regard to the conviction for extortion, I sentence you to the Commission of Correction for a period of ten years. That sentence to run consecutively to the sentence which I imposed for felony murder, that is, life plus ten years, starting from May 1, 1978.

Hence, the court made clear that the extortion sentence would begin upon completion of the life sentence and, because the court had the discretion to order the extortion sentence to run consecutive to the life sentence, the sentence is not illegal. *Wright v. State*, 24 Md. App. 309, 319 (1975) (unless otherwise restricted by statute or constitution, a court has the discretion to make a sentence consecutive or concurrent to any other sentence). The fact that there is no precise start date for the extortion sentence, given that there is no precise end date for a life sentence, does not render the extortion sentence “illegal” under Rule 4-345(a). Accordingly, the circuit court did not err in denying Nolan-El’s motion to correct an illegal sentence.

**STATE’S MOTION TO DISMISS DENIED.
JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**