Circuit Court for Worcester County
Case No: 23-K-12-000116

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 628

September Term, 2020

---

ANTONIO CORTEZ MONROE

v.

STATE OF MARYLAND

---

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: April 30, 2021

In 2015, while serving a sentence in Virginia, Antonio Cortez Monroe pleaded guilty in the Circuit Court for Worcester County to possession with intent to distribute a controlled dangerous substance and fleeing and eluding a police officer and was sentenced to a total term of 18 years' imprisonment. In 2020, Mr. Monroe filed a motion to correct an illegal sentence and/or motion to correct fraud, mistake, or irregularity in sentencing after learning that his sentence in this case is deemed to run consecutively to and not currently with the Virginia sentence. He appeals the court's summary denial of his motion. Because Mr. Monroe failed to produce the transcript from the July 1, 2015 plea and sentencing hearing, we cannot address the merits of his contentions on appeal and, therefore, we shall affirm the judgment.

## BACKGROUND

Pursuant to a Criminal Information filed in 2012, Mr. Monroe was arrested and charged with possession with intent to distribute cocaine, attempting to elude a uniformed police officer by fleeing on foot, and related offenses. After posting a $250,000 bond, he was released from custody pending trial. On August 14, 2012, Mr. Monroe failed to appear in court for trial; the bail bond was forfeited and a bench warrant issued. It appears that the bondsman apprehended Mr. Monroe in Virginia Beach, Virginia in March 2013 and surrendered him to the Virginia Beach Police Department due to criminal charges pending in that jurisdiction. Based on the limited record before us, it appears that Mr. Monroe was convicted and sentenced in Virginia to a term of approximately seven and one-half years for the criminal offenses he committed there. Then in January 2015, Mr. Monroe, pursuant to the Interstate Agreement on Detainers, notified Worcester County of his desire for

disposition on the charges pending in this case and Maryland was ultimately given temporary custody for trial purposes.

Based on the circuit court's docket entries, on July 1, 2015, pursuant to a "binding plea," Mr. Monroe pleaded guilty to possession with intent to distribute cocaine and fleeing and eluding. The docket entry further reflects that he was sentenced to 17 years' imprisonment for the distribution offense and to a consecutively run term of one (1) year for fleeing and eluding, and that the total sentence was "to run consecutively with any sentence the Defendant may be serving or obligated to serve." The Commitment Record reflects that the sentence runs "consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences," and that he was awarded "23 days credit for time served prior to and not including the date of sentence[.]"

After he was convicted and sentenced in Maryland, Mr. Monroe was returned to Virginia to complete the sentence he was serving in that state. Upon completion of his Virginia sentence, Mr. Monroe was moved to a Maryland prison to serve his sentence in this case and at that time he says that he "discovered that he [had] received no credit against his Maryland sentence."

In July 2020, Mr. Monroe, representing himself, filed a pleading he captioned "Motion to Correct an Illegal Sentence and/or Motion to Correct Fraud, Mistake, or Irregularity in Sentencing." He asserted that he was currently confined in a Maryland prison and that he "believe[d] that his Maryland sentence should be made to run from the date imposed—plus credit for time service—which was July 1, 2015, and therefore, concurrent to the sentence then being served in another State." He claimed that when he

was sentenced in this case, the court "failed to state on the record whether the Maryland sentence would be [run] concurrently or consecutively to the sentence then being served in the other State" and, therefore, based on the court's "silence" his sentence should be deemed to run concurrent with the sentence he was serving outside of Maryland. He also pointed out that his Commitment Record in this case stated that his sentence would run "consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences." And he claimed that he had "reasonably under[stood] the plea bargain to allow for concurrent sentences between both jurisdictions."

The State opposed the motion, asserting that "[i]f a Defendant is incarcerated in another State, serving a sentence on charges wholly unrelated to the charges in Maryland, they are not entitled to credit in Maryland." The State did not respond to Mr. Monroe's specific claims.

The court denied Mr. Monroe's motion, giving no explanation for its decision.

## DISCUSSION

On appeal, Mr. Monroe repeats his claim that the sentencing court had failed to announce whether his sentence in this case was run concurrent with or consecutive to the sentence he was then serving in Virginia. Coupled with the fact that the Commitment Record reflects that his sentence runs "consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences," Mr. Monroe maintains that his sentence was run concurrently with the Virginia sentence. He also reiterates the allegation he made in the circuit court that he had "reasonably understood the plea bargain to allow for concurrent sentences between both jurisdictions."

The State initially responds that Mr. Monroe's arguments are not cognizable in a Rule 4-345(a) motion to correct an illegal sentence. We disagree, at least with respect to his claim that running the sentence consecutive to the Virginia sentence breached the terms of his plea agreement. *See Matthews v. State*, 424 Md. 503, 519 (2012).

The State also points out that Mr. Monroe has failed to support his position with the transcript from the July 1, 2015 plea and sentencing hearing. But in any event, the State maintains that other evidence in the record belies his claims. For instance, the State refers us to an exhibit attached to a defense motion that indicates that on May 21, 2012, the Deputy State's Attorney sent defense counsel a telefax offering a plea deal in this case that, in exchange for Mr. Monroe's guilty plea to "felony possession of cocaine" and "fleeing and eluding," the State would nol pros the remaining charges. The offer further provided that the State would make "no specific request regarding period of incarceration but is free to make comments regarding sentencing." The State points out that this "plea offer . . . makes no mention of Monroe's Virginia sentence or a global plea agreement that encompassed the Virginia case and the Maryland charges." We are not persuaded, however, that this plea offer has any relevance to the issues before us. First, the offer was made in May 2012—months before Mr. Monroe failed to appear for trial in this case and apparently prior to his trial and conviction in the Virginia case. Second, there is no indication in the record that the plea agreement leading to entry of the 2015 guilty plea was based on the same terms as those set forth in the 2012 plea offer.

The State also refers us to the sentencing guidelines worksheet which includes a handwritten notation that the sentences imposed in this case were "consecutive to any

sentence now serving or now obligated to serve." And the State relies on a letter Mr. Monroe wrote to the court almost two years after he was sentenced in this case in which he identified himself and stated that he had been "sentenced to seventeen years for a drug charge to be served consecutively to a seven and one half year sentence received in the State of Virginia for an additional drug charge." We find both of these documents unpersuasive because what controls is what the court announced on the record of the sentencing hearing.

The only way to resolve the apparent conflict between the docket entry and the Commitment Record is to review the transcript from the July 1, 2015 plea and sentencing hearing. Undoubtedly, the transcript controls when there are discrepancies between a transcript and docket entries or a commitment record. *See Savoy v. State*, 336 Md. 355, 360 n.6 (1994) (docket entry); *Stephens v. State*, 198 Md. App. 551, 555 n.1 (2011) (docket entries); *Dutton v. State*, 160 Md. App. 180, 191-92 (2004) (commitment record). And the transcript, of course, would indicate the terms of any binding plea agreement and permit us to determine whether the sentence, as imposed, breached those terms.

In his Reply Brief, Mr. Monroe states that he has attempted to obtain the requisite transcripts, but that "it has not been a successful endeavor during the Covid-19 pandemic." Based on our review of the circuit court record, however, Mr. Monroe has yet to request that the July 1, 2015 hearings be transcribed.

Because Mr. Monroe failed to secure the transcript, we cannot resolve the issue on appeal and, therefore, we affirm the judgment of the circuit court. *See* Md. Rule 8-403(a) (Unless the transcript is already on file, it is the appellant's responsibility to order it.). In

short, Mr. Monroe had the burden of producing a sufficient factual record from which we could determine whether error was committed. *Black v. State*, 426 Md. 328, 337 (2012).

Given that a ruling on the merits of Mr. Monroe's claims is not possible without the plea and sentencing transcript, Mr. Monroe is free to re-raise his contentions in an appropriately filed motion in the circuit court if, and when, he secures the transcript. In the meantime, the docket entry's reflection that Mr. Monroe's sentence is "to run consecutively with any sentence the Defendant may be serving or obligated to serve"—which would have encompassed the Virginia sentence—is presumptively correct. *Rainey v. State*, 236 Md. App. 368, 383 (2018) ("[A]lthough docket entries are entitled to a presumption of regularity, and must be taken as true until corrected, they are not sacrosanct, and the presumption may be rebutted.") (quotation marks and citations omitted)).

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