

Circuit Court for Prince George's County  
Case No. CT87-1876A

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 657

September Term, 2017

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JAMES ANTHONY JACKSON

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Graeff,  
Moylan, Charles E., Jr.,  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: May 7, 2018

\*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.

James Anthony Jackson, appellant, appeals the denial, by the Circuit Court for Prince George’s County, of his motion to correct illegal sentence. For the reasons that follow, we affirm.

In 1987, Jackson was charged with twenty-six offenses based on his having allegedly conspired with four other people to commit an armed robbery during a drug deal, during which, two people were shot and killed. At the close of the State’s evidence, the State *nol prossed* twenty of those charges. Jackson was then convicted of the remaining counts including: two counts of first-degree felony murder; one count of attempted robbery with a dangerous weapon; and three counts of use of a handgun in the commission of a crime of violence. This Court affirmed appellant’s convictions on direct appeal. *Jackson v. State*, No. 500, September Term 1989 (filed November 17, 1989).

In 2017, Jackson filed a motion to correct illegal sentence pursuant to Maryland Rule 4-345(a), claiming that his sentences for felony murder were inherently illegal. Specifically, he asserted that the trial court lacked the authority to impose a sentence for those offenses because (1) the indictment in his case was constructively amended after jeopardy had attached, thereby resulting in him being convicted of “modified Felony murder charges” that had not been charged in the original indictment and (2) there was insufficient evidence to sustain his convictions for those offenses. The circuit court denied Jackson’s motion without a hearing. This appeal followed.

Rule 4-345(a) provides that “[t]he court can correct an illegal sentence at any time.” But “the scope of this privilege, allowing collateral and belated attacks on the sentence and excluding waiver as a bar to relief, is narrow.” *Colvin v. State*, 450 Md. 718, 725 (2016)

(citation omitted). As the Court of Appeals has recently explained, “[t]he purpose of Rule 4-345(a) is to provide a vehicle to correct an illegal sentence where the illegality inheres in the sentence itself, not for re-examination of trial court errors during sentencing.” *Meyer v. State*, 445 Md. 648, 682 (2015) (citations omitted). In other words, there is no relief under Rule 4-345(a) where “the sentences imposed were not inherently illegal, despite some form of error or alleged injustice.” *Matthews v. State*, 424 Md. 503, 513 (2012) (citations omitted). A sentence is considered “illegal” for purposes of Rule 4-345(a) only where “there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.” *Colvin*, 450 Md. at 725 (citations omitted).

With those principles in mind, we conclude that the only claim Jackson raises that could possibly be cognizable in a motion to correct illegal sentence is that the indictment in his case was constructively amended to charge him with two counts of felony murder that had not been charged in the original indictment. *See Johnson v. State*, 427 Md. 356 (2012) (holding that the appellant’s sentence for assault with intent to murder was illegal because he had not been charged with that offense in the original indictment and the rule governing amendment of indictments precluded the State from amending the indictment to add that charge once jeopardy had attached). However, having reviewed the record, we find no merit to this claim.

Pursuant to indictment filed in October 1987, Jackson was charged with twenty-six offenses, including two counts of murder using the “short form” indictment, a “formula”

first established by the legislature in 1906. *See Ross v. State*, 308 Md. 337, 342-43 (1987). This was sufficient to charge Jackson with two counts of premeditated murder, first-degree felony murder and second-degree murder, *see Dishman v. State*, 352 Md. 279, 289 (1998). Those counts were not *nol prossed* by the State and Jackson was ultimately convicted of two counts of first-degree felony murder.

Jackson nevertheless contends that the murder counts were constructively amended as a result of the prosecutor's decision to *nol pros* other counts in the indictment at the close of the State's evidence. Specifically, he claims that the crime of conspiracy to commit armed robbery was "an essential element" of the felony murder counts that were charged in the original indictment and, when that charge was *nol prossed*, the original felony murder charges "terminated." He further asserts that by continuing the trial, the State was relying on "modified felony murder charges."

Jackson is mistaken. As previously set forth, Jackson was properly charged with two counts of first-degree felony murder. To convict Jackson of those offenses, the State was only required to prove that Jackson committed one of the predicate felonies set forth in Section 2-201 of the Criminal Law Article and that a death occurred in the perpetration of that felony. *See Wagner v. State*, 160 Md. App. 531, 560 (2005). However, there was no requirement that the indictment inform Jackson of "the specific theory [of murder] on which the State [would] rely." *Ross v. State*, 308 Md. 337, 344, 347 (1987). In fact, the State was not even required to charge Jackson with a predicate felony in order to sustain his conviction. *See Kohler v. State*, 203 Md. App. 110, 119 (2012). Therefore, even though the conspiracy charge was *nol prossed*, the jury could still convict Jackson of felony murder

under the indictment if it determined that he had committed any other predicate offense, including attempted armed robbery which had, in fact, been charged in the indictment. And this is exactly what the jury did. Because Jackson was convicted of the felony murder counts that were charged in the indictment, no constructive amendment to the indictment occurred. Consequently, his sentences for those offenses are not inherently illegal, and the circuit court did not err in denying his Rule 4-345(a) motion.

**JUDGMENT OF THE CIRCUIT  
COURT FOR PRINCE GEORGE'S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**