Circuit Court for Baltimore City
Case No. 298132020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 718

September Term, 2020

JESUS WOMACK

v.

STATE OF MARYLAND

Friedman,
**Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: September 15, 2021

** Steven B. Gould, now serving on the Court of Appeals, participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a specially assigned member of this Court.

*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 1999, a jury sitting in the Circuit Court for Baltimore City in Case No. 298132020, found Jesus Womack, appellant, guilty of distribution of cocaine, possession with intent to distribute cocaine, possession of cocaine, and conspiracy to commit each of those offenses. *Womack v. State*, No. 6968, Sept. Term, 1998, at 1 (filed Nov. 8, 1999). The court sentenced him to consecutive terms of 20 years' imprisonment, the first 10 without the possibility of parole for distribution of cocaine (Count 1 of the indictment), and a consecutive term of 20 years' imprisonment, the first 10 without the possibility of parole, for conspiracy to distribute cocaine (Count 4), merging the remaining offenses for sentencing purposes. Those judgments were affirmed on direct appeal. Nearly 20 years later, Mr. Womack filed a motion to correct an illegal sentence, contending that the sentence imposed on Count 4 was illegal. The circuit court denied that motion, prompting this appeal. For the reasons that follow, we affirm.

BACKGROUND

After his conviction was affirmed, Mr. Womack sought postconviction relief, which was denied. Among the claims he raised in his postconviction petition was that his sentence was illegal because it ran afoul of *Diaz v. State*, 129 Md. App. 51 (1999), which, he maintained, bars "double enhanced penalties" for multiple drug offenses arising out of the same transaction. In denying that claim, the postconviction court declared:

> An amended commitment record[1] was issued in the case *sub judice* on August 3, 2004 reflecting enhanced penalties were applied only to Count 1

[1] Following this clue, we moved, *sua sponte*, to correct the record and obtained the amended commitment record from the circuit court. That amended record, dated August 3, 2004, indicates that the original sentence, issued January 29, 1999, was modified so that the parole restriction was removed from Count 4.

> of Case number 298132020 and not Count 4. Therefore, trial court did not impose double enhanced penalties and this Court declines to find that [Mr. Womack's] sentence is illegal.

In December 2016, Mr. Womack was released on parole. Then, in January 2018, he was arrested in Baltimore County and charged with possession of a controlled dangerous substance ("CDS") with intent to distribute. The following September, he pleaded guilty in the Circuit Court for Baltimore County, in Case No. 03-K-18-000505, to possession of a CDS with intent to distribute and was sentenced to 12 years' imprisonment, consecutive to all other sentences. A parole revocation hearing ensued, and it appears that Mr. Womack was found to have violated his parole, although the only reference in the record before us to any re-imposed sentence in Case No. 298132020 is that he was given credit for the time served from December 20, 2016 to September 19, 2018.

Mr. Womack, with assistance of counsel, subsequently filed, in the Circuit Court for Baltimore City, a motion to correct an illegal sentence in Case No. 298132020. He contended that the enhanced sentence imposed on Count 4 for conspiracy to distribute cocaine was illegal because it ran afoul of *DeLeon v. State*, 102 Md. App. 58, 86 (1994), which held that, in imposing a sentence for conspiracy, under former Article 27, § 290,[2] a

[2] Maryland Code (1957, 1992 Repl. Vol.), Art. 27, § 290, provided:

> Except as provided otherwise under this subheading [Controlled Dangerous Substances], any person who attempts, endeavors or conspires to commit any offense defined in this subheading is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt, endeavor or conspiracy.

(continued)

court may not impose a no-parole condition. Following a hearing, the circuit court denied that motion on the grounds that it had no authority to change Mr. Womack's sentence in the Baltimore County case and that he already had served the mandatory sentence at issue in Baltimore City. This pro se appeal followed.

DISCUSSION

Mr. Womack contends that the circuit court erred in denying his motion because, under *Veney v. State*, 130 Md. App. 135 (2000), the trial court could impose only one enhanced sentence where all the charged offenses arose from a single event or transaction. Although this claim was not raised below, which ordinarily would preclude us from addressing it on appeal, Md. Rule 8-131(a), a claim alleging an inherently illegal sentence may be raised for the first time on appeal. *Walczak v. State*, 302 Md. 422, 427 (1985).

"The court may correct an illegal sentence at any time." Md. Rule 4-345(a). An illegal sentence within the meaning of Rule 4-345(a), known as an "inherently" or "intrinsically" illegal sentence, *Chaney v. State*, 397 Md. 460, 466 (2007), "is a sentence 'not permitted by law.'" *State v. Wilkins*, 393 Md. 269, 273 (2006) (quoting *Walczak*, 302 Md. at 427). Included within the category of an "inherently" or "intrinsically" illegal sentence is a sentence that exceeds the maximum provided by statute. *Carlini v. State*, 215 Md. App. 415, 427 (2013).

Section 290 was deleted when Article 27 was re-codified as the Criminal Law Article, on the ground that it was duplicative of the general statutory limitation on punishment for conspiracy, now codified at Criminal Law Article, § 1-202. *See* Md. Code Ann., Crim. Law Art. (Lexis 2002), vol 1, at 352 (General Revisor's Note).

We are not persuaded that any relief is warranted here because the amended commitment record, issued August 3, 2004, reflects that the sentence was modified so that the no-parole condition applied only to Count 1, the conviction for distribution of cocaine. Any illegality in Mr. Womack's sentence that may have existed upon its imposition was cured at that time.[3] We therefore conclude that the circuit court correctly denied the motion to correct an illegal sentence.[4]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS ASSESSED TO APPELLANT.

[3] We observe that the maximum (unenhanced) sentence for each offense was 20 years' imprisonment. *See* Md. Code (1957, 1996 Repl. Vol.), Art. 27, §§ 277(q)(2) (defining cocaine as a "narcotic drug"); 279(b) (defining cocaine as a Schedule II drug); 286(b)(1) (providing for a maximum sentence of 20 years' imprisonment for, among other things, distribution of and conspiracy to distribute a narcotic drug listed in Schedule II). The only illegality alleged was the no-parole condition attached originally to Count 4.

[4] The State further points out that Mr. Womack was released on parole prior to filing this appeal. Citing *Barnes v. State*, 423 Md. 75 (2011), a plurality decision of the Court of Appeals, the State contends that this appeal is moot. We need not address this contention.