Circuit Court for Wicomico County
Case No.: 22-K-14-000305

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 768

September Term, 2021

ARNOLD D. MILES

v.

STATE OF MARYLAND

Kehoe
Zic
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 27, 2022

*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.

This is an appeal from the denial of a motion to correct an illegal sentence. Before we address the question presented and our discussion of it, we recount the following relevant background.

BACKGROUND

On May 20, 2014, in the Circuit Court for Wicomico County, Arnold D. Miles, appellant, pleaded not guilty on an agreed statement of facts, in Case No. 22-K-14-000305, to possession of a controlled dangerous substance (CDS) with the intent to distribute it. The court found him guilty of that offense and sentenced him, as a subsequent offender, to twenty years' imprisonment, with, as a mandatory minimum, the first ten years to be served without the possibility of parole. The court imposed the term of imprisonment to be served concurrently with any outstanding offenses.

Several months later, on September 22, 2014, also in the Circuit Court for Wicomico County, appellant pleaded guilty, in Case No. 22-K-14-000500, to possession of a controlled dangerous substance (CDS) with the intent to distribute it. The court sentenced him to twenty years' imprisonment to be served consecutively to the case ending in 305, for an aggregate total of forty years' imprisonment between the two cases.

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act ("JRA").[1] Among other things, the JRA eliminated certain mandatory minimum sentences for persons convicted as subsequent offenders of certain drug offenses. In addition, the JRA created Maryland Code, Criminal Law Article ("CR"),

[1] Chapter 515, Laws of Maryland 2016.

§ 5-609.1, which provides that a defendant who had received a mandatory minimum sentence prior to the elimination of such sentences could seek modification of that sentence pursuant to Maryland Rule 4-345 regardless of whether the defendant had previously filed a timely motion for reconsideration *vel non*.

In October 2018, appellant sought to have the sentence imposed in the case ending in 305 modified pursuant to the provisions of CR § 5-609.1, and, on February 2, 2018, the court held a hearing on his motion. After the parties had given their respective presentations to the court, the court modified appellant's sentence by removing the portion of his sentence that prohibited the possibility of parole during the first ten years of the sentence.[2] In so doing, the court made the following pertinent remarks:

> And so here's what we're going to do. I'm going to grant your motion under the Justice Reinvestment Act. Under count one, possession with intent to distribute, I'm going to strike the mandatory minimum provision of the Justice Reinvestment Act. I'm not going to reduce the length of incarceration.

Immediately following that ruling by the court, the State followed up asking about how the sentences in the case ending in 305 and the case ending in 500 would be structured now that the court had modified the sentence in the case ending in 305. The following exchange took place:

> THE STATE: One logistical issue or question to address. If the striking provision requires a new commitment; he is serving a consecutive sentence to the sentence in this particular case. Does that then move this case -- does this act as a resentencing, I think it does, making it necessary to address the logistical issue with case ending 500?

[2] Because the case ending in 500 had no mandatory minimum component to it, it was not subject to modification under the JRA.

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THE COURT: Here's what I'm going to do at this time. I think you're correct. So we maybe have flip flopped the cases. So I'm going to strike the mandatory minimum, I'm going to impose the 20 years consecutive to the other case.

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THE CLERK: May I have that other case number, Your Honor?

THE STATE: It was 22-K-14-0500.

THE COURT: Okay. And if for – and again, how DOC does things sometimes it's like reading a foreign language, but this sentence -- bear with me. So this sentence was imposed August 20th of 2014 and he was given 92 days credit. So in the other case he should get credit, in effect, that sentence should start to run – in other words he should get the same timeframe, I guess that's my, you know what I mean, because he can't lose that time.

THE STATE: What I guess I would ask the Court to do is the Court has imposed sentence in the instant matter, has ordered thus far that it's to be consecutive to K-14-500. I would ask the Court to grant him credit for time served in the instant matter from whatever the 92 days is to today, so that he would gain credit for all that time that he has already served in this matter. He'll begin that sentence in K-14-500

THE COURT: If that's how they do it.

THE STATE: Right.

THE COURT: Because they mishmash it all up and we can't even tell what sentence they're serving at what time.

THE STATE: He's absolutely entitled to the credit.

THE COURT: So he'll get credit, we'll do it that way. And then if you're having a problem I'll hear from you. So here's what I'm going to do. I'll give credit for time served in this case for the 92 days plus from August 20th of 2014.

THE CLERK: Which is 3 years 8 months 13 days.

THE COURT: Okay. So 3 years, 8 months and 13 days. And then we'll run this consecutive and then if that does not work with DOC and we've got to

> restructure that, then I'll hear from you at the appropriate time. For right now let's do it that way and see what comes afterwards.
>
> MR. BRITT: Thank you, Your Honor.
>
> DEFENSE COUNSEL: Your Honor, I believe that DOC will bump the credit for time served to the beginning of the sentence but I will certainly follow up on that.

Shortly after the court modified appellant's sentence, the court received a letter from a Commitment Records Specialist from the Division of Correction inquiring whether the court intended to re-structure appellant's sentences or whether its intention was to merely lift the parole restrictions on his sentence. The letter read as follows:

> The above referenced inmate received a modification of sentence in your court dated February 2, 2018. However, we believe an error has been found within this modified commitment. The original sentence for case #22K14000305 was concurrent and had a start date of 5/20/2014. However. it appears that on the amended commitment record issued on date above that the sentence now is to be served consecutive to a later imposed sentence for case #22K14000500. Please clarify if it is the court['s] intention for [appellant's] sentence structure to be altered or if it was intended for only the parole restrictions to have been lifted, leaving start date the same for case #22K14000305.
>
> Please forward this office an amended commitment record with the correct sentencing information in order that we may accurately update our records. This information is necessary in order to determine the inmate's total term of confinement.

On March 19, 2018, the court responded to the letter from the Commitment Records Specialist stating that "[T]he modification to Defendant's sentence only struck the mandatory minimum requirement of the sentence." Thereafter, the court issued an amended commitment record reflecting that appellant's sentence in the case ending in 305 was 20 years "to run [] concurrent with any other outstanding or unserved sentence." The commitment record indicated that the sentence began on May 20, 2014, and also noted that

appellant was "no longer subject to mandatory minimum sentence."

Thereafter appellant, acting *pro se*, filed a motion to correct an illegal sentence, pursuant to Md. Rule 4-345, contending, in a nutshell, that his sentence in the case ending in 305 is illegal because it was changed from being concurrent to consecutive when the court modified his sentence at the conclusion of the February 2, 2018 hearing on his motion for modification or reduction of sentence. As a remedy, he sought concurrent sentences in both the case ending in 305 and the one ending in 500.

The court denied appellant's motion to correct an illegal sentence on the basis that, when the court responded to the letter from the Commitment Records Specialist and issued the amended commitment record, the case ending in 305 was made concurrent to any other outstanding sentence and was not, at that time, consecutive to any other sentence.

Appellant, acting *pro se*, noted an appeal to this court presenting the following question for our review:

> Did the court err in starting case No. 22-K-1400500, which was not on the court docket: As a result this caused court to err by flip-flopping cases that changed sentence structure of case No. 22-14000305, from a concurrent to a consecutive sentence?[3]

DISCUSSION

We review the denial of a motion to correct an illegal sentence *de novo*. *Rainey v. State*, 236 Md. App. 368, 374, *cert. denied*, 460 Md. 23 (2018). In so doing, "we 'defer to

[3] Appellant also argues on appeal that the court erred by not informing appellant or his attorney when the court responded to the letter from the Commitment Records Specialist and issued an amended commitment record. Because appellant did not raise this claim in the motion to correct an illegal sentence he filed in the circuit court, we decline to address it for the first time on appeal.

the trial court's findings of fact, and will not disturb those findings unless they are clearly erroneous.'" *Id*. (quoting *Kunda v. Morse*, 229 Md. App. 295, 303 (2016)). Maryland Rule 4-345(a)'s authorization for a trial court to correct an illegal sentence "at any time," "creates a limited exception to the general rule of finality, and sanctions a method of opening a judgment otherwise final and beyond the reach of the court." *State v. Griffiths*, 338 Md. 485, 496 (1995).

Under Rule 4–345(a), an illegal sentence "is one in which the illegality inheres in the sentence itself; *i.e.*, 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 v. State*, 450 Md. 718, 725 (2016) (cleaned up). Appellant's claim falls within the latter category as he asserts that the court was not permitted to increase the sentence in the case ending in 305 by making it consecutive instead of concurrent.

In determining that appellant's sentence is not illegal, we find several things significant. First, when modifying appellant's sentence, the court made it patently clear that its sole intention was to remove the mandatory parole restrictions, and to otherwise not change the duration of appellant's sentence. In addition, appellant's aggregate sentence, both before and after the modification, remained, save for the removal of the parole restriction, identical. Next, once the DOC notified the court of the confusion, the court immediately corrected the situation by clarifying its sentencing intentions to the DOC, and submitting an amended commitment record, both of which accurately encompassed the courts clear intent espoused on the record when modifying appellant's sentence. Finally,

in *Twigg v. State*, 447 Md. 1, 28-30 (2016), the Court of Appeals held that a sentence will only be considered to have been increased if the total sentence "package" re-imposed upon re-sentencing is greater than the total sentence "package" that was originally imposed.

Because the court clearly explained its sentencing intentions on the record when modifying appellant's sentence, because the total sentence "package" here remained the same before and after the modification of appellant's sentence, and because the court issued an amended commitment record removing any confusion about the structuring of the sentences, we hold that appellant's sentence is not illegal.

Consequently, we shall affirm the judgment of the circuit court.

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