

Circuit Court for Harford County
Case No: 12-K-11-0010

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 779

September Term, 2019

JOHN EDWARD GARTSIDE

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: June 9, 2020

*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.

John Edward Gartside, Jr. appeals the denial, by the Circuit Court for Harford County, of his motion to correct an illegal sentence. We shall affirm because his sentence is not inherently illegal.

BACKGROUND

In 2011, pursuant to a plea agreement with the State, Mr. Gartside appeared in the circuit court and pled guilty to second-degree sex offense and first-degree assault. In exchange for the plea, the State had agreed to recommend a sentence within the sentencing guidelines and to nol pross other charges. Before accepting the plea, the court informed Mr. Gartside that the sentencing guidelines in his case were “between 13 and 26 years” and the court would not impose a sentence exceeding those guidelines. Sentencing was deferred pending the completion of a pre-sentence investigation by the Division of Parole & Probation. The Division calculated the sentencing guidelines range as 12 to 20 years, which apparently took into account Mr. Gartside’s use of a firearm during the crime. At the sentencing hearing, however the prosecutor related that the gun “turned out of be an air soft gun.” The court sentenced Mr. Gartside to 20 years’ imprisonment, all but 10 years suspended, for the first-degree assault and to a consecutive term of 15 years’ imprisonment, all but seven years suspended, for the second-degree sex offense – a total term of 35 years’ imprisonment, all but 17 years suspended.

In 2012, Mr. Gartside filed a motion to correct an illegal sentence in which he maintained that his sentence breached the terms of his plea agreement because it exceeded the guidelines. The circuit court denied the motion. In a motion for reconsideration, Mr. Gartside also asserted that the guidelines were incorrect because he had not used a firearm.

The court denied the motion for reconsideration. Mr. Gartside appealed and maintained that his sentence was illegal because the total term exceeded the guidelines. *Gartside v. State*, No. 85, Sept. Term, 2013 (filed October 24, 2014) (*Gartside I*), *slip op.* at 6. We agreed that a reasonable person in Mr. Gartside’s position would not have understood the plea agreement, as placed on the record of the plea hearing, to mean only that the *executed* portion of the sentence would not exceed the guidelines and, therefore, we held that the court breached the plea agreement by imposing a *total* term that exceeded the guidelines. *Slip op.* at 9. We then stated that, “[o]rdinarily, we would simply remand the case with instructions to re-sentence Gartside in conformance with the plea agreement.” *Id.* But we noted that “the record is ambiguous as to whether the sentencing guidelines range discussed with Gartside in the plea discussion was correct” given that the court had informed him “that the range was ‘between 13 to 26 years,’” but at sentencing the worksheet prepared by the Division of Parole & Probation “calculated the range to be 12 to 20 years.” *Id.* at 9-10. We further observed that the Division’s calculation “was based in part on the conclusion that Gartside used a firearm, which the prosecutor later admitted was incorrect.” *Id.* at 10. Due to these ambiguities, we remanded “with instructions to re-calculate the guidelines range, and thereafter to impose, in accordance with the plea agreement, a total sentence that does not exceed the higher limit of the re-calculated range.” *Id.*

A re-sentencing hearing was held on March 20, 2015. The court noted that, after the case was remanded, an issue was raised as to whether the victim had sustained an “injury” and, if he had, the parties agreed that guidelines range was 10 to 18 years. Absent an injury to the victim, the parties agreed that the guidelines range was five to 10 years.

Although it was the court’s position that this Court’s directive in *Gartside I* to recalculate the guidelines pertained only to the firearm factor, the court nonetheless permitted the parties to present evidence as to whether the victim had sustained a non-permanent “injury” justifying the additional point that had been added to Mr. Gartside’s “offender score.” The victim testified that he had suffered abrasions, red marks, and swelling to his left hand and wrist as a result of the crimes, as well as “numbness” to his thumb “for about a month afterwards,” but admitted he had not sought medical treatment. The court found that the victim had sustained an injury, as that term is defined in the *Maryland Sentencing Guidelines Manual* and, therefore, the guidelines in this case were 10 to 18 years. After hearing the parties’ recommendations, the court re-sentenced Mr. Gartside to seven years’ imprisonment for second-degree sex offense and to a consecutive term of four years for first-degree assault – a total term of 11 years’ imprisonment, with no suspended time. Mr. Gartside did not appeal the sentence.

In May 2019, Mr. Gartside filed a motion to correct an illegal sentence in which he maintained that the re-sentencing court did not have the authority to conduct an evidentiary hearing on the victim injury issue, arguing that in *Gartside I* we had held that any ambiguity must be resolved in his favor. The court summarily denied the motion. Mr. Gartside appeals that ruling.

DISCUSSION

First, Mr. Gartside asserts that the correct guidelines range in his case is five to 10 years and, therefore, his 11-year sentence is illegal. He maintains that in *Gartside I* this Court “summarily ordered that ambiguity [in the sentencing guidelines] must be resolved

in [his] favor, which would include the issue of the Victim Injury ambiguity[,]” and, therefore result in a guidelines range of five to 10 years. Second, he maintains that the appellate attorney who represented him in *Gartside I* rendered ineffective assistance by failing to “specifically state the issue of the Victim Injury score” in that appeal. And third, he asserts that the re-sentencing court erred in finding that the victim “sustained an injury beyond minimal.”

The State responds that Mr. Gartside’s claims are not cognizable in a Rule 4-345(a) motion to correct an illegal sentence; points out that the ineffective assistance of counsel claim was not raised below; and, in any event, asserts that the claims are meritless. We agree with the State that Mr. Gartside’s sentence is not inherently illegal and the claims he is asserting are not cognizable in a Rule 4-345(a) motion.

Rule 4-345(a) provides that a court “may correct an illegal sentence at any time,” but the Rule is very narrow in scope and is limited to “those situations in which the illegality inheres in the sentence itself[.]” *Bratt v. State*, ___Md. ___ (No. 39, Sept. Term, 2019, filed April 28, 2020) slip op. at 14 (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). An inherently illegal sentence is one in which there “has been no conviction warranting any sentence for the particular offense,” *id.*, where “the sentence is not a permitted one for the conviction upon which it was imposed,” *id.*, where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012), or where the court lacked the power or authority to impose the sentence. *Johnson v. State*, 427 Md. 356, 368 (2012). In other words, the Court of Appeals has distinguished “between procedural and substantive illegalities” in a sentence and has

limited Rule 4-345(a) to “those situations resulting in a substantive illegality.” *Bratt*, slip op. at 20. Moreover, a ““motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.”” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Wilkins v. State*, 393 Md. 269, 273 (2006)).

Here, Mr. Gartside is asserting that his sentence is illegal because he claims that it exceeded the sentencing guidelines in his case, thereby breaching the sentence bargained for in his plea agreement. The re-sentencing court, however, determined that the sentencing guidelines in his case were 10 to 18 years and sentenced him to a total term of 11 years. Accordingly, his sentence is legal. Any challenge to the re-sentencing court’s calculation of the sentencing guidelines range, including its ruling on the victim’s injury, should have been raised in a direct appeal following imposition of the sentence and may not be raised in a Rule 4-345(a) motion because any error in the calculation would be a procedural, not substantive, error. *See Bratt*, slip op. at 20 (“declin[ing] to extend the limitation of Rule 4-345 to include procedural defects such as the failure to award credit”).

As to Mr. Gartside’s claim that his appellate counsel rendered ineffective assistance in *Gartside I*, not only was that claim not raised in his Rule 4-345(a) motion in the circuit court, that claim is not cognizable in a motion to correct an illegal sentence. *Evans v. State*, 396 Md. 256, 276 (2006). *See also Brightwell v. State*, 223 Md. App. 481, 488 (2015) (“[A] motion to correct an illegal sentence is not the appropriate mechanism through which to claim ineffective assistance of counsel.”).

Finally, Mr. Gartside misinterprets this Court’s comments in *Gartside I* where we noted a discrepancy between the sentencing guidelines range announced at the plea hearing and that subsequently prepared by the Division of Parole & Probation and used at the sentencing hearing. We also pointed out that, at sentencing, the prosecutor cast doubt on the Division’s calculation by acknowledging that it was based on Mr. Gartside’s use of a firearm when the weapon, in fact, was an airsoft gun. We stated that the ambiguity in the guidelines range should be resolved in Mr. Gartside’s favor and, therefore, remanded for a re-calculation of that range. We did not conclude, as Mr. Gartside seems to argue, that there was any ambiguity about the victim’s injury; in fact, we said nothing about the victim’s injury whatsoever. And, as we noted above, any challenge to the guidelines range utilized by the re-sentencing court should have been raised in a direct appeal from the re-sentencing and not in a Rule 4-345(a) motion as it pertains to a sentencing procedure that does not render the sentence itself inherently illegal.

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