Circuit Court for Baltimore County
Case No. 03-K-06-005443

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 905

September Term, 2024

CARLOS M. CORTEZ

v.

STATE OF MARYLAND

Zic,
Ripken,
McDonald, Robert N.
(Senior Judge,
Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: January 26, 2026

* Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of *stare decisis*. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

In January 2008, Appellant Carlos M. Cortez was found guilty by a jury in the Circuit Court for Baltimore County of all 12 counts of an indictment charging him with various offenses related to sexual abuse of a minor. In his prior appeal to this Court, those convictions were affirmed.[1]

Beginning in 2019, Mr. Cortez filed several motions in the Circuit Court challenging his convictions and sentences on several grounds. This appeal concerns his motion under Maryland Rule 4-345(a) to correct an allegedly illegal sentence imposed as to one count of the indictment. The Circuit Court denied the motion on the ground that his sentence on that count was not an inherently illegal sentence subject to revision at any time. For the reasons stated below, we agree with the Circuit Court.

I

Background

A. The Indictment, Trial, and Verdict

Mr. Cortez was indicted in 2006 for offenses related to the sexual abuse of a minor. The indictment consisted of twelve counts. Pertinent to this appeal, Count 6 alleged that Mr. Cortez committed a second-degree sexual offense, in violation of Maryland Code, Criminal Law Article ("CR"), §3-306, "on and between" June 1, 2005 to June 7, 2006. Other counts of the indictment charged him with sexual abuse of a minor, in violation of CR §3-602(b) (Counts 1, 3, 5, 9); second-degree rape, in violation of CR §3-304 (Counts 2, 4); third-degree sexual offense, in violation of CR §3-307 (Counts 7, 11); perverted

[1] *See Cortez v. State*, No. 569, Sept. Term, 2008 (Md. Ct. Spec. App. June 10, 2010) (unreported).

practice, in violation of CR §3-322 (Counts 8, 12); and another charge of second-degree sexual offense on a specific date (Count 10). Each count identified the same alleged victim.

The case came to trial in January 2008. The jury found Mr. Cortez guilty on each count of the indictment, indicating its decision on a verdict sheet that listed the counts separately. The verdict sheet correctly described Count 6 as "6) Sexual Offense in the Second Degree on or between 6/1/05 – 6/7/06."

B. The Court's Announcement of Mr. Cortez's Sentences

In May 2008, the court held a hearing at which it sentenced Mr. Cortez. It announced the sentence for each count in the order presented in the indictment.

With respect to the first five counts, the court stated the sentences as follows:

> Under Count 1, sexual abuse to a minor, sentence is 25 years Department of Corrections.
>
> Count 2, second-degree rape, sentence is 20 years Department of Corrections. That's to be served concurrent with Count Number 1.
>
> Count Number 3 – in the first two counts, the abuse and rape occurred between June 1st of '05 and May 13th of '06. Count Number 3, sex abuse of a minor on or about May 14th, 2006, sentence is 25 years Department of Corrections to be served consecutive to Count Number 1 and Count Number 2.
>
> Count Number 4, second-degree rape on or about May 14th, 2006, sentence is 20 years Department of Corrections to be served concurrent with Count Number 3.
>
> The sex abuse of a minor charge. Next would be sexual abuse of a minor between June 1st, 2005, and June 7th, 2006, 25 years Department of Corrections.

The courtroom clerk then interrupted to inquire: "That's Count 5, sir?" The court replied: "Right. That's Count 5, to be served consecutive to the prior Counts 1, 2, 3 and 4." The court then continued with its sequential list of sentences:

> Second-degree rape June 1st, 2005, to June 7th, 2006, is 20 years Department of Corrections to be served concurrent with Count Number 5.
>
> Count Number 7, third-degree sexual offense between June 1st, 2005, and June 7th of '06, I'm merging with Count Number 6.
>
> Perverted practice between June 1st, '05, and June 7th, '06, I'm merging.

The clerk again interrupted to ask: "That's Count 8, sir?" The court confirmed: "That's correct, Count Number 8." The clerk sought further clarification: "Which count are you going to merge that with, sir?" The court responded: "Number 6." The court then proceeded to the sentences for the last four counts of the indictment:

> Count Number 9, sexual abuse of a minor June 8th, 2006, it's 25 years consecutive to all the prior counts.
>
> Count Number 10, sexual offense in the second degree, June 8th, 2006, is 20 years concurrent to Count Number 9.
>
> Count Number 11, third-degree sexual offense on or about June 8th, 2006, is merged into Count 10.
>
> Count 12, perverted practice on or about June 8th, 2006, is also merged into Count 10.

The sentencing court then explained the sentences, stating in part, "Sir, you've ruined this girl's life. … You should never draw another breath of free air."

No one apparently noticed that the court had said "second-degree rape" rather than "second-degree sex offense" when it imposed the concurrent sentence on Count 6.

Nonetheless, the contemporaneous docket sheet specified Mr. Cortez's conviction on Count 6 as "Sex Offense Second Degree," with a 20-year sentence. The commitment record likewise stated that the court imposed a 20-year sentence on Count 6 for "Sex Offense Second Degree."

At the time of the offenses for which Mr. Cortez was convicted, the crimes of second-degree rape and second-degree sex offense each carried a maximum sentence of 20 years. *See* Maryland Code, Criminal Law Article (2002 Vol. & 2005 Supp.), §§3-304(c)(1), 3-306(c)(1).

C. Mr. Cortez's Motion and the Circuit Court's Ruling

As indicated above, Mr. Cortez did not challenge the legality of his sentence in his unsuccessful appeal of his convictions. The motion at issue here was filed by counsel on Mr. Cortez's behalf in August 2023. Prior unsuccessful motions had challenged the legality of his aggregate sentence and of his convictions generally while acknowledging that Count 6 related to a conviction for second-degree sexual offense.[2]

[2] In a motion filed by counsel on his behalf in 2019, Mr. Cortez had argued that his aggregate sentence was illegal because the sentences on various counts, including Count 6, should have been merged into his four convictions for sexual abuse of a minor. The procedural history section of that motion states: "The trial court imposed the following sentences: … Count 6 Second Degree Sex Offense 20 years (concurrent to [Count] 5)." After a hearing, that motion was withdrawn at the request of counsel.

In 2020, Mr. Cortez filed a motion *pro se* challenging his conviction on various grounds, although not the legality of his sentence on any count. In that motion, he recited that "May 5, 2008, the Trial Court imposed the following sentence: …Count 6 (Second Degree Sex Offense) 20 years concurrent with Count 5 … ." By August 12, 2023, no hearing had been held on that motion. That day, counsel, on Mr. Cortez's behalf, filed a supplement to Mr. Cortez's *pro se* motion. The supplement asserted double jeopardy and ineffective assistance of counsel issues. In its recitation of Mr. Cortez's sentences, it listed

The motion at issue in this appeal asserted that Count 6 had not charged him with second-degree rape, that he had not been convicted of such a charge on that count, and that the court therefore lacked the authority either to sentence him for a conviction on that count or to merge other counts into that sentence. The motion cited Maryland Rule 4-345(a) and (f).[3]

The Circuit Court held a hearing on Mr. Cortez's motion in April 2024 and denied it in an order dated June 7, 2024, accompanied by a memorandum opinion. The Circuit Court denied his motion on the grounds that his sentence was not an illegal sentence subject to revision at any time under Maryland Rule 4-345(a).

In its memorandum opinion, the Circuit Court first recited that it had reviewed the indictment, the transcript of the sentencing proceeding, the verdict sheet, and the commitment record, as well as the parties' arguments and relevant law.[4] The court found that the sentence for Count 6 was "misstated" as it "should have been announced as Sexual Offense in the Second Degree instead of Second Degree Rape." However, the court

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Mr. Cortez's sentence on Count 6 as "20 years for count 6 (second-degree rape)… ." On the next day, August 13, 2023, counsel filed Mr. Cortez's third motion – the motion at issue here.

[3] Maryland Rule 4-345(f) provides that the trial court "may modify, reduce, correct, or vacate a sentence only on the record in open court" and imposes various procedural requirements. Mr. Cortez does not rely on that provision here. In any event, it is not relevant to our analysis, as the Circuit Court did not "modify, reduce, correct, or vacate" his sentence.

[4] The judge who had presided over the trial and sentenced Mr. Cortez had retired and passed away by the time Mr. Cortez had filed his August 2023 motion to correct an illegal sentence. Accordingly, a different judge of the Circuit Court decided that motion.

concluded that the misstatement did not present the circumstances that make a sentence illegal for purposes of Rule 4-345(a). Specifically, the court found that the sentence fell within the sentencing court's authority because (1) the sentence did not exceed any sentencing cap for either second-degree sexual offense or second-degree rape; (2) the respective statutes for those offenses authorized a sentence of 20 years' incarceration; and (3) Mr. Cortez had been charged with, and convicted of, both crimes. The Circuit Court further found that the sentencing court was authorized to impose a sentence on all 12 counts because Mr. Cortez had been convicted of all offenses as charged. In addition, the court noted that the commitment record specified that the sentence for Count 6 was 20 years' incarceration for a second-degree sexual offense.

Mr. Cortez noted a timely appeal of the Circuit Court decision.

II

Discussion

Mr. Cortez argues in this appeal that the Circuit Court erred legally in its application of Maryland Rule 4-345(a).

A. Standard of Review

A trial court's denial of a motion to correct an illegal sentence under Maryland Rule 4-345(a) raises two legal questions: (1) whether the claimed illegality of the sentence is cognizable in a motion asserted under that rule and, if so, (2) whether the sentence was illegal. *Farmer v. State*, 481 Md. 203, 222 (2022). The sentencing court's determination on each question is subject to *de novo* review on appeal. *Id.* at 222-23; *State v. Bustillo*, 480 Md. 650, 665 (2022).

B. Review of a Sentence under Rule 4-345

Rule 4-345 authorizes a court to revise a defendant's sentence when the sentence is illegal (4-345(a)); when there has been fraud, mistake, or irregularity (4-345(b)); when there has been an "evident mistake in the announcement of the sentence" (4-345(c)); and, more generally, when the court decides to grant a party's timely motion to revise the defendant's sentence (4-345(e)). In his motion, Mr. Cortez relied on Rule 4-345(a).

1. Correcting an Illegal Sentence under Rule 4-345(a)

Subsection (a) of the Rule allows correction of an illegal sentence "at any time." *See, e.g.*, *Bustillo*, 480 Md. at 664-65 (explaining the Rule). The court has the authority to correct an illegal sentence "even if the defendant failed to object in the trial court at the sentencing hearing or raise the issue in a direct appeal." *Id*. at 664 (citing *Bailey v. State*, 464 Md. 685, 696 (2019)). However, that authority is "narrow" – it applies only to sentences that are "inherently illegal," as distinct from sentences that resulted from a "procedural error." *Id*. at 664-65. That is, "the illegality must inhere in the sentence itself, rather than stem from a trial court error during the sentencing proceeding." *Matthews v. State*, 424 Md. 503, 512 (2012). Thus, when the sentence itself is "lawful," an illegality stemming from a procedural error during sentencing "is not ordinarily cognizable" as an illegal sentence under Rule 4-345(a). *Montgomery v. State*, 405 Md. 67, 74-75 (2008) (internal quotation marks and citation omitted). Instead, that type of error "must ordinarily be raised in or decided by the trial court and presented for appellate review in a timely-filed direct appeal." *Chaney v. State*, 397 Md. 460, 466-67 (2007); *see also Johnson v.*

State, 467 Md. 362, 389 (2020) ("It is well settled that Rule 4-345[(a)] motions may only support claims of substantive, not procedural, illegality.").

Inherent illegality exists in either of two circumstances: "'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[.]'" *Bustillo*, 480 Md. at 665 (quoting *Chaney*, 397 Md. at 466).

As to the first circumstance, determining whether there was a conviction for the particular offense on which the defendant was sentenced is ordinarily a matter of looking at the docket entries to see whether the defendant was convicted of that offense, and, if so, whether the conviction withstood any post-trial motions ruled on before the sentencing.

As to the second circumstance, determining whether the illegality is inherent in the sentence at issue requires the appellate court to discern at the outset what sentence the trial court imposed. As this Court has explained, "the determination of the terms of the judgment ordinarily and necessarily involves review of the transcript of the proceedings and of the docket entries." *Jackson v. State*, 68 Md. App. 679, 688 (1986). The appellate court may also refer to the commitment order. An ambiguity in the oral sentence imposed and the docket entry may be "dispelled" by viewing it in conjunction with the contemporaneous commitment order. *Dutton v. State*, 160 Md. App. 180, 193 (2004) (citation and internal quotation marks omitted). However, as with docket entries, if the sentence specified in the commitment order conflicts with the sentence specified in the transcript, the transcript prevails. *Id*. at 191-92. In examining the meaning of the words contained in the transcript, the appellate court will consider them in the context of the

transcript in its entirety and interpret them in that context. *Id.* at 192 ("review[ing] the transcript in its entirety" in construing the sentence announced by the trial court).

What the appellate court may not do is speculate as to the sentencing court's intentions as to the terms of an ambiguously-stated sentence, *State v. Brown*, 464 Md. 237, 268 (2019), as, for example, when it is unclear whether a sentence is to be served consecutively to pre-existing unserved sentences or to the sentence then being served. *See Robinson v. Lee*, 317 Md. 371, 379-80 (1989) (dismissing case as moot; noting the importance of properly advising the defendant of the terms of his sentence when the court imposes it). In the event of ambiguity as to the sentence, "[the defendant's] punishment must be construed to favor a milder penalty over a harsher one." *Id.* at 380.

2. Correcting a Mistakenly-Announced Sentence under Rule 4-345(c)

In his brief in this appeal, Mr. Cortez also relies on Rule 4-345(c). That subsection of the rule permits a sentencing court to correct "an evident mistake" in announcing the sentence, so long as the defendant has not left the courtroom. The purpose of "that narrow provision" was "to permit on-the-record correction of slips of the tongue or clerical errors while preserving the Rule's broader protection against post-imposition increases." *Reyes v. State*, 492 Md. 630, 641 (2025). An "evident" mistake in the announcement of a sentence is one that is "clear or obvious." *State v. Brown*, 464 Md. 237, 260 (2019).

C. Whether the Sentence Imposed on Count 6 was Illegal

To apply these principles, one must determine the meaning of the sentence that the trial court announced on Count 6 in order to assess (1) whether the court's mistaken reference to second-degree rape rendered the sentence on Count 6 inherently illegal within

the scope of Rule 4-345(a) and (2), even if not, whether the fact that the court did not correct the misstatement during the hearing, as permitted by Rule 4-345(c), otherwise made the sentence illegal.

1. Whether the Sentence was Inherently Illegal

The first question is whether Mr. Cortez was convicted of the crime for which the sentencing court sentenced him when it announced his sentence for Count 6 – that is, whether the sentence announced on Count 6 was for second-degree sexual offense or second-degree rape. Read in isolation, the sentencing court's announcement of a sentence on a count that it referred to as a charge of "second-degree rape" would appear to have unambiguously imposed a sentence for second-degree rape. However, we read the court's words in the context of the entire transcript. *Dutton*, 160 Md. App. at 192. That context includes the following: The court was announcing the sentences on each count in numerical order and, as Mr. Cortez agrees, had reached Count 6 when it misspoke. Then, in addressing Count 6, the court recited the time period alleged in that count and was clearly imposing a sentence on that count. The jury had clearly convicted Mr. Cortez on Count 6 for a second-degree sexual offense during that time period. Count 6 of the indictment did not charge Mr. Cortez with second-degree rape; in fact, the court had already sentenced Mr. Cortez on a second-degree rape conviction for a period of time that largely overlapped with the period alleged in Count 6 for a second-degree sexual offense. In sum, the context in which the sentencing court referred to the conviction on Count 6 as a conviction for "second-degree rape" leaves little ambiguity as to the actual offense to which the

sentencing court intended to refer when it addressed that count – second-degree sexual offense. There is no ambiguity as to the sentence itself.

If there remained any doubt as to the offense for which the sentencing court was imposing a 20-year sentence when it reached Count 6, the docket sheet, presumed to be correct, confirms that the sentencing court imposed the sentence on the second-degree sexual offense charge, not a second-degree rape charge. Further, Mr. Cortez's prior motions to correct an illegal sentence indicate that he understood that the trial court had imposed a 20-year sentence on Count 6 for second-degree sexual offense. See footnote 2 above. The record thus confirms the Circuit Court's conclusion that, although the sentencing court misstated the name of the offense for which Mr. Cortez was convicted on Count 6, the court in fact imposed a sentence for his conviction on that count.

The next question is whether the 20-year sentence for second-degree sexual offense presented either of the two sets of circumstances that would make the sentence inherently illegal for purposes of Rule 4-345(a).

First, a sentence is inherently illegal if there has been no conviction warranting any sentence for the particular offense. *Bustillo*, 480 Md. at 665. Here, as the verdict sheet states, the jury found Mr. Cortez guilty on Count 6 for second-degree sexual offense. This is not a case in which a court has sentenced the defendant for an offense for which the defendant was either not indicted or not convicted. *See, e.g., Johnson*, 427 Md. at 380 (defendant's sentence on assault with intent to murder held illegal because he had not been indicted, and so had not been properly convicted, of that crime); *Ridgeway v. State*, 369

Md. 165, 171 (2002) (defendant's sentences on three counts held illegal because he had been acquitted on those counts).

Second, a sentence is inherently illegal if the court lacked the authority to impose it for the particular conviction. *See, e.g. Bratt v. State*, 468 Md. 481, 496 n.8 (2020) (noting that "a sentence is inherently illegal when it exceeds the limits prescribed by a statute or rule"). Count 6 charged Mr. Cortez with violating CR §3-306, and the jury found him guilty on that count. As noted above, a violation of that statute carried a maximum sentence of 20 years. The sentence imposed by the court was a permitted sentence for that offense. This is not a case of a sentencing court imposing a punishment not authorized by law. *See, e.g., Montgomery*, 405 Md. 67 (defendant's sentence held illegal where trial court had stayed the defendant's prison reporting date for reasons not authorized by the applicable statute); *Holmes v. State*, 362 Md. 190, 195-96 (2000) (defendant's sentence held illegal where trial court had imposed a sentence of probation with home detention without statutory authority to do so); *see also Farmer*, 481 Md. at 223-24 (giving examples of sentences found inherently illegal as beyond the sentencing court's authority).

In sum, the sentence that the sentencing court imposed on Mr. Cortez for his conviction on Count 6 did not have any of the characteristics of an "inherently illegal" sentence. Read in the context of the sentencing proceeding, the court's reference to that conviction during the sentencing proceeding as a conviction for second-degree rape was a non-substantive verbal slip that did not change the fact that the court was sentencing Mr. Cortez for his conviction of second-degree sexual assault from June 1, 2005, to June 7,

2006, as alleged in Count 6. The sentencing court's misstatement was a procedural irregularity, not cognizable under Rule 4-345(a).

2. Whether Lack of a Correction under Rule 4-345(c) Made the Sentence Illegal

Before us, Mr. Cortez cites Rule 4-345(c) for the proposition that a misstatement in the announcement of a sentence renders a correction of the sentence illegal unless the sentencing judge has announced the correction in the defendant's presence and before concluding the hearing. Mr. Cortez did not assert that argument in his motion to correct an illegal sentence, and so we need not reach it. Even so, neither the facts nor the law supports it. Factually, his argument assumes that his sentence on Count 6 was revised. It was not; the sentencing court, in announcing the sentence for his conviction on Count 6, imposed a sentence of 20 years. The court did not change that sentence. Moreover, nothing in Rule 4-345 suggests that Rule 4-345(c) is the exclusive means by which a sentencing court may correct a mistake in the announcement of a sentence; for example, Maryland Rule 4-345(e), which permits a sentencing court to revise a sentence downwards upon the filing of a motion and within a certain period of time, does not exclude motions based on mistaken announcements. *See Thomas*, 488 Md. at 480-81 (explaining Rule 4-345(e)); *Brown*, 464 Md. at 251-60 (same).

III

Conclusion

For the reasons set forth above, the meaning of the sentencing court's announcement of Mr. Cortez's sentence on Count 6 is and was apparent from the context, and the sentence

itself was legal. Accordingly, Mr. Cortez's motion to correct an illegal sentence was not cognizable under Rule 4-345(a) and the Circuit Court properly denied that motion.

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