

Circuit Court for Montgomery County
Case No.: 113271C

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 934

September Term, 2023

EDWIN ANTONIO LOPEZ

v.

STATE OF MARYLAND

Wells, C.J.,
Ripken,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 6, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 2010, Edwin Antonio Lopez, appellant, pleaded guilty to first-degree murder and was sentenced to life imprisonment, all but 30 years suspended, to be followed by a five-year term of supervised probation. Twelve years later, Mr. Lopez—representing himself—filed a Rule 4-345(a) motion to correct an illegal sentence, which the court denied. Mr. Lopez appeals that decision. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

On June 3, 2010, Mr. Lopez appeared in court with counsel. A plea agreement was placed on the record which provided that, in exchange for the plea to first-degree murder, the court would sentence him to life imprisonment, suspending all but a cap of 35 years. The court explained that meant that the court “would not impose more than 35 years of time in jail or executed incarceration.” The court also noted that the sentencing guidelines in this case were 20 to 30 years.

Counsel for Mr. Lopez conducted the plea colloquy, informing Mr. Lopez at the start thereof that she would be asking him “things that we’ve already discussed[.]” He then answered each question posed to him regarding the rights he would be waiving by pleading guilty. He also confirmed that he understood the charge of murder in the first degree and what the State would need to prove to obtain a conviction for that offense. He confirmed as well that he was entering the plea voluntarily. Once the examination was complete, the court found that “the plea has been offered voluntarily with full awareness of the potential consequences.” After hearing the State’s proffer of facts in support of the plea, the court found “a sufficient factual predicate to find the defendant guilty of murder in the first degree.” At a subsequent sentencing hearing, the court sentenced Mr. Lopez to life

imprisonment, suspending all but 30 years, to be followed by five years of supervised probation.

In December 2022, Mr. Lopez filed a Rule 4-345(a) motion to correct an illegal sentence. He based his motion on three grounds: (1) the trial court’s acceptance of his plea was faulty because the court did not announce on the record its finding that he had “knowingly and voluntarily” waived his right to a jury trial; (2) the plea agreement “was changed and negotiated” out of his presence; and (3) the court sentenced him “outside of the guidelines” without giving a reason for doing so. The court denied the motion.¹

DISCUSSION

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[.]” *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

¹ As noted, Mr. Lopez filed his motion *pro se*. After he filed it but before it was ruled on, it appears that counsel entered an appearance in relation to Mr. Lopez’s petition for post-conviction relief. The court entered its opinion and order denying the motion to correct an illegal sentence on January 18, 2023. Then, on April 25, 2023, Mr. Lopez, *pro se*, filed a motion asking the court to reissue its decision denying his Rule 4-345(a) motion because the court had sent the decision to his counsel (who was not representing him on this motion) and not to him personally. He claimed he received the decision on April 12, 2023 from his post-conviction counsel. The court granted the motion and reissued its decision on June 26, 2023. Mr. Lopez filed his notice of appeal on July 6, 2023. Thus, the appeal is timely. Consequently, we shall deny the State’s motion, raised in its brief, to dismiss the appeal as untimely.

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, 370 (2012). Notably, however, 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 *State v. Wilkins*, 393 Md. 269, 273 (2006)). In other words, “only claims sounding in substantive law, not procedural law, may be raised through a Rule 4-345(a) motion.” *Id.* at 728. Appellate court review of the circuit court’s ruling on a motion to correct an illegal sentence is *de novo*. *Bratt v. State*, 468 Md. 481, 494 (2020).

On appeal, Mr. Lopez repeats the same contentions raised in his motion before the circuit court. Because all of his contentions raise alleged *procedural* defects in the acceptance of his plea or in the sentence imposed, he is not entitled to relief under Rule 4-345(a). Thus, the circuit court did not err in denying his motion to correct an illegal sentence.

Even if the issues were properly before us—which they are not—Mr. Lopez would fare no better. First, we are not persuaded that the court erred in accepting the plea as Mr. Lopez was thoroughly examined regarding the rights—including the right to a jury trial—that he was waiving by entering the plea. We have no doubt that the court found that the plea was entered knowingly and voluntarily.

Second, the plea agreement was placed on the record in Mr. Lopez’s presence, and he confirmed he understood its terms. It appears that, at the outset of the plea hearing—

before Mr. Lopez had entered the courtroom—defense counsel and the prosecutor advised the court that they had modified the sentencing terms of the plea from life suspend all but 35 years to life suspend all but a cap of 35 years with the defense free to argue for an executed sentence less than 35 years. As the circuit court pointed out when ruling on his motion to correct an illegal sentence, this modification of the plea terms was in Mr. Lopez’s favor. Moreover, the terms of the plea agreement were undisputedly placed on the record of the plea hearing after Mr. Lopez entered the courtroom.

Finally, the trial court at the plea hearing stated that the sentencing guidelines in this case were 20 to 30 years. Because the court imposed an active time of 30 years’ imprisonment, it imposed a sentence within the purported guidelines. But more importantly, the sentence imposed was in line with the sentencing terms of the plea agreement which provided for a cap of 35 years of executed time.

**MOTION TO DISMISS APPEAL DENIED.
JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**