

Circuit Court for Wicomico County
Case No. 22-K-05-000945

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1002

September Term, 2020

BRIAN WATERS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: August 2, 2021

*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.

Brian Waters, appellant, contends that the Circuit Court for Wicomico County erred in denying his motion to correct illegal sentence. For the reasons that follow, we shall affirm the judgment of the circuit court.

In January 2006, Mr. Waters pleaded guilty to first degree burglary. The court sentenced Mr. Waters to a term of eight years' imprisonment, all but five years suspended. On June 25, 2010, Mr. Waters was released on parole. On November 10, 2010, the Maryland Parole Commission revoked Mr. Waters's parole, granted him credit from June 25, 2010, to September 28, 2010, and returned him to the authority from which he was released.

On February 17, 2011, Mr. Waters appeared before the court and admitted to violating the terms of his probation. Following allocution, the court asked Mr. Waters's probation agent: "[I]f I continue him on probation, will it begin again when he is released?" The agent replied: "I believe so, although, Your Honor could order it to begin today." The court stated: "No, no, I want it to begin upon his release, so I have the full, I have a lot of time over him." The court then imposed sentence as follows:

The first case was three years, and I'm not giving him any credit, because he was doing his parole retake the whole time, he gets zero credit[.]

* * *

And I will re-suspend it immediately upon, or immediately. And probation will resume upon his release from the Division of Corrections. His period of probation will be four years from his release date[.]

On November 8, 2011, Mr. Waters was released on mandatory supervision. On January 18, 2013, Mr. Waters appeared before the court and again admitted to violating the

terms of his probation. The court sentenced Mr. Waters to a term of three years' imprisonment, to be served consecutive to a sentence he was then serving in a separate matter.

In October 2020, Mr. Waters filed the motion to correct illegal sentence, in which he contended that at the February 17, 2011 violation of probation hearing, the court failed to award him credit for the period from October 17, 2010, to November 10, 2010, and hence, “lacked authority to impose sentence.” Mr. Waters further contended that the court erred in failing “to pronounce that in its discretion, [it] wanted the . . . sentence to be ‘consecutive’ to the parole sentence being served,” and hence, was required to award Mr. Waters credit for the period from November 10, 2010, to February 17, 2011, or in the alternative, to November 8, 2011. The court subsequently denied the motion.

Mr. Waters first contends that “because the lower court did not pronounce on the record at the [February 17, 2011] violation of probation hearing . . . that the sentence of three years . . . would run ‘consecutively’ to [his] parole sentence,” the “sentence . . . should be ‘concurrent’ with the parole sentence,” and hence, “credit should have been applied at” the January 18, 2013 violation of probation hearing. We disagree for two reasons. First, the Court of Appeals has stated that an “allegation that [a defendant] was entitled to credit for time served . . . is a defect in sentencing *procedure* that does not render the sentence itself inherently illegal,” and hence, a motion to correct illegal sentence is “not an appropriate mechanism for challenging the failure to award credit for time served.” *Bratt v. State*, 468 Md. 481, 499-500 (2020) (citation omitted) (emphasis in original). Second, the court explicitly stated that it wanted its sentence to begin, and probation to resume,

“upon [Mr. Waters’s] release.” The court clearly intended for its sentence to run consecutive to Mr. Waters’s sentence for violation of parole, and hence, he is not owed any credit toward the sentence for violation of probation.

Mr. Waters next contends that “since the lower court erred in pronouncement of sentence[,] the probation that was given should be without force as meaningless, and there should have been no second probation hearing at all.” But, for the reasons stated in resolving the previous contention, the court did not err in pronouncing sentence. Hence, the court did not err in denying the motion to correct illegal sentence.

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