

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1027

September Term, 2014

JONATHON FRANK MURPHY

v.

STATE OF MARYLAND

Wright,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 13, 2015

*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.

In 2008, appellant, Jonathon Frank Murphy, pleaded guilty in the Circuit Court for Calvert County to two counts of robbery, and was sentenced to ten years of incarceration for each count. In addition to a number of other post-conviction pleadings, none of which are relevant to this appeal, Murphy filed a *pro se* motion to correct an illegal sentence on the basis that he was “incorrectly sentenced under a case number that was not assigned to [his] cause.”

Following denial of his motion, he appealed to this Court, asserting error by the circuit court in denying his motion.

Based on the fact that a recertified transcript of the sentencing hearing reveals that the Clerk called the correct case number for his sentencing hearing, and other reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

Murphy was charged with robbery in case number 04-K-08-000101. On August 13, 2008, he entered guilty pleas to two counts of robbery, and the State nolle prossed other charges. Murphy filed a motion for modification of sentence, which was denied following a hearing May 14, 2012. In a letter to the Clerk of Court on October 23, 2013, Murphy inquired regarding the correct number for his case, after seeing an unfamiliar case number on the December 12, 2008, sentencing hearing transcript. He wrote:

[A]fter looking at the transcript for the sentencing hearing held on December 12th, 2008, I noticed that the referenced case number on page one (1) reflected “K-13-0600810” and the clerk announcing “K-13-0600810, State of Maryland

versus Jonathon Murphy.” I don’t understand this because these two proceedings were for the same indictment and offense. Would you please let me know which one is the correct case number so that I may be able to properly reference the case in the future?

In response, the Clerk used only the assigned case number, K-08-101, just as it was consistently used throughout the proceedings. Murphy’s question appears to have arisen from a misprint in the case number of the original transcript of the December 12, 2008, hearing. Its first entry reflects the following statement by the Clerk: “K-13-06000810, State of Maryland versus Jonathon Murphy[,]” and the transcript’s cover page reflects a slightly different, but also inaccurate, case number: “K-13-0600810.”

On April 11, 2014, Murphy filed, *pro se*, a motion to correct an illegal sentence, on the basis that he was “incorrectly sentenced under a case number that was not assigned to [his] cause.” After the court denied his motion, he appealed to this Court. In his reply brief with this Court, he attached the inaccurate pages from the December 12, 2008, sentencing hearing transcript. Subsequently, on the State’s motion to supplement the record, a recertified transcript of the sentencing hearing was made part of the record before this Court. In the recertified original transcript of the December 12, 2008, court proceedings, the correct case number – K-08-101 – was entered on the cover page.

DISCUSSION

Murphy argues that the circuit court erred when denying his motion to correct an illegal sentence because “[n]owhere in the record can it be ascertained that the court sentenced Appellant under the proper case number, from his actual indictment.” The State responds that his argument is based solely on a typographical error by the court reporter, and that the original audiotape of the sentencing hearing demonstrates that the clerk did, in fact, announce the correct case number. As a result, appellant has “failed to allege any cognizable illegality in his sentence.”

The maximum sentence for robbery is 15 years. Md. Code Ann., Crim. Law § 3-402(b). The court imposed a sentence of ten years for each of the two robbery counts, within the statutory parameters. An illegal sentence may be corrected at any time. Md. Rule 4-345(a). However, “the illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding.” *Matthews v. State*, 424 Md. 503, 512 (2012).

A motion to correct an illegal sentence may be granted only “where there is some illegality in the sentence itself or where no sentence should have been imposed.” *Tshiwala v. State*, 424 Md. 612, 618 (2012) (quoting *Montgomery v. State*, 405 Md. 67, 74 (2008)). For purposes of Rule 4-345(a), we review *de novo* whether the circuit court erred in denying a motion to correct an illegal sentence. *Carlini v. State*, 215 Md. App. 415, 443 (2013).

Appellate review of an illegal sentence is limited, and restricted to three recognized grounds:

(1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations; and (3) whether the sentence is within statutory limits.

Jackson v. State, 364 Md. 192, 200 (2001) (citations omitted). The distinction between sentences subject to correction under Rule 4-345 “has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings.” *Bryant v. State*, 436 Md. 653, 663 (2014).

In the case *sub judice*, the only error consisted of a typographical error by the court reporter, which had no adverse effect on the sentences, and which has now been corrected for the record. There was no illegality in the sentences imposed.

**JUDGMENT OF THE CIRCUIT COURT
FOR CALVERT COUNTY AFFIRMED;**

COSTS TO BE PAID BY APPELLANT.