

Circuit Court for Queen Anne's County
Case No. 17-K-08-006830

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1107

September Term, 2018

ERIC LEWIS CLARK

v.

STATE OF MARYLAND

Arthur,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 4, 2019

*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.

Eric Lewis Clark appeals from an order of the Circuit Court for Queen Anne’s County denying his motion to correct an illegal sentence. We shall affirm.

BACKGROUND

At a plea hearing on April 30, 2008, Mr. Clark entered a plea of guilty to the charge of possession with intent to distribute cocaine. At the outset of the hearing, the prosecutor set forth the terms of the parties’ plea agreement:

The agreement is [Mr. Clark is] going to plead guilty to Count 1, which is possession of cocaine with the intent to distribute. The State will be filing subsequent offender, pursuant to Criminal Law 5-905 which is a doubling penalty, so [he] would be eligible for 40 years and, I guess, a \$50,000 fine. The State, in exchange, will be entering a nol pros to remaining counts, recommend a sentence within the guidelines, which we believe to be eight to 16 years and the defendant has agreed to forfeit the money found in the residence.

Defense counsel agreed, on the record, that the prosecutor had accurately stated the terms of the plea agreement.

The court restated the terms of the agreement as described by the prosecutor and asked Mr. Clark if that was his understanding of the plea agreement, and Mr. Clark responded affirmatively. The court then engaged Mr. Clark in a colloquy to ensure that his plea was knowing and voluntary, during which the court asked Mr. Clark if he understood that (1) neither the sentencing guidelines nor any “recommendations made by the state’s attorney . . . with regard to any particular sentence or disposition” were binding on the court; (2) the court could impose the maximum penalties of 40 years in prison, \$50,000 in fines or both; and (3) if any part of the sentence imposed by the court were to be suspended in favor of probation, and it was later proven that he violated a condition of that probation,

probation could be revoked and he could be ordered to execute all or part of the suspended sentence. Mr. Clark verbally acknowledged that he understood each of these things.

The court accepted the plea, conditioned upon a factual basis for it, finding that Mr. Clark had pleaded guilty knowingly and voluntarily. After hearing the State’s proffer of evidence, the court found sufficient factual basis for the plea and found Mr. Clark guilty of possession with intent to distribute cocaine.

At sentencing, the prosecutor stated his belief that the circumstances of the case warranted an active period of incarceration at the top of the sentencing guidelines, which he represented was 16 years, and recommended a sentence of 40 years, with all but 16 years suspended. Defense counsel asked for “whatever large sentence [the court] wants to impose, suspend it down to guideline sentence of eight years.” The court imposed a sentence of 40 years, with all but 20 years suspended, to be followed by five years of probation.¹

In 2009, Mr. Clark filed a petition for post-conviction relief claiming, *inter alia*, that the State’s Attorney violated the plea agreement during sentencing. The court denied the requested relief, finding that “the State did not violate its plea agreement by recommending a split sentence since the active incarceration period recommended by the State was within the guidelines.”

In 2013, Mr. Clark was released from prison for drug treatment, pursuant to Health General Article § 8-507, and was placed on probation at that time. In 2016, Mr. Clark was

¹ Mr. Clark filed a pro se application for leave to appeal the verdict and judgment of the circuit court, which was dismissed as untimely filed.

again convicted of possession with intent to distribute cocaine, along with two counts of illegal possession of a firearm. On January 3, 2017, at a violation of probation hearing, the circuit court revoked Mr. Clark’s probation in this case and ordered him to serve the suspended sentence of 20 years, to be served consecutive to the sentences imposed for the 2016 convictions.

In 2018, Mr. Clark filed a motion to correct an illegal sentence pursuant to Maryland Rule 4-345, asserting that his sentence was illegal because (1) the State violated the terms of the plea agreement by recommending a harsher sentence than it had agreed to, and (2) he was not advised that if he violated probation, he could be ordered to execute the suspended part of his sentence consecutive to any sentence imposed in the future. The court denied his motion without a hearing. This appeal followed.

DISCUSSION

Pursuant to Maryland Rule 4-345, a court “may correct an illegal sentence at any time.” The Court of Appeals has explained that there is no relief under Rule 4-345(a) where “the sentences imposed were not inherently illegal, despite some form of error or alleged injustice.” *Matthews v. State*, 424 Md. 503, 513 (2012). A sentence is “inherently illegal” where there was “no conviction warranting any sentence[,]” *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not a permitted one, *id.*; or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews*, 424 Md. at 514. Whether a sentence is or is not inherently illegal is a question of law which we review *de novo*. *State v. Bratt*, 241 Md. App. 183, 190 (2019).

Mr. Clark asserts that the State violated the plea agreement, which called for a sentence recommendation within the guidelines of eight to 16 years, when the prosecutor asked the court to impose a sentence of “40 years, suspend all but 16[.]” Mr. Clark claims that the sentence imposed by the court is illegal because “it stems from the State’s alteration of the sentence recommendation in violation of the plea agreement.” We disagree.

As stated above, a sentence is considered inherently illegal for purposes of Rule 4-345 when the sentence imposed exceeds the sentence agreed upon as part of a binding plea agreement. Pursuant to Maryland Rule 4-243(c)(2), “[t]he agreement of the State’s Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.” Here, the circuit court expressly stated that the terms of the plea agreement were not binding on the court, and the court informed Mr. Clark that, upon accepting his plea, the court could impose the maximum sentence of 40 years in prison. Accordingly, we conclude that the sentence is not illegal as it did not violate the terms of a binding plea agreement.

Mr. Clark also contends that his sentence is illegal because he was not advised that, in the event he violated probation, he could be ordered to serve any suspended portion of his sentence consecutive to any sentence that was imposed in the future. This claim is also without merit. It is within the discretion of the court, upon a violation of probation, to order that a suspended sentence be executed consecutive to a new sentence for an offense committed while a defendant is on probation. *See Kaylor v. State*, 285 Md. 66, 76 (1979). That Mr. Clark was not so advised does not make his sentence inherently illegal.

Finally, Mr. Clark contends that the court erred in denying his Rule 4-345 motion without a hearing. That Rule, however, requires a hearing only when the sentence is modified, reduced, corrected, or vacated. Md. Rule 4-345(f). Because the court denied the motion, no hearing was necessary.

**JUDGMENT OF THE CIRCUIT COURT
FOR QUEEN ANNE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**