

Circuit Court for Prince George's County  
Case No: CT161341A

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1118

September Term, 2019

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TERRELL MARKEE NICHOLSON

v.

STATE OF MARYLAND

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Nazarian,  
Gould,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: August 5, 2020

\*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.

Terrell Markee Nicholson appeals from an order of the Circuit Court for Prince George’s County denying his motion to correct an illegal sentence. For the reasons that follow, we shall affirm the judgment.

In 2016, Mr. Nicholson was charged in a 22-count indictment with home invasion, third-degree burglary, attempted armed robbery, first-degree assault, use of a handgun in the commission of a felony or crime of violence, and related offenses. On April 14, 2017, pursuant to a plea agreement with the State, he entered an *Alford* plea to use of a handgun in the commission of a felony or crime of violence (count 4), first-degree assault (count 5), and attempted armed robbery (count 8). On June 30, 2017, the court sentenced him to 15 years’ imprisonment for the handgun offense, the first five years without the possibility of parole; a concurrent term of 10 years for first-degree assault; and a concurrent term of 10 years for attempted armed robbery.<sup>1</sup> He did not seek leave to appeal.

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<sup>1</sup> Neither the plea nor sentencing hearing transcripts are in the record before us. A paper marked “Exhibit H” was admitted at the plea hearing. That exhibit set forth the terms of the plea agreement and provided that Mr. Nicholson would enter an *Alford* plea to “count 4 (use of a hand in the commission of a crime of violence), count 5 (1<sup>st</sup> degree assault of Lucy Frimpoma) and count 8 (attempted armed robbery of Joseph Blankson).” As for sentencing, the agreement provided that the State “agrees to allocate for no more than 15 years of active incarceration, with the first five years without parole, pursuant to statute; Defendant is free to allocate for any sentence aside from the aforementioned mandatory 5 years for the use of a handgun.” The agreement further provided that “[b]oth sides will defer to the court as to whether and how much suspended time to impose and whether and how many years of probation to impose.” Finally, the State agreed to nol pross the remaining charges. The court imposed a total term of 15 years’ imprisonment, the first five years without parole, and no suspended time. Accordingly, based on the record before us, the sentence did not breach the terms of the plea agreement.

In September 2018, Mr. Nicholson, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence. Apparently noting that the commitment record reflected that the first five years of the handgun sentence was “without possibility of Parole to [sic] Criminal Law Article CR-203,” he asserted that his sentence was illegal because there is no such statutory provision.<sup>2</sup> The circuit court denied the motion shortly after it was filed. Mr. Nicholson did not appeal that ruling.<sup>3</sup>

In March 2019, Mr. Nicholson, again representing himself, filed a second Rule 4-345(a) motion to correct an illegal sentence that was a carbon-copy of the first motion. The court summarily denied the motion by order entered on March 21, 2019. Mr. Nicholson filed a notice of appeal, which was struck as untimely. On July 19, 2019, he filed a third motion, again a carbon-copy of the first. The circuit court summarily denied the motion by order dated July 19, 2019. Mr. Nicholson then noted this timely appeal.

Mr. Nicholson does not argue that the circuit court erred in denying his motion, but instead notes that the circuit court failed to provide a “memorandum of law” to support its decision and, therefore, states that it was denied “for procedural reasons only.” He then asks this Court: “what procedures must [he] follow” and “what is [his] remedy?” The State responds that the circuit court properly denied relief because Mr. Nicholson’s motion “lacked merit.” We agree with the State.

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<sup>2</sup> The correct citation to the Maryland Code is Criminal Law § 4-204.

<sup>3</sup> It appears from the record that Mr. Nicholson did not appeal the court’s denial of his motion because he claimed to have received the order denying relief after the 30-day appeal period had expired.

We first note that our review of a circuit court’s ruling on a motion to correct an illegal sentence is *de novo*. *Bratt v. State*, 468 Md. 481, 494 (2020). Second, Rule 4-345 does not require the circuit court to support its ruling on a motion to correct an illegal sentence with a memorandum of law.

Turning to the merits, Mr. Nicholson does not dispute that he entered an *Alford* plea to use of a handgun in the commission of a felony or crime of violence, a crime prohibited by Section 4-204 of the Criminal Law Article of the Maryland Code. Nor does he allege that he was not informed of the penalty for the handgun offense, including that he would be ineligible for parole for the first five years of the sentence. In fact, the plea agreement is to the contrary. *See* footnote 1.

In relevant part, Crim. Law § 4-204, prohibiting the use of a firearm in the commission of a crime of violence, provides:

(c)(1)(i) A person who violates this section is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 5 years and, except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.

In short, Mr. Nicholson’s sentence to 15 years’ imprisonment, the first five years to be served without parole, for the handgun offense is legal.

Count 4 of the indictment charging Mr. Nicholson with use of a handgun in the commission of a felony or crime of violence specifically cited “CR-04-204 of the Criminal Law Article” – the correct statutory citation for the handgun offense. The docket entry for June 30, 2017 reflects that, for count 4, the sentencing court imposed “a period of 15 years;

first 5 years mandatory without possibility of parole pursuant to criminal law article CS-03-203.” The citation to “CS-03-203” is obviously incorrect.<sup>4</sup> The amended commitment record includes a citation to “Article 4 Section 204” for count 4 and accurately reflects a sentence of 15 years in the Division of Correction. An error appears in the notation following that sentence, which reads: “First 5 years mandatory without possibility of Parole to [sic] Criminal Law Article **CR -203.**” (Emphasis added.) The statutory citation errors in the docket entry and the commitment record, however, do not render Mr. Nicholson’s sentence illegal. Mr. Nicholson did not produce the transcript from the sentencing hearing and we presume that the sentencing court ordered the first five years of the 15-year sentence to be served without the possibility of parole in accordance with Crim. Law § 4-204, as it was required to do. *Medley v. State*, 386 Md. 3, 7-8 (2005) (a judge is “presumed to know the law and apply it properly.”) (quotation omitted).

Because Mr. Nicholson’s sentence is legal, we affirm the judgment of the circuit court denying his motion to correct an illegal sentence. In the interest of judicial economy, however, we shall remand with instructions for the court to correct the error in the June 30, 2017 docket entry and in the commitment record as it relates to the statutory authority for

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<sup>4</sup> We assume “CS-03-203” is a reference to the Correctional Services Article, § 3-203 of the Maryland Code. That statute, however, does not address parole, but rather sets forth the “general powers and duties” of the Commissioner of the Division of Correction.

the directive that the first five years of Mr. Nicholson’s 15-year sentence for the handgun offense be served without the possibility of parole.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY DENYING MOTION TO CORRECT ILLEGAL SENTENCE AFFIRMED. CASE REMANDED WITH INSTRUCTIONS FOR THE CIRCUIT COURT TO CORRECT THE JUNE 30, 2017 DOCKET ENTRY AND THE COMMITMENT RECORD TO REFLECT THAT THE CORRECT STATUTORY CITATION FOR ORDERING THE FIRST FIVE YEARS OF THE 15-YEAR SENTENCE FOR COUNT 4 TO BE SERVED WITHOUT THE POSSIBILITY OF PAROLE IS § 4-204 OF THE CRIMINAL LAW ARTICLE OF THE MARYLAND CODE.**

**COSTS TO BE SPLIT BETWEEN APPELLANT AND PRINCE GEORGE’S COUNTY.**