Circuit Court for Prince George's County

Case No. CT922196X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1120

September Term, 2019

Jeff Sean Andrews

V.

STATE OF MARYLAND

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

JJ.

Opinion by Moylan, J.

Filed: October 6, 2020

On October 22, 1993, the appellant, Jeff Sean Andrews, was convicted in the Circuit Court for Prince George's County for first-degree murder. He was sentenced to life imprisonment. Twenty-six and one-half years later, in May of 2019, the appellant filed a Motion to Correct an Illegal Sentence and/or To Exercise Revisory Power Over the Sentence pursuant to Maryland Rule of Procedure 4-345(a) and (b). Rule 4-345(a) and (b) provide:

> Rule 4-345. Sentencing – Revisory Power of court.
> (a) Illegal Sentence. The court may correct an illegal sentence at any time.
> (b) Fraud, mistake, or irregularity. The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

On July 25, 2019, Judge DaNeeka Varner Cotton denied the motion without a hearing. This appeal has timely followed. The appellant's multitudinous attacks reduce themselves, in our judgment, to four. They are, as the appellant has phrased them:

1) "The Family Court does not have jurisdiction over matters in adult Criminal Court;"

2) The appellant "had a right to a hearing and allocution in the matter of an illegal sentence;"

3) The court erroneously failed to review the sentence; and

4) In light of intervening developments in the sentencing of juveniles to terms of life imprisonment, the appellant's life sentence was illegal.

The Jurisdiction Of The Court

In contending that Judge Cotton did not have jurisdiction even to consider, let alone to deny, his Motion to Correct an Illegal Sentence, the appellant completely misperceives

the nature and structure of the Prince George's County judicial system. The appellant claims that the Family Court had no jurisdiction to decide his motion, which related to a criminal case. To be sure, Judge Cotton was sitting in July of 2019 as the Family Coordinating Judge of the Family Division. Prince George's County, however, does not have a separate Family Court. The Circuit Court of Prince George's County simply has a Family Division, to which any of the Circuit Court judges may rotate in and out. Judge Cotton is a full-fledged Circuit Court judge with plenary power and authority in any matter coming before the Circuit Court, as this motion did. There is no merit at all to this contention.

The Lack Of A Hearing

The appellant's contention that he was erroneously denied the right to a hearing and to allocution is equally without merit. Maryland Rule 4-345(f) requires a hearing when the court, in resolving the motion, "modif[ies], reduc[es], correct[s], or vacate[s] a sentence." Otherwise, it does not. In this case, Judge Cotton did none of those things. No hearing was required.

Revisory Power Over The Sentence

Subsection 4-345(b) provides that the court may exercise revisory power over a sentence if the original sentence was the product of a "fraud, mistake, or irregularity." This sentence was none of those. An "irregularity" is a "failure to follow requisite process or procedure." Early v. Early, 338 Md. 639, 652, 659 A.2d 1334 (1995). This sentencing did not involve that.

A "mistake," within the contemplation of Rule 4-345, means "a jurisdictional mistake." Hamilos v. Hamilos, 52 Md.App. 488, 450 A.2d 1316 (1982), aff'd 297 Md. 99, 465 A.2d 455 (1983). No jurisdictional mistake was remotely involved. The court clearly had jurisdiction to sentence the appellant following his conviction for first-degree murder.

The appellant does not even suggest that his 1993 sentencing was in any way "fraudulent." A revisory power pursuant to Rule 4-345(b) has no applicability to this case.

Standard of Review

The standard for reviewing a claim pursuant to Rule 4-345(a) is very clear. The appellate court reviews the denial of a motion to correct an illegal sentence de novo, as a matter of law. Rainey v. State, 236 Md. App. 368, 374, 182 A.3d 184 (2018).

Critical to a proper understanding of the very limited role of Rule 4-345(a) is an appreciation of what a motion pursuant to that rule is not. It is not a belated appeal. It is not aimed at procedural flaws, even grievous ones, in the proceedings leading up to the judgment under attack or the sentence imposed. Nor is it aimed at the wisdom of or the legal support for the antecedent judgment or the sentence. As the Court of Appeals pointed out in Colvin v. State, 450 Md. 718, 724-25, 150 A.3d 850 (2016):

> 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.

The question of what constitutes an illegal sentence within the contemplation of Maryland Rule 4-345(a) can be a tricky one. There is a natural tendency to assume that any flaw in the trial procedure severe enough, on appellate review, to constitute

reversible error would make any resulting sentence illegal per se. Such, of course, is not the case. In Carlini v. State, 215 Md.App. 415, 419, 81 A.3d 560 (2013), this Court went to some length to explain why a flawed trial does not necessarily produce a flawed sentence.

> What is an illegal sentence? That all depends upon what one means by "an illegal sentence." There are countless illegal sentences in the simple sense. They are sentences that may readily be reversed, vacated, corrected or modified on direct appeal, or even on limited post-conviction review, for a wide variety of procedural glitches and missteps in the sentencing process. Challenges to such venial illegalities, however, are vulnerable to such common pleading infirmities as non-preservation and limitations. There is a point, after all, beyond which we decline to revisit modest infractions. There are, by contrast, illegal sentences in the pluperfect sense. Such illegal sentences are subject to open-ended collateral review. Although both phenomena may casually be referred to as illegal sentences, there is a critically dispositive difference between a procedurally illegal sentencing process and an inherently illegal sentence itself. It is only the latter that is grist for the mill of Maryland Rule 4–345(a):
>
> (a) *Illegal sentence*. The court may correct an illegal sentence at any time.

(Emphasis supplied.)

The different levels of illegality should not be conflated. It was of this linguistic problem that this Court spoke in Matthews v. State, 197 Md. App. 365, 367, 13 A.3d 834 (2011), rev'd on other grounds, 424 Md. 503, 36 A.3d 499 (2012):

> What seems at first to be a legal problem frequently turns out to be a linguistic or a semantic problem. On this appeal, we come face to face with the enigma that an illegal sentence is not always an illegal sentence. We do not mean this as doubletalk. In the context of direct appellate review, there are a wide variety of reasons why a sentence, or a sentencing procedure, may be so seriously flawed as to give rise to the appellate reversal or vacating of the sentence. In this context, such flaws are, and are regularly referred to as, illegal sentences. There are, however, procedural rules regulating the form that challenges to such sentences may take and imposing strict limitations on when such challenges may be made. There is also, by dramatic

> contrast, a very different context in which a sentence may be challenged at any time, subject to no filing deadline of any sort.

(Emphasis supplied.)

The limited attack on an illegal sentence focuses only on an illegality inherent in the sentence itself and not in the proceeding that produced the sentence. Colvin, 450 Md. At 724-25, was very precise.

> An illegal sentence, for purposes of Rule 4-345(a), is one in which the illegality inheres in the sentence itself; i.e., there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.

(Emphasis supplied.)

Was The Sentence Illegal?

The appellant's contention that his sentence was illegal is based upon the fact that he was only 17 years of age when Judge David Gray Ross sentenced him on November 16, 1993, to "remain in prison for the duration of his natural life."

Much of the appellant's attack on his sentence is predicated on his mistaken assumption that his sentence "for natural life" is tantamount to a sentence of "life without the possibility of parole." That is not the case. A sentence to life without the possibility of parole, as an even harsher sanction, was added to the menu of available sentences for first-degree murder in 1987. See Oken v. State, 378 Md. 179, 194, 835 A.2d 1105 (2003) for a general review of the historical development of the penalties for first-degree murder. This appellant, of course, was sentenced in 1993, at a time when a sentence of life without parole was available. He expressly did not receive that sentence, however, nor did he receive the

advance notice that would have been required for such a sentence. In Scott v. State, 379 Md. 170, 840 A.2d 715 (2004), the Court of Appeals dealt with Scott's claim that his sentence for "natural life" was ambiguous because the State "might interpret 'natural life' to mean no possibility of parole." The Court of Appeals held squarely, 379 Md. at 176-77, that there was "no basis for Scott's contention that the correctional authorities would be confused and imprison him without possibility for parole."

The core of the appellant's argument is that he is entitled to the benefit of the Supreme Court's decision in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 507 (2012), wherein the Supreme Court held that a "mandatory life [sentence] without parole for those under the age of 19 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments." 567 U.S. at 465. That decision was subsequently made retroactive by Montgomery v. Louisiana, 577 U.S. ___, 136 S.Ct. 718, 736, 193 L.Ed.2d 599 (2016).

Miller v. Alabama applies to all persons sentenced to life without parole who were under 18 years of age at the time of their sentencing. As we have held, however, the appellant, albeit 17 years of age at the time of sentencing, was not sentenced to life without parole. Miller v. Alabama, therefore, does not apply to this case, and Miller v. Alabama is the heart of the appellant's argument.

The Science of Miller v. Alabama Without Its Holding

In a closely related argument, the appellant contends that Maryland should rely on the science of Miller v. Alabama even if it is not bound by its holding. The appellant, in

his brief, uses this factual decision in Miller v. Alabama to attack the legal sufficiency of the State's evidence to prove the necessary mens rea of premeditated first-degree murder.

> This Court must vacate the conviction and sentence of first degree murder since the adolescent-brain-science shows that the elements of premeditation are not present due to Andrews's immaturity, irresponsibility, impretuousness, and recklessness, Miller, 567 U.S. at 476. Andrews lacked the requisite mens rea for first degree murder. In accord, this Court should enter a verdict of guilty of second degree murder and sentence Andrews as is statutorily permissible.

(Emphasis supplied.)

An attack on the legal sufficiency of the evidence to support the conviction is classically off limits for an attack on the legality of a sentence per Rule 4-345(a). This evidentiary support for the conviction is not something inherent in the sentence itself.

JUDGEMENT AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.