

Circuit Court for Anne Arundel County
Case No: 02-K-95-001665

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1128

September Term, 2018

TYREE KEVIN CRAWFORD

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 29, 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.

Tyree Kevin Crawford filed a Rule 4-345(a) motion to correct an illegal sentence in the Circuit Court for Anne Arundel County in which he alleged that his sentence to life imprisonment, all but 40 years suspended, for first-degree murder was illegal because the court had failed to award 18 years of credit for time served. The circuit court denied the motion, ruling that “the sentence itself is not illegal and any issues relating to the calculation of time are not subject to attack as an illegal sentence.” Mr. Crawford noted an appeal of that order, which we stayed pending the Court of Appeals’ decision in *State v. Bratt*, 468 Md. 481 (2020).

In *Bratt*, the Court of Appeals stated that the failure to “award appropriate credit for time served” is an alleged “defect in sentencing *procedure* that does not render the sentence itself inherently illegal.” *Id.* at 499. The Court held, therefore, that a motion to correct the commitment record pursuant to Rule 4-351 is the “appropriate vehicle” for addressing a credit issue. *Id.* at 506-07 (“[P]rocedural errors” on the commitment record, such as failure to include a sentencing start date and the appropriate credit for time served, may be remedied by filing a motion pursuant to Rule 4-351, not Rule 4-345.)

Following the Court’s decision in *Bratt*, the stay of this appeal was lifted and on July 1, 2020, Mr. Crawford filed a supplemental brief in which he maintains that *Bratt* is distinguishable because “the error in his sentence involves more than just the failure to award credit for time served.” He asserts that his sentence “is also illegal because it was made to run consecutive to an expired sentence[.]” In the supplemental brief, appellate counsel also informs us that Mr. Crawford “was released from prison in 2019.”

The issue in this case is squarely one of credit for time served. As background, it appears that Mr. Crawford was sentenced in 1974, for robbery with a deadly weapon, to a six-year term of imprisonment. While serving that sentence, he escaped but was ultimately apprehended and returned to prison. In 1976, Mr. Crawford was convicted of robbery with a dangerous or deadly weapon, an offense he had committed while he was a fugitive, and was sentenced to 18 years' imprisonment, to run consecutively to the 6-year sentence imposed in 1974. Two months later, he was convicted of escape, and sentenced to one year, "to run consecutive to any sentence(s) now being served." In 1979, Mr. Crawford was convicted of first-degree murder for killing a fellow inmate and was sentenced to "natural life, consecutive to any sentence or sentences you are now serving."

In 2015, Mr. Crawford's murder conviction was reversed based on *Unger v. State*, 427 Md. 383 (2012), and in 2016 he pled guilty to first-degree murder and was sentenced to life, with all but 40 years suspended, to be followed by a 5-year term of supervised probation. That sentence was to run consecutively to the 18-year sentence imposed in 1976, and it was intentionally structured to allow Mr. Crawford to "step down" and out of prison over a three-year period. It appears that the calculation of time to serve, and the manner in which the sentence was imposed, was based on information that defense counsel had obtained from the Commitment Office at the Division of Correction related to Mr. Crawford's sentencing history and diminution credits. The commitment record that was issued did not include a sentencing start date (other than that it ran consecutively to the 18-year sentence), and it reflected that Mr. Crawford was awarded "ZERO days credit for time served[.]"

In 2018, Mr. Crawford filed the motion to correct an illegal sentence at issue in this appeal, in which he asserted that he was entitled to 18 years of credit for time served on the 2016 murder sentence. He claimed that the original life sentence for murder, imposed in 1979, began on September 27, 1980 because it was run consecutively to any sentence he was then serving and the only sentence, he claims, he was then serving was the 6-year sentence for armed robbery imposed in 1974. He asserted that the 18-year sentence imposed in 1976 for armed robbery had not yet commenced when he was sentenced for murder in 1979 and, therefore, that sentence ran concurrently with the murder sentence. Thus, by running the 2016 murder sentence consecutively to the 18-year sentence for armed robbery, he maintained that he was entitled to credit for the time that he had served on the original murder sentence from 1980 to 1998.

We hold that the circuit court did not err in ruling that “the sentence itself is not illegal and any issues relating to the calculation of time are not subject to attack as an illegal sentence.” *Bratt*, 468 Md. at 499 (the failure to award credit “is a defect in sentencing *procedure* that does not render the sentence itself inherently illegal.”). As the Court held in *Bratt*, the appropriate vehicle for challenging a credit issue or the start date of a sentence is a motion to correct the commitment record pursuant to Rule 4-351. *Id.* at 507.

Nonetheless, Mr. Crawford contends, for the first time on appeal, that the 2016 sentence is “also illegal” because it was allegedly run consecutively to an expired sentence, namely the 18-year sentence for armed robbery, which he claims expired on September 27, 1998. He asserts that the sentence is illegal because the court had no authority to run a sentence consecutively to a sentence not then in existence.

Although it is generally true that a court may not run a sentence consecutively to another sentence not then in existence, the context here is important. It appears to us that the 2016 sentencing court was attempting to begin the 2016 sentence on the same date that the original murder sentence had begun in order to account for time already served. The 1979 life sentence was run “consecutive to any sentence or sentences” he was then “serving,” but what sentence or sentences Mr. Crawford was serving in 1979 is, in our view, open to question and hence, best left for the circuit court to determine. But in any event, Mr. Crawford’s sentence is not inherently illegal. The real issue is the calculation of credit for time served, which Mr. Crawford may pursue by filing a motion to correct the commitment record in the circuit court. *Bratt*, 468 Md. at 507.

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