

Circuit Court for Baltimore County
Case No.: 03-K-08-002158

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1138

September Term, 2023

COURTNEY DARNELL BUTLER

v.

STATE OF MARYLAND

Friedman,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 6, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 2009, a jury in the Circuit Court for Baltimore County found Courtney Darnell Butler, appellant, guilty of attempted robbery with a dangerous and deadly weapon, use of a handgun in the commission of a crime of violence, and illegal possession of a regulated firearm. The court sentenced him to a total term of 35 years' imprisonment, the first 25 years without parole. On direct appeal, this Court rejected his contention that the suppression court erred in denying his motion to suppress his pre-trial identification and his assertion that the evidence was insufficient to sustain the convictions and, accordingly, affirmed the judgments. *Butler v. State*, No. 321, Sept. Term, 2009 (filed October 21, 2010).

In 2020, Mr. Butler filed a *pro se* motion to correct an illegal sentence, which the circuit court denied on July 24, 2023.¹ He noted a timely appeal. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Pursuant to an indictment filed in the circuit court, Mr. Butler was charged with 11 offenses, including attempted robbery with a dangerous and deadly weapon (count 1), attempted robbery (count 2), attempted theft over \$500 (count 3), first-degree assault (count four), and various weapon offenses. The charges arose after a teenage male, seated in a parked car outside of an apartment complex, was approached by three males. One of the assailants pointed a gun at the teenager and ordered him out of the vehicle. That assailant, later identified as Mr. Butler, then searched his pants pockets for money and,

¹ Mr. Butler had previously filed a *pro se* motion to correct an illegal sentence, which the court denied on June 5, 2013. He did not appeal that judgment.

when he found none, riffled through the console of the car while a second assailant held the victim in place by pointing a gun at his chest.

Ultimately, the State submitted four counts for the jury’s consideration: robbery with a dangerous and deadly weapon (count 1), carrying a weapon (a machete) openly with an intent to injure (count 5), illegal possession of a regulated firearm (count 6), and use of a handgun in the commission of a crime of violence (count 8). The jury acquitted Mr. Butler of count 5 and found him guilty of the remaining offenses. The seven counts not sent to the jury, including attempted robbery (count 2), were nol prossed.

For the attempted robbery with a dangerous and deadly weapon conviction, the court sentenced Mr. Butler to an enhanced sentence of 25 years without parole, pursuant to Md. Code, Criminal Law § 14-101(c), after the State presented evidence that Mr. Butler had been convicted of a crime of violence on two prior separate occasions and had served at least one term of confinement in a correctional facility for the prior conviction(s). The court also sentenced him to a consecutive term of 10 years for the use of a handgun in the commission of a crime of violence, and to a concurrent five years for illegal possession of a regulated firearm.

Mr. Butler did not challenge his sentences on direct appeal, but years later did so in his Rule 4-345(a) motion. As noted, the circuit court denied relief.

DISCUSSION

Rule 4-345(a) provides that a court “may correct an illegal sentence at any time[.]” but the Rule is very narrow in scope and is “limited to those situations in which the illegality inheres in the sentence itself[.]” *Chaney v. State*, 397 Md. 460, 466 (2007). An

inherently illegal sentence is one in which there “has been no conviction warranting any sentence for the particular offense[.]” *id.*; where “the sentence is not a permitted one for the conviction upon which it was imposed[.]” *id.*; where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012); or where the court “lacked the power or authority” to impose the sentence. *Johnson v. State*, 427 Md. 356, 370 (2012). Notably, however, 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.” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)). In other words, “only claims sounding in substantive law, not procedural law, may be raised through a Rule 4-345(a) motion.” *Id.* at 728. Appellate court review of the circuit court’s ruling on a motion to correct an illegal sentence is *de novo*. *Bratt v. State*, 468 Md. 481, 494 (2020).

Contentions

Use of a Handgun Sentence

On appeal, Mr. Butler, who continues to represent himself, asserts that his sentence for use of a handgun in the commission of a crime of violence is illegal. In support of his claim, he focuses on the trial court’s instructions to the jury and what the court related the State needed to prove to convict him of the offense. In its instructions, which immediately followed the court’s instructions on attempted robbery with a dangerous and deadly weapon, the court stated: “A crime of violence in this case is robbery with a dangerous and deadly weapon” and that offense “is considered a crime of violence.” The court continued:

“In order to convict the Defendant, the State must prove, number one, that the Defendant committed the crime of violence, of robbery with a deadly weapon and, two, that the Defendant used a handgun in the commission of the crime of violence[.]”

Mr. Butler correctly points out that he was charged with *attempted* robbery with a dangerous and deadly weapon, not robbery with a dangerous and deadly weapon. The court’s statement that “[a] crime of violence in this case is robbery with a dangerous and deadly weapon” rather than the *attempt* to commit the same, however, does not render his sentence for use of a handgun in the commission of a crime of violence illegal. Attempted robbery with a dangerous or deadly weapon is a crime of violence. Md. Code, Criminal Law §14-101(a) (9) & (19).

Moreover, in the State’s closing arguments, which followed the court’s instructions to the jury, the prosecutor noted that the issue in this case was “who committed” the crimes and asserted that the evidence established that Mr. Butler was the assailant. The prosecutor then stated:

Starting with those two counts, his Honor instructed you as to the law specifically with attempted robbery with a dangerous and deadly weapon. He has advised you that if someone attempts to take and carry away property of another – which we have here – placing that person in fear of force or threat of force – which we have here – with intent to deprive him of property and with use of a deadly weapon, he is responsible for that.

We all know that a loaded handgun was recovered later. And a handgun is clearly a deadly weapon.

For use of a handgun in a crime of violence, as his Honor instructed you, use of a handgun coupled with the use of a handgun during an *attempted* robbery is more than enough to convict the person of that crime.

(Emphasis added.)

In short, the conviction for use of a handgun in the commission of a crime of violence was not invalid and the sentence imposed for that offense is legal.

In a separate argument, Mr. Butler seems to assert that his sentence for use of a handgun in the commission of a crime of violence is also illegal because it was predicated on the “completed offense” of robbery with a deadly weapon and he could “not be convicted and sentenced [] both for the complete offense and an attempt to complete the same offense.” Mr. Butler is mistaken. The crime of violence in this case was the attempted robbery with a dangerous weapon. And in *Whack v. State*, 288 Md. 137 (1980), the Maryland Supreme Court held that a defendant may be convicted and sentenced for both armed robbery and use of a handgun in the commission of a crime of violence even where the offenses arose from the same set of facts. The fact that a crime of violence was attempted, but not consummated, does not preclude a conviction for use of a handgun in the commission of a crime of violence.

Enhanced Sentence for Attempted Robbery with a Dangerous Weapon

As noted, for the attempted robbery with a dangerous and deadly weapon conviction, the court sentenced Mr. Butler to an enhanced sentence of 25 years, without parole, pursuant to Md. Code, Criminal Law § 14-101(c), after the State presented evidence that Mr. Butler had been convicted of a crime of violence on two prior separate occasions and had served at least one term of confinement in a correctional facility for the prior conviction(s). Based on the record before us, at sentencing Mr. Butler did not dispute those facts or otherwise challenge his eligibility for the enhanced sentence. Nor did he raise the issue on direct appeal.

In this appeal, Mr. Butler maintains that the sentencing court “lack[ed] the requisite authority to impose the enhanced sentencing” because the conditions for the enhancement were not met. His reasoning is not altogether clear. He does not allege that he had not been convicted on two prior separate occasions of a crime of violence nor that he had not served at least one term of confinement in a correctional facility for one of those prior convictions when he was sentenced in this case. Rather, he seems to base his position on his assertion that the State had nol prossed the count in this case charging him with attempted robbery and that the jury acquitted him of carrying a weapon openly (machete) with intent to injure. The nol pros and the acquittal, however, had no bearing on whether he met the criteria for an enhanced sentence for attempted robbery with a dangerous weapon.

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