Circuit Court for Montgomery County
Case No: 117564C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1164

September Term, 2020

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DAQUAN TYLER

v.

STATE OF MARYLAND

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Fader, C.J.,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: August 31, 2021

*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.

Daquan Tyler, appellant, appeals from the denial of his motion to correct an illegal sentence. For the reasons to be discussed, we shall affirm the judgment.

In 2011, in the Circuit Court for Montgomery County, Mr. Tyler was convicted of second-degree assault and sentenced to four years' imprisonment, all but 18 months suspended, to be followed by a two-year period of supervised probation. The sentence was ordered to begin running on November 17, 2010. Mr. Tyler was released in 2012, and in 2013, while on probation in this case, Mr. Tyler was charged with a host of new offenses. Those charges prompted the State to seek revocation of his probation in this case and on August 29, 2013, the court in fact terminated his probation and ordered him to serve two and one-half years of his previously suspended sentence, to run consecutive to any sentence he was then serving. It is not clear from the record before us what sentence(s) Mr. Tyler may have been serving when the violation of probation ("VOP") sentence was imposed; the transcript from the VOP proceeding is not in the record before us and Mr. Tyler fails to illuminate us.

In 2020, Mr. Tyler, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he maintained that his sentence in this case is illegal because the original sentence was run concurrently with any outstanding sentence while his sentence following revocation of probation was run consecutively to any outstanding sentence. The circuit court summarily denied his motion.

On appeal, Mr. Tyler asserts that (1) the court erred in denying his motion without stating reasons for its ruling; (2) the VOP sentence could not have been run consecutively to any outstanding sentence because when the sentence was originally imposed in 2011 it

was deemed to run concurrently with any other sentence; and (3) the VOP proceeding was flawed because the State's case was presented by a prosecutor and not by a probation agent.

First, although perhaps a good practice, Mr. Tyler points to no authority which requires a court to state its reasons for denying a Rule 4-345(a) motion to correct an illegal sentence and we are not aware of any. Second, based on the limited record before us, we are not persuaded that the court erred in ordering Mr. Tyler to serve his VOP sentence consecutively to any sentence that was outstanding when that time was imposed. As this Court has stated, a trial court has "the unfettered prerogative to make [a] reinstated sentence of incarceration [upon revocation of probation] either concurrent with or consecutive to" an intervening sentence then in effect. *DiPietrantonio v. State*, 61 Md. App. 528, 535 (1985). Mr. Tyler has not asserted, or even hinted, that the VOP sentence in this case was run consecutively to a sentence he was serving *prior to* the original imposition of the sentence in this case in 2011. Moreover, the record before us indicates that, while on probation in this case, Mr. Tyler was charged with committing various new criminal offenses—behavior which apparently led the court to revoke his probation and order him to serve his previously suspended time. The VOP court, as indicated, had the discretion to run the VOP sentence consecutive to any sentence Mr. Tyler may have been serving for any new convictions he incurred after he was originally sentenced in this case.

Finally, Mr. Tyler's assertion that a probation agent rather than a prosecutor should have represented the State at the VOP hearing is not an issue properly before us. 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, 368 (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 sum, we hold that the circuit court did not err in denying Mr. Tyler's motion to correct his sentence.

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