Circuit Court for Baltimore County
Case No. 03-K-07-004700

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1296

September Term, 2019

MARVIN RAY JORDAN

v.

STATE OF MARYLAND

Reed,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, Paul E., J.

Filed: March 22, 2021

The appellant, Marvin Ray Jordan, was charged in the Circuit Court for Baltimore County with armed robbery and eighteen related offenses. Pursuant to a binding plea agreement, on August 14, 2008, he pled guilty to armed robbery. The State nolle prossed the remaining charges. The circuit court sentenced the appellant, as a repeat offender, to 25 years' imprisonment without the possibility of parole pursuant to Maryland Code, § 14-101(c)(1) of the Criminal Law Article ("CR"), "to be served concurrent to any sentence that he's currently serving." The appellant did not object to the sentence imposed by the court. On July 15, 2019, however, he filed a Motion to Correct an Illegal Sentence, arguing that the court had erroneously applied the five-year sentencing enhancement set forth in CR § 14-101(c)(1). The court denied his motion without a hearing. The appellant timely appealed the denial of that motion and presents a single question for our review, which we have rephrased as follows:

> Did the circuit court err in finding that the appellant had served a "term of confinement" for a violent felony, resulting in its imposing an illegal five-year sentence enhancement pursuant to CR § 14-101(c)?

We answer the appellant's question in the negative and shall therefore affirm the judgment of the circuit court.

BACKGROUND

The appellant was arrested for and charged with the August 21, 2007, armed robbery of a "GameStop" located at 7972 Belair Road in Baltimore County. On February 14, 2008, the State filed a notice of intent to seek an enhanced penalty of 25-years' incarceration

without the possibility of parole under CR § 14-101(c)(1). The State's notice provided, in pertinent part:

> In 2005, [the appellant] was convicted in the Circuit Court [for] Baltimore City of Armed Robbery[.] The [appellant] was sentenced to the Department of Corrections for a period of twenty (20) years, sixteen (16) years of which were suspended.
>
> On November 5, 2007, [the appellant] was convicted in the Circuit Court for Baltimore County … of Robbery with a Dangerous and Deadly Weapon, under Case No. K06005361. The [appellant] was sentenced to the Department of Corrections for a period of ten (10) years. On the same date, the [appellant] was also convicted … of First Degree Escape in Case No. K06005362. The [appellant] was sentenced to four (4) years in the Department of Correction, to be served consecutive to Case No. K06005361.

According to the State at the appellant's plea hearing, on August 21st, 2007 appellant entered the GameStop, perused several videogames, and exited the store. Upon returning to the store minutes later, the appellant locked the front door, approached the checkout counter, drew a handgun from his waistband, and announced: "[T]his is a stickup." Thereafter, he ordered a GameStop employee and a customer to lie on the floor. He then instructed the store manager to open the cash registers and handed her a trash bag, which he demanded she "start filling … with games." As the manager did so, the appellant took the cash from the store's registers.

With the registers' cash and GameStop's videogames in hand, the appellant proceeded to steal the customer's keys, as well as $100 from his wallet. He then ordered the victims to a back room, which contained several videogame consoles. The appellant proceeded to instruct the manager to place the consoles in the bag in which she had deposited the videogames. After once again ordering the victims to the floor, the appellant

"placed shackles on the legs of two of the witnesses," relieved the manager of the keys to the store, and asked the manager whether the store's back door alarm was operational. After the manager explained how to disable said alarm, the appellant locked the victims in the back room and fled the scene.

Members of the Baltimore County Crime Lab processed the scene of the robbery, whereupon they discovered the appellant's fingerprints. Thereafter, the GameStop employees positively identified him as their assailant from a photographic array. The appellant was ultimately apprehended in South Carolina, to which he had absconded following the robbery. After having been Mirandized, the appellant confessed to having robbed the GameStop and two other stores.

At the plea hearing, the appellant neither disputed the foregoing facts, nor denied that he had twice previously been convicted of armed robbery. The record further reflects that his guilty plea was knowingly, voluntarily, and intelligently entered. Prior to entering his plea, the appellant affirmed that he understood that, as a repeat violent offender, he was subject to a mandatory sentence of 25 years. After the appellant had entered his guilty plea, the court imposed the mandatory 25-year sentence pursuant to CR § 14-101(c)(1), notwithstanding the State's purportedly having failed to introduce evidence that he had been lawfully released from the terms of confinement arising from his 2005 and 2007 armed robbery convictions.

We shall include additional facts, as necessary, in our discussion of the issue presented.

DISCUSSION

I

The State contends that the appellant "waived his illegal sentence claim because he did not object during his sentencing, and he does not allege an illegality inherent to the sentence itself." Citing *Bryant v. State*, 436 Md. 653 (2014), the State further maintains that the sentence arose from a procedural—rather than a substantive—error, and did not, therefore, constitute an "inherently illegal sentence." As such, it asserts that the appellant "waived his claim for [our review]."

The appellant counters that the State failed to prove that he had "'serve[d] at least one term of confinement in a correctional facility as a result of [having been convicted of] a crime of violence.'" Accordingly, he argues, "the sentence in this case was in fact inherently illegal and not the subject of procedural error." In view of the purportedly inherently illegal sentence, he asserts that his claim is exempt from the normal preservation requirements pursuant to Maryland Rule 4-345(a), which permits a court to "correct an illegal sentence at any time."

Maryland Rule 8-131 governs the scope of appellate review and provides, in pertinent part: "Ordinarily, the appellate court will not decide any … issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). By failing to timely object—either at trial or during sentencing—a defendant generally waives appellate review of the court's ruling. *See Bryant*, 436 Md. at 660 ("It is well settled that challenges to sentencing determinations are generally waived if not raised

during the sentencing proceeding." (citations omitted)). This rule "'applies equally to proceedings where an enhanced sentence may be imposed.'" *Id.* at 668 (quoting *Ford v. State*, 73 Md. App. 391, 405 (1988)). Rule 8-131 is, however, subject to limited exceptions. One such exception is set forth in Maryland Rule 4-345, which "governs a sentencing court's power to revise an enrolled sentence in a criminal case," *Lamb v. Kontgias*, 169 Md. App. 466, 473, *cert. denied*, 395 Md. 57 (2006), and provides: "The court may correct an illegal sentence at any time." Md. Rule 4-345(a). *See also Carlini v. State*, 215 Md. App. 415, 423 (2013) (Maryland Rule 4-345(a) "'creates a limited exception to the general rule of finality, and sanctions a method of opening a judgment otherwise final and beyond the reach of the court.'" (emphasis omitted) (quoting *State v. Griffiths*, 338 Md. 485, 496 (1995)).[1]

The illegalities to which Maryland Rule 4-345(a) applies are limited to those which inhere "in the sentence itself as opposed to being some procedural (even constitutional) flaw in the trial resulting in the conviction for which the sentence is imposed or even a flaw in the sentencing procedure[.]" *Ray v. State*, 230 Md. App. 157, 164 (2016), *aff'd*, 454 Md. 563 (2017). *See also State v. Wilkins*, 393 Md. 269, 273-74 (2006) ("[A] motion to

[1] This exception to the general preservation requirement applies to inherently illegal sentences imposed pursuant to plea agreements. As the Court of Appeals held in *Holmes v. State*, 362 Md. 190, 196 (2000), a defendant can only consent to a valid, statutorily authorized plea agreement. *See also White v. State*, 322 Md. 738, 749 (1991) ("[T]he defendant cannot validate an illegal sentence or insulate it from appeal or collateral attack by consent or waiver."); *Stachowski v. State*, 213 Md. App. 1, 26 (2013) ("[C]onsent does not transform an illegal sentence into a legal one." (citations omitted)), *rev'd on other grounds*, *State v. Stachowski*, 440 Md. 504 (2014).

correct an illegal sentence can be granted only where there is some illegality in the sentence itself or where no sentence should have been imposed." (citation omitted)); *Tshiwala v. State*, 424 Md. 612, 619 (2012) ("[W]here the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a)." (citation omitted)).

In *Bryant*, 436 Md. at 663, the Court of Appeals clarified the distinction between "illegal sentences" and "inherently illegal sentences," explaining:

> The distinction between those sentences that are "illegal" in the commonly understood sense, subject to ordinary review and procedural limitations, and those that are "inherently" illegal, subject to correction "at any time" under Rule 4–345(a), has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings.

For purposes of Rule 4-345(a), therefore, a sentence is "inherently illegal" if "'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[.]'" *Colvin v. State*, 450 Md. 718, 727 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). *See also State v. Wilkins*, 393 Md. 269, 273 (2006) ("'[A] sentence that is not permitted by statute is an illegal sentence.'" (quoting *Holmes v. State*, 362 Md. 190, 195-96 (2000))).

In this case, the appellant neither contests the sufficiency of the evidence underlying his conviction, nor contends that "the judge's 'actions' [were] *per se* illegal." *Wilkins*, 393 Md. at 284. Rather, he denies there having been a "necessary predicate … to meet [a] statutory requirement[] for an enhanced sentence"—to wit, his having "served at least one term of confinement in a correctional facility as a result of a conviction of a crime of

violence." CR § 14-101(c)(1)(ii). Given that the appellant challenges the legality of the enhanced sentence itself (and not a mere procedural irregularity), his claim is cognizable under Maryland Rule 4-345(a). The appeal is, therefore, properly before us, and we shall address the merits thereof.

II

Although preserved, the appellant's claim that the court erred in applying the sentencing enhancement prescribed by CR § 14-101(c)(1) is ultimately unavailing.

A. Standard of Review

We review the legality of a sentence and any enhancements thereto *de novo*. *See State v. Crawley*, 455 Md. 52, 66 (2017) ("Whether a sentence is an illegal sentence under Maryland Rule 4–345(a) is a question of law that is subject to *de novo* review." (citing *Meyer v. State*, 445 Md. 648, 663 (2015)); *Bonilla v. State*, 443 Md. 1, 6 (2015) ("We review the legal issue of the sentencing … as a matter of law." (citations omitted)). "'Where the General Assembly has required or permitted enhanced punishment for multiple offenders, the burden is on the State to prove, by competent evidence and beyond a reasonable doubt, the existence of all of the statutory conditions precedent for the imposition of enhanced punishment.'" *Stevenson v. State*, 180 Md. App. 440, 447 (2008) (quoting *Jones v. State*, 324 Md. 32, 37 (1991)).

B. Criminal Law Article, Section 14–101(c)(1)

Criminal Law § 14-101(c)(1) governs the imposition of enhanced sentences for certain violent repeat offenders, and provides:

> Except as provided in subsection (f) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person: [2]
>
> (i) has been convicted of a crime of violence on two prior separate occasions:
>
> 1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and
>
> 2. for which the convictions do not arise from a single incident; and
>
> (ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

Of the above-enumerated conditions, the appellant neither denies his having "been convicted of a crime of violence on two separate occasions," nor contends that those violent crimes arose from a single incident. On this appeal, he challenges only the court's finding that, prior to the conviction at issue, he had "*served at least one term of confinement* in a correctional facility as a result of a conviction of a crime of violence." CR § 14-101(c)(1)(ii) (emphasis added). In so doing, he argues that his escape from prison

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[2] CR § 14-101(f) provides, in relevant part:

> (f)(1) This subsection does not apply to a person registered or eligible for registration under Title 11, Subtitle 7 of the Criminal Procedure Article.
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> (2) A person sentenced under this section may petition for and be granted parole if the person:
>
> (i) is at least 60 years old; and
>
> (ii) has served at least 15 years of the sentence imposed under this section.

interrupted the terms of his incarceration for the predicate violent crimes at issue. Relying principally on our holdings in *McLee v. State*, 46 Md. App. 472 (1980), *cert. denied*, 289 Md. 738 (1981), and *Teeter v. State*, 65 Md. App. 105 (1985), *cert. denied*, 305 Md. 245 (1986), the State counters that "a defendant need not serve a complete sentence to satisfy the 'one term of confinement' requirement." We agree that *McLee* and *Teeter* are instructive.

In *McLee*, the defendant was convicted of robbery. The court sentenced him to twenty-five years' incarceration under then Article 27, § 643B(c)—the predecessor to CR § 14-101(c)(1).[3] On appeal, the defendant in that case conceded that the robbery at issue had been the third violent crime of which he had been convicted and acknowledged that the prior two violent crimes had arisen from separate incidences. He contended, however, that, because he had been paroled approximately twenty-three years prior to having fully served the aggregate thirty-year sentence for his prior convictions, he had "not served 'at least one term of confinement in a correctional institution[.]'" *McLee*, 46 Md. App. at 476.

Although we acknowledged "a certain surface logic," *id.* at 476, to the defendant's argument, we affirmed the judgment of the circuit court, holding that the Article 27, § 643B(c) sentencing enhancement did not require "the defendant [to] have served the

[3] The Revisor's Note to CR § 14-101 explicitly provides: "This section is new language *derived without substantive change from former Art. 27, § 643B(b) through (g) and the first sentence of (a)*." (emphasis added). *See also Stevenson*, 180 Md. App. at 453 (noting that CR § 14-101 was derived without substantive change from Art. 27, § 643B).

complete term of imprisonment imposed for the prior convictions." *Id*. at 477. We reasoned:

> At the time appellant was convicted … of his third crime of violence he had served at least one term of confinement for the … offenses for which he was on parole, which would have been the entire prison term had he not violated his parole. In such a situation we do not interpret the statute so as to immunize third offenders from its effects. To do so would be to place a premium on the violation of a parole, a result entirely foreign to the purpose of the act.[4]

Id. at 476-77 (quotation marks and citations omitted). We thus distinguished, for purposes of Article 27, § 643B(c), a criminal defendant's having "served at least one term of confinement" from his or her having "served the complete term" of imprisonment to which he or she had been sentenced.

As in *McLee*, the defendant in *Teeter* challenged the court's imposition of a sentence enhancement pursuant to Article 27, § 643B(c), asserting that the State failed to provide

[4] In *Jones v. State*, 336 Md. 255, 264 (1994), the Court of Appeals addressed the legislative intent underlying the enactment of such statutes as Article 27, § 643B(c), explaining:

> [T]he penological objectives of statutes such as § 643B(c) … [are] to provide warning to those persons who have previously been convicted of criminal offenses that the commission of future offenses will be more harshly punished, and to impose the extended period of incarceration upon those who fail to heed that warning so as to protect society from violent recidivist offenders.

(Citations omitted). *See also Williams v. State*, 220 Md. App. 27, 43 (2014) (providing that the express purpose of Article 27, § 643B(c), was "to provide a warning to repeat violent offenders that they will be subject to more severe sentences, and to protect the public from those repeat violent offenders who do not heed the warning), *cert. denied*, 441 Md. 219 (2015).

competent evidence that he had previously served a term of confinement for a violent crime of which he had been convicted. The defendant in that case was convicted of daytime housebreaking, malicious destruction of property, and theft. Pursuant to its request that the court sentence the defendant as a subsequent offender at sentencing, the State introduced various documents, none of which specified his date of release. Nevertheless, we held that "[t]he term of incarceration was adequately established," reasoning:

> While these records do not set out the date of release, the testimony is clear that appellant was no longer confined by October 1983 when the most recent offenses were committed. *It is not necessary that the full sentence imposed be served in order to satisfy the requirements of § 643B*, so long as a "term of incarceration" has been completed.

Id. at 114 (emphasis added; citations omitted).

Consistent with our opinions in *McLee* and *Teeter*, we conclude that in order to satisfy CR § 14-101(c)(1)'s "term of confinement" requirement, the State need only prove that an offender served part of a violent crime sentence, and need not establish that he or she served "the complete term" imposed by the court. Moreover, as the State aptly notes, to construe CR § 14-101(c)(1) as rewarding an appellant for having feloniously escaped from incarceration would, under the facts of this case, "lead to absurd results." *See Blandon v.* State, 304 Md. 316, 319 (1985) ("[R]ules of statutory construction require us to avoid construing a statute in a way which would lead to absurd results. In other words, we should reject a proposed statutory interpretation if its consequences are inconsistent with common sense." (citations omitted)).

We were presented with an analogous situation in *McLee*, wherein we held that the defendant's parole violation did not immunize him from Article 27, § 643B(c)'s effects, reasoning that to adopt a contrary interpretation "would be to place a premium on the violation of a parole, a result entirely foreign to the purpose of the act." *McLee*, 46 Md. App. at 477 (quotation marks and citation omitted). The proposition that, in enacting CR § 14-101, the General Assembly intended to reward recidivists for felonious flight strains credulity.

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