UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1309

September Term, 2012

JOSEPH BARNES

v.

STATE OF MARYLAND

Wright,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 6, 2015

Appellant, Joseph Barnes, in this *pro se* appeal, seeks review of the Circuit Court for Baltimore City's denial of his motion to correct an illegal sentence ("motion"). Barnes was sentenced to a total of forty years' imprisonment for the sexual abuse of his two nieces.[1] He appealed his conviction to this Court, and we affirmed in an unreported opinion *Joseph Calvin Barnes, Jr. v. State*, No. 1415, Sept. Term, 1999 (filed July 13, 2000). Barnes moved to correct an illegal sentence in 2003, but that motion was denied. He again filed a motion to correct an illegal sentence in 2012, which was also denied. It is from this denial that he appeals. Barnes presents five questions, each of which overridingly concerns the issue of whether the circuit court properly denied his motion. For the reasons discussed below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 13, 1999, Barnes was sentenced in five separate cases relating to the sexual abuse of his two nieces.[2] The circuit court announced its sentence:

> 198259039, the court enters the sentence of fifteen years to the Department of Correction for sexual child abuse, and merges the assault [in the 2nd degree].
>
> 198259042, the court enters the sentence of fifteen years for rape in the second degree, that charge to be **consecutive to the first**. The court will merge counts three and four [3rd and 4th degree sex offense].

[1] Barnes was convicted of: child sex abuse, second-degree rape, second-degree sex offense, attempted second-degree sex offense, and third-degree sex offense.

[2] We shall refer to each case by the last two digits of its case number: 39, 42, 43, 45, and 49.

198259043, the court enters the sentence of ten years to the Department of Correction for sexual offense in the second degree. The court makes that sentence **concurrent to the first sentences**. The court will merge perverted practice [count 4].

198259045, the court enters the sentence of ten years to the Department of Correction for attempted sexual offense in the third degree. The court merges counts three and five into count two [attempted 4th degree sex offense and 2nd degree assault merged into attempted third degree sex offense]. That sentence of ten years to the Department of Correction for Tierra [B.] is **consecutive to the first**.

198259049, count one, sexual offense in the third degree, the court enters the sentence of ten years to the Department of Correction, **concurrent to the first**, and the court will merge count two [4th degree sex offense].

The defendant has a total sentence I believe of forty years. It is so ordered.

(Emphasis added).

DISCUSSION

In this case, Barnes challenges whether portions of his sentences are concurrent or consecutive. Barnes asserts that the sentence of forty years' imprisonment, as reflected in the commitment order, does not comport with the sentence as announced by the circuit court and reflected in the transcript. Barnes specifically points to the sentence announced in case no. 45 as imposing a sentence of ten years "consecutive to the first." Barnes appears to argue that the court's sentence of ten years in case no. 45 should run consecutive to the sentence of fifteen years imposed in case no. 39, the first case in which he was sentenced. This would

result in an overall sentence of thirty years, not forty as reflected in the commitment order. The State counters that any ambiguity in the sentence was resolved by the court announcing "[t]he defendant has a total sentence I believe of forty years[,]" indicating that the court believed it sentenced Barnes to ten years imprisonment in case no. 45 consecutive to the sentence imposed in case no. 42, which was fifteen years consecutive to case no. 39.

This case comes to us as an appeal of the denial of a motion to correct an illegal sentence. We may correct an illegal sentence at any time. Md. Rule 4-345(a). As an initial matter, we must determine whether the claim as described above falls within the narrow ambit of Md. Rule 4-345(a). We have, in the recent past, explained the dichotomy of illegal sentence claims:

> 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.

Matthews v. State, 197 Md. App. 365, 367 (2011), *rev'd on other grounds,* 424 Md. 503 (2012). "Of all the illegal sentences that might deserve immediate appellate vacating in the broad context of direct review, only a small fraction are even cognizable in the austerely limited context of Rule 4-345(a) review." *Id.* at 367-68. An "illegal sentence" deals with

substantive law and not procedural law. Simply arguing that a procedural defect occurred at some point during trial or sentencing is not, without more, enough to support a claim based on Md. Rule 4-345(a). In *Walczak v. State*, the Court of Appeals was careful to narrowly tailor its holding that an illegal sentence may be reviewed in cases, where it was not objected to at sentencing, to instances where the sentence itself was "not permitted by law." 302 Md. 422, 427 (1985).

> A motion to correct an illegal sentence ordinarily can be granted only where there is some illegality in the sentence itself or where no sentence should have been imposed. On the other hand, a trial court error during the sentencing proceeding is not ordinarily cognizable under Rule 4-345(a) where the resulting sentence or sanction is itself lawful.

Matthews, 197 Md. App. at 372 (quoting *Evans v. State*, 382 Md. 248, 278-79 (2004)) (emphasis omitted). We are mindful that appellate courts review sentences for only three forms of error:

> (1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations; and (3) whether the sentence is within statutory limits.

Bishop v. State, 218 Md. App. 472, 508 (2014) (citation and emphasis omitted), *cert. denied*, 441 Md. 218 (2015).

Barnes contends that the transcript differs from the sentence actually imposed in the record. Specifically, he asserts that the sentence for case no. 45 should run consecutive to

the sentence in case no. 39, not consecutive to the sentence in case no. 42, as indicated in the docket entries. Put simply, Barnes contends that the total sentence imposed should have been thirty years, not forty years. This contention does not fall within the narrow conception of an illegal sentence as described above. Further, Barnes does not claim that his sentence is cruel or unusual, that the sentencing judge was motivated by prejudice or ill-will, or that the sentence was outside the statutory limits. Accordingly, the claim Barnes advances was not the proper subject of a motion to correct an illegal sentence.[3] We find no error.

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

[3] We note that the proper method to pursue the type of claim Barnes advances would be to file a motion to correct the commitment order under Md. Rule 4-351. *See Howsare v. State*, 185 Md. App. 369, 398 (2009) (An error of this sort "does not invalidate imprisonment after conviction" or "amount to an illegal sentence.").