

Circuit Court for Baltimore City
Case Nos.: 117223005, 06

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1344

September Term, 2020

DWAYNE TORRENCE

v.

STATE OF MARYLAND

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 25, 2022

*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.

In 2020, a jury in the Circuit Court for Baltimore City found appellant, Dwayne Torrence, guilty of conspiracy to commit first-degree murder of Maurice Finney and use of a handgun in the commission of a felony or crime of violence (Case No. 117223005) and guilty of attempted murder in the first-degree of Diamonta Boyd, conspiracy to murder Boyd, use of a handgun in the commission of a felony or crime of violence, and possession of a handgun by a prohibited person (Case No. 117223006). The court sentenced him in 005 to life imprisonment for conspiracy to commit murder of Finney and a concurrent term of 20 years, the first five without parole, for the handgun offense. In 006, the court sentenced him to a concurrent term of life imprisonment, with all but 30 years suspended, for attempted murder of Boyd, a concurrent term of 20 years, the first five years without parole, for the use of a handgun offense, and a concurrent term of 15 years, the first five without parole, for the handgun possession offense.

On direct appeal, this Court vacated the conviction and sentence for conspiracy in 006 because there was only one conspiracy. *Torrence v. State*, No. 200, September Term, 2019 (filed June 24, 2020). After determining that the issue was not preserved for appellate review, we declined to address Mr. Torrence’s argument that the use of a handgun conviction and sentence in 005 must be also be vacated because the handgun offense was not related to any qualifying predicate offense. *Id.*, slip op. at 15-16.

Although neither our opinion nor the mandate directed that the case be remanded to vacate the conspiracy conviction and sentence, as that was accomplished by this Court, on December 18, 2020, the circuit court convened a hearing for that purpose and issued an amended commitment record. Mr. Torrence, representing himself, then noted an appeal in

which he moves to correct an illegal sentence and presents the following questions for our review, which we quote:

1. Is the conviction and sentence for use of a handgun in commission of a felony or crime of violence against Maurice Finney illegal and must be vacated when there was no predicated [sic] felony or crime of violence?
2. Was Torrence provided ineffective assistance of counsel during the resentencing hearing?
3. Did the lower court err by failing to permit Torrence to allocute for lesser punishment?

For the reasons to be discussed, we shall deny the motion to correct and affirm the judgment of the circuit court.

DISCUSSION

Legality of Handgun Sentence in Case No. 005

In his brief, Mr. Torrence moves to correct an illegal sentence pursuant to Md. Rule 4-345(a) and asserts that his conviction and sentence for the use of a handgun in 005 is illegal for the same reasons he argued on direct appeal. The legality of the conviction is not properly before us, however, and we discern no inherent illegality in the sentence.

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) (holding a sentence was illegal where the defendant was convicted of an offense for which he was never charged). 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)).

Here, Mr. Torrence was convicted—rightly or wrongly—of use of a handgun in the commission of a felony or crime of violence in 005, a crime he was charged with committing in connection with the offenses against Finney. The sentence imposed for that offense is not inherently illegal and for that reason, his Rule 4-345(a) motion is denied.¹

Ineffective Assistance of Counsel at “Resentencing”

Mr. Torrence characterizes the December 20, 2020 proceeding as a “resentencing” and claims that counsel who represented him at that proceeding “did nothing to become abreast of the facts and circumstances of [his] case[,]” and provided ineffective assistance. We decline to address any ineffective assistance of counsel claims in this appeal, as the matter is best left to the post-conviction court.

We disagree, however, with Mr. Torrence’s characterization that the December 20th proceeding was a resentencing. On direct appeal, this Court vacated the conviction and

¹ Mr. Torrence cannot, in this appeal, seek belated appellate review of his claim that the evidence was insufficient to support the handgun conviction in 005. If his contention is that his trial counsel failed to raise the issue at trial, that is something he could possibly raise in a petition for post-conviction relief.

sentence for the conspiracy offense in 006 and “in all other respects” affirmed the judgments in 005 and 006. We did not order a remand for resentencing, as resentencing was not needed. Moreover, at the December 20th hearing the court indicated that the purpose was simply to “vacate Count III . . . conspiracy to commit murder where [Torrence] was sentenced to life suspend all but 30 years and five years’ probation.” Because that sentence was run concurrently with the other sentences imposed, there was no need to “resentence” Mr. Torrence on the remaining convictions.

Failure to Permit Allocution

Mr. Torrence maintains that the court, at the December 20th hearing, erred in prohibiting him from advocating “for lesser punishment.” We disagree. As noted, the December 20th proceeding was not a resentencing. In fact, in our view the proceeding was unnecessary because this Court vacated the conspiracy conviction and sentence at issue without an order of remand. Thus, the only thing required of the circuit court was the modification of the commitment record to delete the sentence for conspiracy in 006—something that could have been done administratively without a hearing.

**MOTION TO CORRECT ILLEGAL
SENTENCE DENIED.**

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