

Circuit Court for Baltimore City  
Case Nos.: 57902206 & 57902208

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1354

September Term, 2023

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GERALD D. FULLER

v.

STATE OF MARYLAND

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Graeff,  
Arthur,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: May 14, 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 1979, a jury in the Circuit Court for Baltimore City convicted Gerald D. Fuller, appellant, of first-degree murder. The court later sentenced him to life imprisonment. Soon after, in two other criminal cases, Fuller pleaded guilty to first-degree rape and armed robbery. The court later sentenced him, respectively, to life imprisonment and 20 years' concurrent incarceration. Following our Supreme Court's decision in *Unger v. State*, 427 Md. 383 (2012), Fuller's murder conviction and sentence were vacated. Before his retrial, in 2017, Fuller pleaded guilty to first-degree murder and was sentenced to life, time served. Then, in April 2023, Fuller filed a Motion to Correct Illegal Sentence. The circuit court denied the motion without a hearing, and this appeal followed.

As best we can discern, Fuller raises four claims on appeal. He first contends his sentence does not conform with the terms of the plea agreement because he “did not receive the recommendation” for Patuxent Institution. Fuller raised this claim in a prior appeal, where it was considered and rejected by this Court. *Fuller v. State*, Nos. 928 & 1432, Sept. Term, 2019, 2020 WL 4334736, at \*1 (App. Ct. Md., July 28, 2020). Accordingly, this argument is barred by the law-of-the-case doctrine. *See Nichols v. State*, 461 Md. 572, 593 (2018) (The law-of-the-case doctrine forbids “relitigation of an ‘illegal sentence’ argument that has been presented to[,] and rejected by[,] an appellate court.” (cleaned up)).

Fuller next contends his sentence is illegal because he is actually innocent. A motion to correct an illegal sentence is not the proper procedural mechanism to raise an actual-innocence claim. Such claims must be raised, instead, under Md. Code Ann., Crim. Proc. § 8-301. Thus, we will not consider this argument.

Fuller next contends his sentence is illegal because he was not referred for drug treatment. Again, a motion to correct an illegal sentence is not the proper procedural mechanism to request a substance-abuse evaluation. Such claims must be raised, instead, under Md. Code Ann., Health Gen. § 8-507. *See also Fuller v. State*, 397 Md. 372, 387 (2007) (A “Section 8-507 petition is not akin to a motion to correct an illegal sentence[.]”). And in all events, with limited exception not here relevant, the denial of such relief is not appealable. *Id.* at 380. Thus, even if Fuller had raised this argument in an appropriate motion and been denied relief, we could not review the issue. *See* Md. Rule 8-602(b)(1).

Finally, Fuller contends his sentence is illegal because he was not awarded “credit for time served pending conviction.” But, again, a motion to correct an illegal sentence is not the proper procedural mechanism to raise a claim that pre-trial incarceration has not been correctly credited. Such claims must be raised, instead, by filing a “motion to amend the commitment record to reflect credit for time served.” *Bratt v. State*, 468 Md. 481, 506 (2020). Consequently, the circuit court did not err or abuse its discretion in denying Fuller’s motion.<sup>1</sup>

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

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<sup>1</sup> In this appeal, Fuller attached a commitment record to his brief that, according to the State, may, in fact, require correction. The circuit court, here, did not explain the basis of its ruling, so we are unable to discern whether it denied Fuller’s motion because it concluded that he had received credit for time served or if it perceived the motion as the incorrect procedural vehicle to raise such a claim. The State, in its brief, suggests that we issue a limited remand to the circuit court for it to explain the basis of its ruling on this discrete issue. But the circuit court is presumed to know the law and apply it correctly.

(continued)

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*Green v. State*, 259 Md. App. 341, 361 n.11 (2023). Accordingly, we presume that the court denied Fuller’s motion as procedurally improper. That said, we make no comment on the merits of Fuller’s claim, and therefore this opinion should not be read as prejudicial to any future motion to amend the commitment record that he may file.