Circuit Court for Prince George's County
Case No. CT04-2239X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1412

September Term, 2022

TREVE ANTONIO ABEL

v.

STATE OF MARYLAND

Arthur,
Albright,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: October 11, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In 2011, the Circuit Court for Prince George's County was notified that Appellant Treve Abel's commitment record did not match his sentence. The circuit court then corrected the commitment record, but did so without first notifying Mr. Abel or affording him an opportunity to object to the proposed correction. Mr. Abel filed a Motion to Strike Illegal Sentence ("Motion to Strike"), claiming that the failure to notify him violated Maryland Rules 4-345 and 4-351. The circuit court denied Mr. Abel's Motion to Strike and he noted this appeal. Mr. Abel presents six questions for our review, which we have rephrased and consolidated into one:[1]

> Did the circuit court err in denying the Appellant's Motion to Strike Illegal Sentence?

[1] The original six questions presented by the Appellant are as follows:

1. Was the amended commitment record issued in November of 2011 illegal?
2. Did the amendment of the defendant's commitment record without a hearing violate Maryland Rules 4-345 and 4-451?
3. Was that portion of the November of 2011 commitment record which imposes a sentence of "0 years," and "Life," instead of 99 years, as indicated in his previous commitment, illegal?
4. Was that portion of the November 2011 commitment record which awards "259 days credit for time served prior" to 1 November 2011, illegal?
5. Was that portion of the November of 2011 commitment record which imposes a sentence of "life plus 20 years to begin on … 1-Oct-2004, illegal?"

[6.] Was the November of 2011 commitment record illegal for its failure to comply with Maryland Rule 4-351(a)(5), in that it failed to include a "statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the proceeding term or to any other outstanding or unserved sentence;"

We conclude that the circuit court did not err and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Mr. Abel's 2005 Conviction and Sentence

The circuit court entered Mr. Abel's original commitment record in June 2005 after sentencing him. Earlier that year, after a bench trial, Mr. Abel had been found guilty of first-degree murder, second-degree murder, first-degree assault, and use of a handgun in the commission of a crime of violence. At the sentencing hearing, the circuit court imposed the following terms of imprisonment, announcing the sentence on the record: for first-degree murder, life; for first-degree assault, 25 years concurrent with the first-degree murder sentence, with 259 days of credit for time served; and for use of a handgun in the commission of a crime of violence, 20 years consecutive to the first-degree murder sentence, with 259 days of credit for time served.[2] In sum, Mr. Abel was sentenced to life plus 20 years. On June 23, 2005, the clerk of the court then filed Mr. Abel's commitment record.

B. Subsequent Corrections to Mr. Abel's Commitment Record

Mr. Abel's commitment record was first corrected in September 2008, after this Court (then the Court of Special Appeals) vacated Mr. Abel's sentence for first-degree assault because it merged with his conviction for first-degree murder.[3] Thus, the

[2] Mr. Abel's second-degree murder conviction was merged with his first-degree murder conviction for purposes of sentencing.

[3] The judgments of the circuit court were otherwise affirmed.

correction reflected only the vacatur of Mr. Abel's first-degree assault sentence, which was to run concurrently to his life sentence.

Other corrections followed. The September 2008 commitment record omitted the 20-year sentence Mr. Abel had received for use of a handgun in the commission of a crime of violence, which sentence was to run consecutively to Mr. Abel's life sentence. In October 2011, the clerk of the circuit court learned about the discrepancy and issued a new commitment record purporting to correct the error. In doing so, though**,** the clerk included the 25-year sentence for first-degree assault, which had been vacated. The record was corrected once again in November 2011. Before the clerk made these three corrections (September 2008, October 2011, and November 2011), Mr. Abel was neither notified nor otherwise given an opportunity to object. The November 2011 commitment record remains in place today.

C. Mr. Abel's Motion to Strike Illegal Sentence

Ten years after the November 2011 correction, our Supreme Court, then the Court of Appeals, revised Maryland Rule 4-351 to clarify that the circuit court can correct a commitment record. Specifically, our Supreme Court added a sentence to Rule 4-351(b) to indicate that the circuit court can correct a commitment record at any time, but if it intended to act on its own motion in doing so, the circuit court had to first provide the parties notice and "an opportunity to object[.]" Md. Rule 4-351(b). Between November 2011 (when his commitment record was last corrected) and this rule change, Mr. Abel did

not dispute the validity or accuracy of his November 2011 commitment record.[4]

On July 22, 2022, Mr. Abel filed the Motion to Strike that is the subject of this appeal. In it, Mr. Abel identified four allegedly "illegal" portions of his November 2011 commitment record. Pointing to Rule 4-351(b)'s then-new requirement of notice and an opportunity to object, Mr. Abel also argued that his November 2011 commitment record was "inherently illegal" under Rule 4-345(a) because the circuit court did not afford him notice of its intent to correct his record before doing so. Mr. Abel also pointed to Md. Rule 4-345(c), apparently arguing that it too required a hearing before the court corrected his commitment record in November 2011.[5]

As for the timing of his Motion to Strike, Mr. Abel did not theorize how Rule 4-351(b)'s notice requirement might apply to commitment records filed before the rule was changed, i.e., retroactively. Instead, citing Md. Rule 4-345(a), Mr. Abel argued "[t]he timing of this motion is not an issue[]" because the court may correct an illegal sentence at any time. Mr. Abel then referenced a handful of Maryland cases that, taken together, outline some of the parameters of what does (and does not) constitute an "illegal

[4] Since 2011, Mr. Abel has sought other post-judgment relief, including a petition for post-conviction relief that he supplemented and attempted to re-open and a petition for a writ of *coram nobis*, all to no avail. He also filed a prior Motion to Strike Illegal Sentence. For the purposes of this opinion, we assume, without deciding, that Mr. Abel neither included nor could not have included his current claims in his prior pleadings and motions. In any event, the State does not argue here that Mr. Abel's current claims are barred; we will proceed as if they are not.

[5] Rule 4-345(c) provides, "The Court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding." Md. Rule 4-345(c).

sentence." Mr. Abel concluded by requesting a hearing.

The circuit court did not grant Mr. Abel a hearing on his Motion. Instead, the court denied it with a written Order. This timely appeal followed.

II. DISCUSSION

Here, Mr. Abel makes largely the same arguments he did in the circuit court. Thus, he points to Rules 4-351(b) and 4-345(c) and argues that the November 2011 commitment record is "inherently illegal" because it was filed without first affording him notice and an opportunity to be heard. Repeating that an illegal sentence may be corrected at any time, Mr. Abel asks us to reverse and remand with instructions that the circuit court hold a new sentencing hearing and correct his commitment record as outlined above.

We see no error in the circuit court's denial of Mr. Abel's Motion. None of the errors alleged by Mr. Abel (whether the failure to notify him before making corrections in November 2011 or the failure to make more corrections now) amount to a cognizable claim of illegal sentence under Rule 4-345(a). Moreover, even if we treat Mr. Abel's Motion to Strike as a motion to correct his commitment record, we disagree that his commitment record suffers from the errors he posits. Accordingly, and as we explain below, we will affirm.

A. Standards of Review

The illegality of a sentence under Rule 4-345(a) is a question of law, which we review *de novo*. *See Johnson v. State*, 467 Md. 362, 389 (2020); *State v. Crawley*, 455

Md. 52, 66 (2017). Decisions regarding credit for time served are reviewed *de novo* as well. *Gilmer v. State*, 389 Md. 656, 662-63 (2005). We apply the same standard of review to the other issues Mr. Abel raises as they are " . . . quintessentially . . . question[s] of law calling for *de novo* appellate review." *Carlini v. State*, 215 Md. App. 415, 443 (2013).

In construing Maryland Rules, we use "the well-settled principles of statutory construction and interpretation." *Bratt v. State*, 468 Md. 481, 494 (2020) (citing *Bailey v. State*, 464 Md. 685, 696 (2019)) (internal citation omitted). Thus, we must look to the plain language of the relevant rules "and construe that language without forced or subtle interpretations designed to limit or extend its scope." *Id.* (quoting *Lee v. State*, 332 Md. 654, 658 (1993)).

B. Analysis

We start with Mr. Abel's claim that his sentence is illegal because of the manner in which the circuit court corrected his commitment record in November 2011. Whether viewed under Rule 4-345 pertaining to sentence revision or Rule 4-351 pertaining to commitment records, this claim fails for the simple reason that by November 2011, Mr. Abel's sentence was not illegal. If there were errors in how the accompanying commitment record was corrected, such errors did not make the otherwise-legal sentence illegal. We explain.

In examining whether a sentence is illegal under Rule 4-345(a), we have differentiated substantive or inherent illegality from mere defects in the procedure by which an otherwise legal sentence is imposed. *See Bratt*, 468 Md. at 497. Whether a

sentence is inherently illegal "depends *solely* on whether the illegality inheres in the sentence itself, and *not* on […] the procedural posture of the case[.]" *Matthews v. State*, 424 Md. 503, 509 (2012) (emphasis in the original). So long as the underlying conviction or plea agreement supports the sentence imposed, courts have affirmed the sentence as inherently legal. *See id.* at 508 (holding that a sentence going beyond the terms of a binding plea agreement is inherently illegal); *State v. Wilkins*, 393 Md. 269, 281 (2006) (finding no inherent illegality when the sentence itself fell within the range authorized by the law, despite the judge's error in sentencing).

In his Motion to Strike, Mr. Abel did not argue that the sentence, as partially vacated, exceeded what the trial court was authorized to impose. In other words, Mr. Abel identified nothing inherently illegal about his 2005 sentence after it was partially vacated. Nor did he argue that the sentence exceeded a binding plea agreement. Indeed, as he was found guilty at a bench trial, there was no plea agreement that would have limited the trial court's sentencing authority.

Having failed to establish anything illegal after the first-degree assault sentence was vacated, Mr. Abel was not entitled to a new sentencing hearing merely because the circuit court intended to correct his commitment record to again remove the first-degree assault sentence. To be sure, Rule 4-345(f) has required that any correction or modification of *a sentence* occur "only on the record in open court, after hearing from the

defendant []" unless the defendant waives that right. Md. Rule 4-345(f).[6] In November 2011, though, there was no change to Mr. Abel's sentence. As such, the circuit court's intent to then correct Mr. Abel's commitment record did not entitle Mr. Abel to another sentencing hearing. *See Bratt*, 468 Md. at 504 n.18 ("Where there has been no change to the pronounced sentence, and the trial judge intends only to correct the commitment record, Rule 4-345 does not apply.") (omitting citation).

Nor did Rule 4-345(c) entitle Mr. Abel to a hearing before the circuit court corrected his commitment record in November 2011. Rule 4-345(c) has provided that an "evident mistake in the announcement of a sentence" may be corrected on the record before the defendant leaves the sentencing hearing. Md. Rule 4-345(c). A correction to a commitment record is not the announcement of a sentence. *Bratt*, 468 Md. at 504. Mr. Abel's sentence was announced in 2005.

Mr. Abel fares no better under Rule 4-351. To be sure, Section (b) of this Rule now affords parties the right to notice "and an opportunity to object" if the circuit court intends to correct a commitment record on its own motion. Md. Rule 4-351(b). But even if this section somehow applies retroactively to the circuit court's November 2011 correction of Mr. Abel's commitment record, the failure to have afforded Mr. Abel this right then does not render his sentence illegal now. Indeed, Rule 4-351(b) says as much

[6] For a modification or reduction of sentence, Rule 4-345(f) has also required that the circuit court determine whether a victim or victim's representative is present or whether they have been notified of the hearing. Md Rule 4-345(f); *see also* Md. Rule 4-345(e)(2)-(3) (requiring a notice to each victim and victim's representative before the modification of a sentence).

when it provides, "An omission or error in the commitment record *or other failure to comply with this Rule does not invalidate imprisonment after conviction*." Md. Rule 4-351(b) (emphasis added). In other words, even if the circuit court should have notified Mr. Abel in November 2011 of its intent to correct his commitment record, its failure to do so does not now invalidate his sentence or otherwise entitle him to another sentencing hearing.

In an attempt to overcome this conclusion, Mr. Abel posits that any "sentence imposed in violation of a mandatory Maryland Rule is inherently illegal[,]" and cites *Juan Pablo B. v. State*, 252 Md. App. 624 (2021). But *Juan Pablo B*. was reversed by our Supreme Court, which rejected the notion that every violation of a sentencing rule renders the imposed sentence illegal. *See State v. Bustillo*, 480 Md. 650, 660 (2022). In *Bustillo,* the trial court failed to advise defendant orally at the sentencing hearing of the conditions and duration of probation imposed as part of split sentence. 480 Md. at 677-78. Reiterating the distinction between inherent illegality and procedural error, our Supreme Court concluded that because the trial court's error was procedural, it did not render the sentence illegal. *Id.* at 678-79.

The illegal sentence cases that Mr. Abel cites provide him no help because none undermine the basic distinction between inherent illegality in a sentence on the one hand and procedural error in the preparation or correction of a commitment record (assuming such an error happened here) on the other. *See Matthews*, 424 Md. at 519 (finding an illegal sentence where the judge imposed a sentence greater the terms of the plea

agreement to which the judge had bound himself); *Cuffley v. State*, 416 Md. 568 (2010) (discussing a judge's decision to go beyond the sentencing guidelines, notwithstanding his earlier agreement to follow the guidelines); *Baines v. State*, 416 Md. 604 (2010) (same); *Dotson v. State*, 321 Md. 515 (1991) (concerning a decision by a three-judge panel to impose a sentence greater than the one in a plea agreement that the court had agreed to bind itself to). After these cases, the consequence of the distinction remains: procedural errors in the preparation or correction of commitment records do not render the accompanying sentence illegal.

Armstrong v. State and *Carter v. State*, yet two other cases that Mr. Abel cites, are also inapposite. Both cases concern Rule 4-245 and the *pre-trial* (Subsection (b)) or *pre-sentence* (Subsection (c)) notice a defendant is due when the State seeks imposition of an enhanced subsequent-offender sentence.[7] In *Armstrong,* the enhanced penalty was both

[7] Rule 4-245(b) pertains to subsequent-offender penalties that are permitted but not mandated:

> **(b) Required Notice of Additional Penalties.** When the law permits but does not mandate additional penalties because of a specified previous conviction, the court shall not sentence the defendant as a subsequent offender unless the State's Attorney serves notice of the alleged prior conviction on the defendant or counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial in circuit court or five days before trial in District Court, whichever is earlier. The notice required under this section shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

Md. Rule 4-245(b).

Rule 4-245(c) pertains to subsequent-offender penalties that are mandated:

an "additional" penalty under Rule 4-245(b) and an "mandatory" penalty under Rule 4-245(c). 69 Md. App. 23, 34-35 (1986). In *Carter*, the enhanced penalty was an "additional penalty" under Rule 4-245(b). 319 Md. 618, 619-20 (1990). Both sentences were vacated for failure to comply with Rule 4-245(b)'s pre-trial notice requirement. *Armstrong*, 69 Md. App. at 36; *Carter*, 319 Md. at 622-23.

Here, Rule 4-245's pre-trial or pre-sentence notice requirements do not apply to the November 2011 correction of Mr. Abel's commitment record if for no other reason than by November 2011, Mr. Abel had already been sentenced. Again, the correction of Mr. Abel's commitment record did not modify or change his actual sentence. *See Bratt*, 468 Md. at 504.

Turning to the rest of Mr. Abel's allegations on appeal, we still see no error. Mr. Abel alleges that the circuit court erred by failing to correct the following errors in his commitment record: *one*, changing the sentence for his first-degree murder conviction

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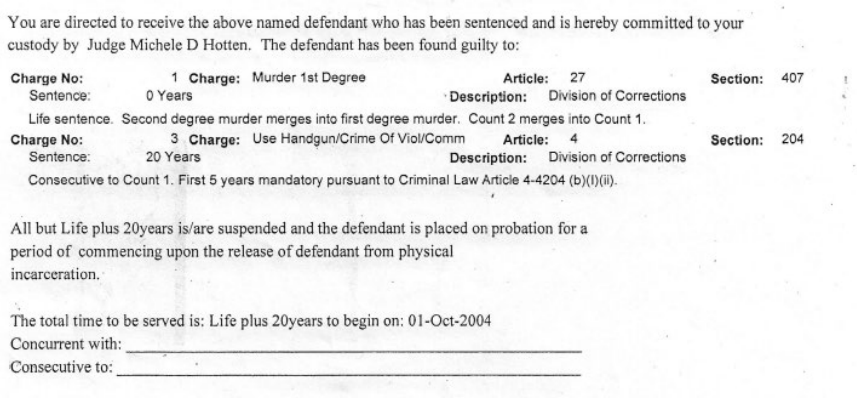
> **(c) Required Notice of Mandatory Penalties.** When the law prescribes a mandatory sentence because of a specified previous conviction, the State's Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State's Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement. The notice required under this section shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

Md. Rule 4-245(c).

from "99 years" to "Life";[8] *two*, providing him with incorrect jail time credits by not accounting for the time he served back, and prior, to his original sentencing date in June 2005; *three*, changing the total sentence note from "Life" to "Life plus 20 years"; and *four*, failing to include a statement required under Rule 4-351(a)(5).[9] We disagree on all four points.

As to *one* and *three*, Mr. Abel's November 2011 commitment record, a portion of which is reproduced below, correctly reflects his total sentence.



You are directed to receive the above named defendant who has been sentenced and is hereby committed to your custody by Judge Michele D Hotten. The defendant has been found guilty to:

Charge No: 1 **Charge:** Murder 1st Degree **Article:** 27 **Section:** 407
Sentence: 0 Years **Description:** Division of Corrections
Life sentence. Second degree murder merges into first degree murder. Count 2 merges into Count 1.

Charge No: 3 **Charge:** Use Handgun/Crime Of Viol/Comm **Article:** 4 **Section:** 204
Sentence: 20 Years **Description:** Division of Corrections
Consecutive to Count 1. First 5 years mandatory pursuant to Criminal Law Article 4-4204 (b)(I)(ii).

All but Life plus 20years is/are suspended and the defendant is placed on probation for a period of commencing upon the release of defendant from physical incarceration.

The total time to be served is: Life plus 20years to begin on: 01-Oct-2004
Concurrent with: _____
Consecutive to: _____

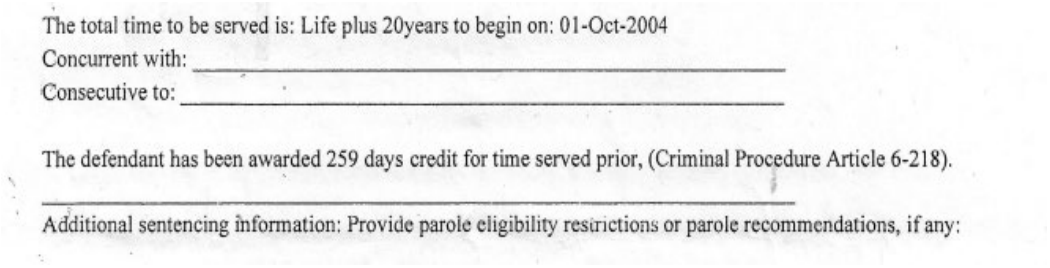
As noted earlier, at the sentencing hearing, Mr. Abel received life for first-degree murder and a consecutive 20 years for use of a handgun in the commission of a crime of violence. Those sentences remain unchanged to this day. *See State v. Abel*, No. 955, 2005 Term (Nov. 13, 2007), *cert. denied*, 403 Md. 304 (2008) (vacating only the concurrent

[8] The June 2005 and September 2008 commitment records both state that Mr. Abel's sentence for first-degree murder was "99 years." The October 2011 commitment record changed the sentence to "0 years," and on the November 2011 commitment record, which remains in effect today, the sentence reads, "Life."

[9] Rule 4-351(a)(5) requires "a statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term[.]" Md. Rule 4-351(a)(5).

sentence for first-degree assault but affirming all other sentences). Mr. Abel's November 2011 commitment record shows "Charge No. 1 Murder 1st degree Article: 27 Section 407 . . . Life Sentence . . ." For Charge No. 3, the record shows "Use Handgun/Crime of Viol Comm Article: 4 Section 204 Sentence: 20 years . . . Consecutive to Count 1. First 5 years mandatory pursuant to Criminal Law Article 4-4204(b)(1)(ii)." The length and nature of Mr. Abel's sentence are twice confirmed several lines down where the record says "All but Life plus 20years is/are suspended . . ." and "The total time to be served is: Life plus 20years to begin on: 01-Oct-2004[]"[10]

As to Mr. Abel's point *two*, the commitment record accurately reflects the 259 days' time-served credit that he was awarded. True, and as below, a notation on Mr. Abel's November 2011 commitment record states, "259 days credit for time served prior[,]" but three lines above, the commitment record starts Mr. Abel's sentence on October 1, 2004.


The total time to be served is: Life plus 20years to begin on: 01-Oct-2004
Concurrent with: _____
Consecutive to: _____

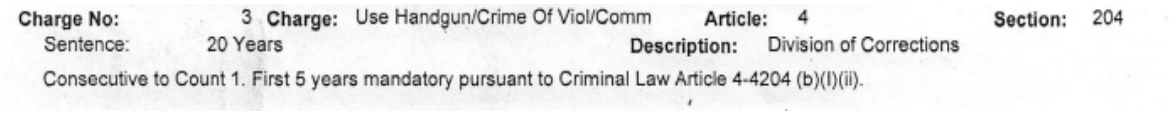
The defendant has been awarded 259 days credit for time served prior, (Criminal Procedure Article 6-218).

_____
Additional sentencing information: Provide parole eligibility restrictions or parole recommendations, if any:

[10] Under Mr. Abel's first-degree murder conviction, his commitment record says both "0 years" and "Life sentence." As the State explains in its brief, the entry of "0" is merely a place holder on the form. Mr. Abel has never received a sentence of zero years for first-degree murder.

Because this October date is exactly 259 days before June 17, 2005, the date that Mr. Abel was sentenced, we do not agree that the November 2011 commitment record only accounted for the time he served from 259 days before November 1, 2011, and onward.

Last, as to *four*, we find that Mr. Abel's November 2011 commitment record satisfies Rule 4-351(a)(3). As below, the commitment record specifies that his twenty-year sentence for the use of handgun in the commission of a crime of violence (Count 3) is consecutive to Count 1, Mr. Abel's Life sentence for the first-degree murder.



Charge No: 3 **Charge:** Use Handgun/Crime Of Viol/Comm **Article:** 4 **Section:** 204
Sentence: 20 Years **Description:** Division of Corrections
Consecutive to Count 1. First 5 years mandatory pursuant to Criminal Law Article 4-4204 (b)(I)(ii).

We see no error.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.