Circuit Court for Baltimore City
Case No: 506333015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1491

September Term, 2019

JOHN HENRY MARTIN

v.

STATE OF MARYLAND

Fader, C.J.,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2020

John Henry Martin, appellant, appeals the denial, by the Circuit Court for Baltimore City, of his motion to correct an illegal sentence. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

1995 & 2007 Sentences

In 1995, Mr. Martin was convicted of robbery with a dangerous weapon (case no. 594346025), attempted robbery with a dangerous weapon (case no. 595046019), and attempted robbery with a dangerous weapon (case no. 594346024). The court sentenced Mr. Martin to 20 years' imprisonment for the armed robbery and to concurrently run terms of 20 years each for the two offenses for attempted robbery with a dangerous weapon, to run consecutively to the sentence for armed robbery. The court suspended all but 12 years of the total 40-year term and imposed a five-year term of supervised probation upon release.

It appears that Mr. Martin was paroled or released on mandatory supervision in 2005. In October 2006, he was charged with robbery, second-degree assault, and theft (case no. 506333015). On May 25, 2007, he appeared in court with counsel, who informed the court that "[t]his is a case that needs to be worked out, but we need some help." The court noted that Mr. Martin was "on probation until 2010." Defense counsel replied, "[w]ell, actually, I think he's on parole." Defense counsel also informed the court that Mr. Martin was presently in the "DOC" on a "parole retake warrant" and was awaiting a hearing. The court stated that the "Parole Commission is not going to take him until he's sentenced" in this case so that "they get the option of running their sentence concurrent to

what we've done or consecutive." Ultimately, the court agreed to sentence Mr. Martin to 10 years' imprisonment in exchange for Mr. Martin's *Alford* plea to robbery. The court informed the parties that it had no control over what the "Parole Commission" would do. Defense counsel then confirmed his understanding of the plea:

> DEFENSE COUNSEL: So just so I'm straight. 15 suspend all but eight or 10 straight with a recommendation to COPS.
>
> THE COURT: Correct. Correct.
>
> DEFENSE COUNSEL: Okay. And he takes his chances with Parole.
>
> THE COURT: Correct.
>
> DEFENSE COUNSEL: Because you can't do anything about it.
>
> THE COURT: Right.

When examining Mr. Martin on the record before accepting his *Alford* plea to robbery, the court paused to clarify the sentencing terms of the agreement.

> DEFENSE COUNSEL: Your Honor, just so - - you would agree to run the sentence concurrent to any time he's currently serving. Obviously, you have no control over what happens with the Parole Commission.
>
> THE COURT: Exactly.
>
> DEFENSE COUNSEL: But anything that he's currently serving, this would be run concurrent to[].
>
> THE COURT: Right. And what I'm going to say on the commitment is, that it is concurrent to the sentence he's currently serving, and any parole violation. I'm putting that on the commitment record.
>
> DEFENSE COUNSEL: Okay.
>
> THE COURT: Although technically it will depend on what the Parole Commission does. If the Parole Commission's warrant C-pied and I say concurrent to anything he's serving, he is entitled, as a matter of

> law, to credit from the time that the Parole Commission warrant C-pied. So in a sense, it would be a concurrent sentence. Do you understand what I'm saying? It's one of those little glitches that I was talking to you about. [1]

MR. MARTIN: Yes, ma'am.

THE COURT: But beyond that, if the Parole Commission elects to give him consecutive time, there's nothing I can do about that.

DEFENSE COUNSEL: I understand, Your Honor. And it included a recommendation to the COPS program?

THE COURT: I am recommending COPS.

In its further examination of Mr. Martin, the court elicited the fact that he was then 47 years old and had a "GED and two years of college." He could read and write and was not under the influence of any medications, drugs, or alcohol. The colloquy continued:

THE COURT: . . . Now, are you on parole or probation for anything right now?

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MR. MARTIN: Yes, I'm on parole.

THE COURT: Parole. And you understand that I have nothing to do with the Parole Commission's determinations, but I've done what I can and made the references that I did to you and your lawyer about the sentence to be imposed. But beyond that, much of it's in the hands of the Parole Commission, do you understand that?

MR. MARTIN: Yes.

After finding that his plea was entered knowingly and voluntarily and that the State's proffer of facts supported the plea to robbery, the court sentenced Mr. Martin to 10 years' imprisonment, stating that the "sentence will run concurrent to anything you're

[1] In its brief, the State states that "the trial court's 'C-pied' reference appears to be to the Parole Commission's retake warrant being effectuated."

serving and any parole violation that may occur. I can only run it concurrent. Hopefully the Parole Commission will agree and not try to give you a consecutive sentence." The commitment record, in fact, reflects that the sentence was run "concurrent with any other outstanding or unserved Maryland sentences" and "concurrent to any parole violation." The sentence was ordered to begin on October 10, 2006 – apparently the date Mr. Martin was arrested.

Based on a document included in Mr. Martin's brief, it appears that on July 24, 2007 – two months after he entered his *Alford* plea to robbery and was sentenced in that case – the Maryland Parole Commission held a "parole/mandatory supervision release violation hearing" and found that Mr. Martin had violated "Rule 4" by failing to obey all laws "as evidenced by the finding of guilty on the charge(s) of assault 2° by the Circuit Court for Baltimore City" and Rule 8 by posing a threat to himself and the public. (We assume that the Rule 4 violation was actually based on the *Alford* plea to robbery. Although he was also charged with second-degree assault and theft in the case, those counts appear to have been nol prossed.) The Parole Commission ordered that Mr. Martin be "returned to the authority from which you were released."

On October 4, 2007, the circuit court revoked Mr. Martin's probation in the 1995 cases, apparently based on its finding that he had violated the condition of probation that required him to "obey all laws." That court ordered him to serve 20 years of his previously suspended time, to run consecutively to the 10-year sentence imposed in the 2007 robbery case.

Motions To Correct Illegal Sentence

In April 2015, Mr. Martin, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that the 10-year sentence for robbery imposed in 2007 was illegal. The circuit court denied the motion. In July 2015, Mr. Martin filed a second motion to correct an illegal sentence in which he again maintained that the 2007 sentence for robbery was illegal. As grounds, he claimed that the trial court had stated that it would run the sentence concurrently with any sentence he was serving and that a parole violation may occur, but the court had made "no mention" "of a VOP [violation of probation] sentence." The circuit court denied the motion, stating that it had addressed the same issue when ruling on Mr. Martin's first motion and, moreover, it concluded that the 10-year sentence for robbery was legal because it "was what was agreed to" pursuant to the plea agreement and it did not exceed the penalty permitted by statute. Mr. Martin appealed that ruling. This Court ultimately dismissed the appeal because Mr. Martin failed to brief the issue and failed to produce the transcript from the May 25, 2007 plea and sentencing hearing. *Martin v. State*, No. 1553, Sept. Term, 2015 (filed December 15, 2016).

In 2019, Mr. Martin filed his third motion to correct an illegal sentence. In essence, he seemed to assert that, because the trial court did not have the authority to run the robbery sentence concurrently with a sentence not yet imposed for any possible parole violation, the plea agreement was "ambiguous." He also maintained that the robbery sentence was "inherently illegal" because the "court lacked authority to fulfill the agreement and/or impose the sentence."

The circuit court found that it had sentenced Mr. Martin "appropriately and consistent with the plea agreement" and that at the 2007 plea hearing it had "made it abundantly clear on the record" that the sentence would be run concurrently with any sentence "known to the Court at the time" and had alerted him "to the possibility that the Parole Commission could impose a consecutive sentence." The circuit court also found that, "[d]uring the plea litany," Mr. Martin "fully knew of a **probation** violation and the possibility of a **parole** violation because this Court explained it full on the record." (Emphasis in the original.) Accordingly, the court denied the motion to correct an illegal sentence.

DISCUSSION

On appeal, Mr. Martin asserts that his sentence is illegal because he had "relied on the consideration/agreement that his sentence would run 'concurrent' with his parole." Although the trial court had advised him that the Parole Commission might run its sentence consecutive to the 10-year robbery sentence, Mr. Martin asserts that the sentencing terms of his plea agreement were nonetheless "ambiguous." He also maintains that the 2007 sentence is illegal because the trial court had no authority to run its sentence either concurrently with or consecutively to his "parole term" because his parole "was not revoked on May 25, 2007."

The State responds that Mr. Martin's sentence is not illegal and "was consistent with the plea agreement." The State notes that the 10-year sentence for robbery was less than the statutory maximum of 15 years' incarceration permitted pursuant to § 3-402 of the Criminal Law Article of the Md. Code. And the State asserts that "[t]here was no ambiguity

in the plea agreement about whether the sentence would be concurrent with any sentence resulting from a parole violation because the court endorsed defense counsel's observation that the judge had 'no control over what happens with the Parole Commission[.]'" Although acknowledging the court's "remark that its 10-year sentence would 'run concurrent to . . . any parole violation that may occur,'" the State maintains that "that remark appears to harken back to the court's earlier remark that '[i]f the Parole Commission's warrant C-pied and I say concurrent to anything he's serving, he is entitled . . . to credit from the time the parole commission warrant C-pied.'"

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). 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)). We review *de novo* a circuit court's ruling on a motion to correct an illegal sentence. *Bratt v. State,* 468 Md. 481, 494 (2020).

Here, we agree with the State that the 10-year sentence for robbery is, on its face, legal. We also agree with the State that the court did not violate any sentencing terms of the plea agreement. The court made clear it had no control over whatever action the Parole Commission might take, but its "hope" was that a "sentence" for any "parole violation" would be run concurrently with its sentence. Based on the limited record before us, it appears that the Parole Commission revoked Mr. Martin's "parole/mandatory supervision release" and ordered his return to the facility from which he had been released. Then the circuit court, in a violation of probation proceeding, revoked Mr. Martin's *probation* in the 1995 cases and ordered his previously suspended time to be executed and ordered that the execution of that time run consecutively to the 2007 sentence.

In Maryland, parole is the release of an inmate from prison before the full sentence has been served and is administered exclusively by the executive branch of government by the Maryland Parole Commission. *Stouffer v. Pearson*, 390 Md. 36, 57 n. 19 (2005); Md. Code, Correctional Services Article, § 7-205. Probation, in contrast, is a judicial function that is imposed, administered, and subject to revocation by the judiciary branch. *Stouffer*, 390 Md. at 57 n. 19. Nonetheless, the two terms have been deemed "analogous for the limited purpose of imposition of a consecutive or concurrent sentence upon revocation." *Id.*

Although we agree with Mr. Martin that the court in this case – the 2007 *Alford* plea to robbery – did not mention any potential *probation* consequences that he could incur in the 1995 cases, both defense counsel and Mr. Martin himself informed the court that he was presently on "parole" and said nothing about probation. Certainly, a probation

violation in the 1995 cases was a potential collateral consequence of the 2007 *Alford* plea, but no one focused on the fact that Mr. Martin was then serving a term of probation. Rather, the focus was on his parole status and it was made clear to him that any prison time ordered by the Parole Commission for violating parole could run consecutively to the 2007 robbery sentence. Certainly, Mr. Martin should have been advised of any potential probation consequences. Rule 4-242(f), however, provides that "[t]he omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid."

In sum, the 10-year sentence for robbery did not breach the terms of the plea agreement and it did not exceed the statutory maximum penalty for robbery. The court was clear that the 2007 sentence would be run concurrent with any outstanding sentence, which it was. For those reasons, we hold that the sentence was not inherently illegal and, therefore, the circuit court did not err in denying Mr. Martin's Rule 4-345(a) motion.

Furthermore, we note that the 10-year robbery sentence, which had a start date of October 10, 2006, was completed when Mr. Martin filed his third motion to correct an illegal sentence in 2019 and, therefore, even if it were inherently illegal there is no sentence to revise or correct. *See Barnes v. State*, 423 Md. 75, 86 (2011) (Judge Adkins, writing for a plurality of the Court, stated that, because a Rule 4-345(a) motion "simply permits a court to revise an illegal sentence, rather than modify or overturn the underlying conviction, it follows that a court can no longer provide relief under that rule once a defendant has completed his or her sentence."). And even if we could vacate the 2007 sentence and remand for re-sentencing, the trial court could not make the new sentence concurrent with

the outstanding 1995 sentences. *Scott v. State,* 454 Md. 146, 197 (2017) ("where an appellate court vacates a sentence to which another sentence is ordered to be served consecutively and remands for resentencing without vacating the consecutive sentence, the non-vacated consecutive sentence remains consecutive to the newly imposed sentence – *i.e.*, the trial court cannot make the new sentence concurrent with the non-vacated consecutive sentence.").

Mr. Martin's real complaint is not with the 2007 sentence, but with the suspended time he was ordered to serve in the 1995 cases when the circuit court revoked his probation and ordered him to serve his previously suspended time consecutively to the sentence imposed in 2007. The legality of the violation of probation sentences in the 1995 cases, however, is not before us. But we note that, when a court orders a probationer to serve previously suspended time after finding a violation of probation, the court may order the time to run consecutively to any sentence then outstanding. *Kaylor v. State,* 285 Md. 66, 75 (1979) (affirming the court's authority to order a violation of probation sentence to run consecutively to the sentence imposed in the case which caused the probationer to violate probation where the sentence for the new conviction was imposed prior to the revocation of probation). Here, the 2007 robbery sentence was outstanding when the court revoked Mr. Martin's probation.

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