Circuit Court for Frederick County
Case No.: C-10-CR-19-000120

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1539

September Term, 2021

SHELDON DUKE WHITE

v.

STATE OF MARYLAND

Arthur,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 3, 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.

By indictments filed in the Circuit Court for Frederick County, Sheldon Duke White, appellant, was charged with 29 counts involving CDS and firearms. On June 4, 2019, he appeared in court with counsel. The State and defense counsel informed the court that, pursuant to a negotiated agreement, they would proceed on three counts by way of a bench trial on "a not guilty agreed statement of facts." Upon a finding of guilt, at sentencing the State would nol pros the remaining counts. As for sentencing, the State and defense would make a "joint recommendation" for a total term of 50 years' incarceration, all but 20 years suspended, to be followed by a five-year term of supervised probation. White would also forfeit $1,375 that the police had recovered in connection with the incident.

After ensuring that White understood the right to a jury trial and other rights he would be waiving by proceeding in this manner, and that the choice was voluntary, the State presented to the court the agreed statement of facts. The court then found, beyond a reasonable doubt, that White was guilty of possession with intent to distribute heroin (count 12), possession with intent to distribute heroin with a detectable amount of fentanyl (count 16), and possession of a firearm with a nexus to drug trafficking (count 25). On September 4, 2019, the court sentenced White to 20 years' imprisonment on count 25, the first five years without parole; 20 years' imprisonment on count 12, to be served consecutively, but all suspended; and 10 years' imprisonment on count 16, to be served consecutively, but all suspended. The court imposed a five-year term of supervised probation upon release. White appealed, raising various issues. This Court affirmed the judgments. *White v. State*, 250 Md. App. 604, *cert. denied*, 475 Md. 717 (2021).

In October 2021, White, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence. He claimed that his sentence was illegal because (1) the court sentenced him beyond the guidelines, which were 14 to 28 years' imprisonment; (2) his agreement with the State impermissibly required him to forfeit the $1,375 recovered upon his arrest; and (3) his not guilty plea upon an agreed statement of facts is "a plea that is not allowed by law." After the State filed an opposition to the motion, the court summarily denied relief. White appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

DISCUSSION

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).

In this appeal, White raises essentially the same issues he raised in his motion filed in the circuit court, and he also asserts that the circuit court erred in denying relief without holding a hearing. As to the latter, there is no requirement that a circuit court hold a hearing on a Rule 4-345(a) motion before denying the motion. The "open hearing requirement found in Rule 4-345 ordinarily applies only when the court intends to 'modify, reduce, correct, or vacate a sentence.'" *Scott v. State*, 379 Md. 170, 191 (2004). Here, the court denied the motion. Moreover, the transcripts from the plea and sentencing hearings were in the record before the circuit court and the same judge who presided over the trial and sentencing ruled on the Rule 4-345(a) motion.

White maintains that his sentence is illegal because he was sentenced beyond the sentencing guidelines. We find no merit to White's claim. First, the June 4, 2019 transcript clearly indicates that the parties had agreed to proceed on a not guilty agreed statement of facts and that there would be a "joint recommendation" of "a total [sentence] of 50 years, suspend all but 20 years to serve." The State explained to the court that the recommendation for that sentence was based on the sentencing guidelines, which were 14 to 28 years, which as White acknowledges, refers to executed time. The sentence imposed—50 years, with all but 20 years suspended—fell within the sentencing guidelines. Moreover, the court never bound itself to impose any particular sentence in this case, much less a guidelines sentence.

Finally, there is no question that both parties had agreed to recommend "a total of 50 years, *suspend all but 20 years to serve*." (Emphasis added.)[1]

White next maintains that his sentence is illegal because a condition of his probation required the forfeiture of the $1,375 the police had seized when conducting a search and seizure warrant. We need not address this issue for two reasons. First, the trial transcript reflects that White agreed to the forfeiture and second, even if it were somehow illegal (which it is not), the condition would not render his sentence inherently illegal.

Finally, White maintains that the court erred by allowing him "to enter into a plea that was not allowed according to law." Relying on Maryland Rule 4-242, he states that "the only pleas allowed by law is [sic] guilty, not guilty, or nolo contendere," and he asserts that there is no authority for a "not guilty upon an agreed statement of facts." In his direct appeal, this Court recognized that White "did not enter any of the pleas covered by" Rule 4-242, but we certainly acknowledged the validity of a not guilty plea upon an agreed statement of facts, which White had entered in this case. 250 Md. App. at 648 (citing, among others, *Bishop v. State*, 417 Md. 1, 21 (2010)). Accordingly, we find no merit to White's contention that his sentence is illegal because he proceeded to trial on a not guilty agreed statement of facts.

[1] The State explained that the parties had agreed to a "joint recommendation for the same sentence," as follows: 20 years to serve on count 25 (the maximum penalty for the offense); a consecutively run term of 20 years, all suspended, for count 12; and a consecutively run 10 years for count 16, all suspended. The parties were free to argue at sentencing whether the sentence in this case should run concurrently with or consecutive to a sentence White was then serving in Howard County.

In sum, the circuit court did not err in denying White's motion to correct an illegal sentence and in doing so without holding a hearing.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.