

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1593

September Term, 2014

TROY NEAL EDWARDS

v.

STATE OF MARYLAND

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: October 9, 2015

*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.

Appellant, Troy Neal Edwards, appeals the denial of his motion to correct an illegal sentence by the Circuit Court for Anne Arundel County. He presents one question for our review, which we have modified slightly:

Did the circuit court err in denying appellant's motion to correct an illegal sentence?

For the reasons below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was charged in the Circuit Court for Anne Arundel County (in case number K-95-420) with nine counts, including robbery with a dangerous and deadly weapon. He pleaded guilty to robbery with a dangerous and deadly weapon, and on August 21, 1995, he was sentenced to twelve years' imprisonment, with all but seven years suspended to be served concurrent with his sentence in case number K-95-421, with credit for time served from January 25, 1995 through June 12, 1995.

Appellant filed a motion to modify the sentence and, on January 7, 1997, the court suspended the balance of his sentence, ordered him to successfully complete treatment and aftercare at Second Genesis, and imposed five years probation. On December 3, 1997, appellant was discharged from Second Genesis for failing to successfully complete aftercare. The court held a violation of probation hearing on March 2, 1998, and directed the execution of the remainder of the twelve-year sentence to be served concurrently with any outstanding

or unserved sentence, giving appellant credit for time served between January 13, 1995 and January 7, 1997.¹

Appellant filed a second motion to modify sentence and on November 16, 2001, the court modified appellant's sentence to twelve years' imprisonment, suspending all but one year in favor of home detention and five years supervised probation following release and participation in drug and alcohol counseling along with weekly urinalysis. On September 8, 2004, appellant pleaded guilty in the Circuit Court for Anne Arundel County in case number K-04-385 to armed robbery and received a sentence of eighteen years' imprisonment.

On September 20, 2004, appellant pleaded guilty to violating the terms of his probation in this case, and the court directed the execution of the remainder of the twelve-year sentence with credit for seven years three-hundred-six days, to be served "consecutive to any sentence now serving" and his probation was closed unsatisfactorily. Appellant did

¹As explained by the Court of Appeals:

[W]hen a court imposes a sentence and then . . . suspends execution of all or part of that sentence in favor of probation, and later strikes the probation and directs execution of all or part of the previously suspended part of the sentence, the court does *not*, at that time reimpose all or any part of the sentence. The full sentence has already been imposed and does not need any reimposition. The effect of the court's action is simply to lift the previously ordered suspension and direct execution of the now unsuspended part. In those rather rare situations in which the court . . . has deferred imposition of sentence in favor of probation and later revokes the probation, it proceeds then to impose sentence for the first time.

Moats v. Scott, 358 Md. 593, 596-97 (2000) (statutory citations omitted).

not seek leave to appeal, but he did file a motion to modify sentence and requested review by a three-judge panel. Appellant's motion to modify was denied, and the three judge panel did not alter his sentence. Appellant thereafter filed the motion to correct an illegal sentence, which was denied on June 24, 2014, and is the subject of this appeal.

DISCUSSION

Appellant asserts that his sentence was illegal because it was ambiguous and, because a split-sentence was imposed, the court may only “impose” the suspended portion of the sentence. The State responds that appellant's claims are not cognizable under Maryland Rule 4-345, and, in the alternative, citing *Kaylor v. State*, 285 Md. 66 (1979), asserts that the court properly denied appellant's motion. We will address first the State's argument that appellant's claim is not properly the subject of a motion to correct an illegal sentence under Rule 4-345(a).

Rule 4-345(a) provides: “[t]he court may correct an illegal sentence at any time.” But, as we have explained:

In the context of direct appellate review, there are a wide variety of reasons why a sentence, or a sentencing procedure, may be so seriously flawed as to give rise to the appellate reversal or vacating of the sentence. In this context, such flaws are, and are regularly referred to as, illegal sentences. There are, however, procedural rules regulating the form that challenges to such sentences may take and imposing strict limitations on when such challenges may be made. There is also, by dramatic contrast, a very different context in which a sentence may be challenged at any time, subject to no filing deadline of any sort.

Matthews v. State, 197 Md. App. 365, 367 (2011), *rev'd on other grounds*, 424 Md. 503 (2012). “Of all the illegal sentences that might deserve immediate appellate vacating in the broad context of direct review, only a small fraction are even cognizable in the austere limited context of Rule 4-345(a) review.” *Id.* at 367-68. For example, a procedural defect during sentencing does not, without more, support a Rule 4-345(a) claim. As the Court of Appeals pointed out in *Walczak v. State*, an illegal sentence under Rule 4-345(a) is a sentence that is “not permitted by law.” 302 Md. 422, 427 (1985). In other words:

A motion to correct an illegal sentence ordinarily can be granted only where there is some illegality in the sentence itself or where no sentence should have been imposed. On the other hand, a trial court error during the sentencing proceeding is not ordinarily cognizable under Rule 4-345(a) where the resulting sentence or sanction is itself lawful.

Matthews, 197 Md. App. at 372 (quoting *Evans v. State*, 382 Md. 248, 278-79 (2004)); *accord Bryant v. State*, 436 Md. 653, 662-63 (2014) (“[An illegal sentence under Rule 4-345(a) is] limited to those situations in which the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.”) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007) (internal quotation marks omitted)).

Appellant’s claims do not fall within the ambit of an illegal sentence under Rule 4-345. Appellant’s plea of guilty to armed robbery supported a conviction for that offense and the sentence of twelve years was well within the statutorily mandated limits. *See*

Md. Code, Art. 27 § 488 (1992 Repl. Vol.) (providing that an individual convicted of robbery with a deadly weapon be “sentenced to imprisonment in the Maryland Penitentiary for not more than twenty years.”). Accordingly, his sentence is not illegal under Rule 4-345(a) and, the circuit court did not err in denying his motion to correct it.

Appellant also claims that his sentence is ambiguous because the record is conflicting as to whether the sentence in this case is to run consecutive to or concurrent with the sentence he was serving in Case. No. K95-421. Because his sentence is not illegal for Rule 4-345(a) purposes, that issue is not properly before us. But, if it were, appellant would fare no better.

The transcript of the September 20, 2004, court hearing on appellant’s violation of probation is not in the record before us, but both the docket entries and the “criminal hearing sheet” for that date clearly state that the court terminated his probation and ordered him to serve the twelve-year sentence “consecutive to any sentence” appellant was then serving, with credit for seven years and three hundred and six days. When a court revokes probation and directs the execution of a previously suspended sentence, the court has the discretion to run the sentence concurrent with or consecutive to any sentence the defendant was serving when probation was revoked. *Kaylor*, 285 Md. at 75. On September 20, 2004, appellant had recently been convicted and sentenced in Case No. K-04-385, and that was the sentence he was then serving.

Finally, appellant asserts that “when a split-sentence is imposed, and violation of probation occurs, the court may only impose the suspended portion of the sentence.” Section § 6-224 of the Criminal Procedure Article of the Maryland Code provides, in relevant part, that upon termination of probation, the court “may sentence the defendant to . . . all or any part of the period of imprisonment imposed in the original sentence[.]” Md. Code (2001, 2008 Repl. Vol.) § 6-224 of the Criminal Procedure Article. Appellant’s “original sentence” was twelve years’ imprisonment, with all but seven years suspended. As noted, upon revocation of his probation, the court ordered him to serve the twelve-year term, with credit for the seven years and three hundred and six days he had already served.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**