Circuit Court for Anne Arundel County
Case No. C-02-CR-20-000700

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1703

September Term, 2021

ANTHONY BRAD SPICER

v.

STATE OF MARYLAND

Graeff,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: June 21, 2022

This appeal arises from a decision of the Circuit Court for Anne Arundel County, denying a motion to modify a sentence filed by appellant, Anthony Brad Spicer. Appellant presents a single question for our review, which we have rephrased:

> Did the circuit court lawfully order home detention as a condition of probation upon appellant's release from a period of executed incarceration?[1]

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On December 15, 2020, appellant pleaded guilty to third-degree sex offense.[2] The court sentenced appellant to ten years' incarceration, with all but eighteen months suspended, and a period of five years of supervised probation following his release.[3] As a condition of probation, the court ordered that appellant serve one year of "house arrest":

> THE COURT: The sentence is going to be – as to count ten, ten years. I'm going to suspend all but 18 months. I will give you credit for the 17 days that you served. After the 18 months, I will place you on five years of supervised

[1] The issue as presented in appellant's brief is:

> Did the trial court impose an illegal sentence by ordering the Appellant to serve one year in home detention upon release from the 18 months of active incarceration in the Anne Arundel County Detention Center?

[2] The penalty for committing the felony of sexual offense in the third degree is imprisonment not exceeding 10 years. Md. Code Ann., Crim. Law § 3-307(b) (2002, Repl. Vol. 2021, 2021 Supp.).

[3] This is commonly known as a "split sentence" under Maryland Code, § 6-222 of the Criminal Procedure Article, which authorizes a court to "impose a sentence for a specified time and provide that a lesser time be served in confinement;[ ] suspend the remainder of the sentence; and [ ] order probation" for a period of time as set forth in that statute. *Russell v. State*, 221 Md. App. 518, 527 (2015) (quoting *Moats v. Scott*, 358 Md. 593, 595 (2000)).

probation. As a condition of that probation, I will order that you be – you will serve one year on house arrest.

* * *

I'm giving you to Friday to turn yourself in, on the 18 months. Then, after you're released, you need to report immediately to probation. Okay? Once you report to probation, you're going to get placed on house arrest, as a condition of probation, are you listening to me, Mr. Spicer?

[APPELLANT:] Um-hum.

THE COURT: Okay. While you're on house arrest, you're going to have house arrest for one year.

* * *

COURT CLERK: I just want to make sure that the sentence is correct. So, it's 18 months. Upon completion of the 18 months then it's one year on house arrest, right?

THE COURT: No, not part of the sentence. It's one year, as a condition of probation. Yes. Um-hum. Yes, you got it written right.

The "probation/supervision order" provided that "[p]robation begins [ ] upon release" from the executed portion of the sentence with a "special condition" of "[h]ome confinement/detention to AADC for 1 YR[.]" The commitment record similarly memorialized the sentence and condition of probation, as follows: "10 years DOC. Suspend all but 18 months AADC. Credit for time served 17 days. Sentence to begin on 12/18/20 @ 6:00 pm. Upon release, defendant will serve an additional 1 year on House Arrest as a Condition of Probation...All but **18 M** is [ ] suspended and the Defendant is placed on SUPERVISED probation for a period of…**5 Years**[.]" (Emphasis in original).

On October 13, 2021, and pursuant to Maryland Rule 4-345(e), appellant filed a Motion for Modification and/or Clarification of Sentence, mainly seeking to eliminate the period of "house arrest." On November 10, 2021, appellant filed a supplemental motion, requesting the same relief on the same grounds.[4] On November 29, 2021, the court entered an order "declin[ing] to modify this sentence in any way." It reiterated the sentence and the "house arrest" requirement:

> On December 15, 2020, Defendant pleaded guilty to Sex Offense in the Third Degree and was sentenced to ten (10) years in jail, suspend all but 18 months, and with credit for 17 days. Defendant was ordered to turn in on December 18, 2020. Defendant was then placed on five (5) years supervised probation **with a condition of probation that he serve the first year on house arrest.**

(Emphasis in original). On December 27, 2021, appellant noted an appeal of the court's order denying his supplemental motion because, in his view, his sentence is illegal.

STANDARD OF REVIEW

Rule 4-345(a) permits a court to "correct an illegal sentence at any time." Md. Rule 4-345(a). "The sentence may be attacked on direct appeal, but it also may be challenged collaterally and belatedly, and, if the trial court denies relief in response to such a challenge,

[4] Appellant argued that he "believe[d] that some portion of his sentence was to be served via house arrest upon his release, which was calculated to be on or about October 16, 2021"; that given the time served and earned credits, he "d[id] not and should not have any time remaining on house arrest upon his release from incarceration"; and that "house arrest would last for as much as ten (10) months upon his release from incarceration[,]" which amount, "when added to the time of his incarceration," exceeds "the Court's sentence and the [House Arrest Alternative Sentencing] program's regulations." Appellant did not raise these arguments in his brief. Accordingly, we do not consider them. *See* Md. Rule 8–504(a)(6).

the defendant may appeal from that denial and obtain relief in an appellate court." *Chaney v. State*, 397 Md. 460, 466 (2007). Under Rule 4-345, an "illegal sentence" is "limited to those situations in which the illegality inheres in the sentence itself." *Id*. For instance, "[a] sentence that is not permitted by statute is an illegal sentence." *Holmes v. State*, 362 Md. 190, 195–96 (2000). "Courts do not possess the authority to impose a sentence that does not comport with a legislatively-mandated sentence, and any such sentence must be corrected to remedy the illegality." *State v. Crawley*, 455 Md. 52, 66 (2017). Whether a sentence is an illegal sentence is a question of law that is subject to *de novo* review. *Id.*

DISCUSSION

Appellant contends that the imposition of a one-year period of "house arrest" as a condition of probation, following his release from serving the executed portion of his sentence, is tantamount to an additional year of "custodial incarceration" and, therefore, is an illegal sentence which should be remedied pursuant to Rule 4-345. The State argues that appellant has no right to relief under his claim because the imposition of home detention as a condition of probation is statutorily permitted by Maryland Code, § 6-225 of the Criminal Procedure Article. We agree.

"Probation is a creature of statute, and as such, the terms of probation are derived from statutory authority." *Bailey v. State*, 355 Md. 287, 293 (1999). The statutes governing probation expressly empower courts to order home detention, a form of "custodial

confinement,"[5] as a condition of probation. *See* Md. Code Ann., Criminal Procedure §§ 6-219(b)(4) (2001, 2018 Repl. Vol., 2021 Supp.) (in the context of a suspended sentence, a court may "order a person to a term of custodial confinement as a condition of a suspended sentence."); 6-220(b)(5) (in the context of probation before judgment, "[a]s a condition of probation, the court may order a person to a term of custodial confinement..."); 6-225(b)(1)(v) (in the context of probation after judgment, "[a]s a condition of probation, the court may order a defendant to a term of custodial confinement.") and (d) ("The court may impose a sentence of custodial confinement…as a condition of probation.").

I.

Legislative History

This express grant of authority was the product of the General Assembly's response to *Bailey v. State*, in which the Court of Appeals held that, in the absence of statutory authority, a court may not impose home detention or house arrest as a condition of probation. 355 Md. 287, 299 (1999); *see* Dep't Legis. Servs., *Floor Report*, Senate Bill 91, at 1 (2001 Session) ("This emergency bill is in response to a 1999 ruling by the Court of Appeals in Bailey v. State, which effectively limited the imposition of home detention and other alternative sentencing methods as a condition of probation."). When *Bailey* was decided, the primary statutes governing probation, including former Article 27, §§ 639, 641, and 641A, did not expressly authorize home detention as a permissible condition of

[5] "Custodial confinement" means "home detention." Criminal Procedure §§ 6-219(a)(1), 6-220(a)(1), 6-225(a)(1)(i).

probation. *See id.* at 297. The probation statutes did, however, explicitly authorize courts to impose "a sentence of confinement" as a condition of probation in some but not all counties. *Id.* (citing Art. 27, §§ 639(a)(2), 641(a)(1)(i)(2) and 641(A)(a)(2)).

In *Bailey*, the Circuit Court for Anne Arundel County imposed a split sentence and a period of five years of supervised probation upon the petitioner's release from the detention center. *Id.* As a special condition of probation, effective upon the petitioner's release, the court ordered home detention for a period of twenty-four months. *Id.* The petitioner appealed, arguing that the court imposed an illegal sentence in ordering "house arrest" as a condition of his probation. *Id.* at 290. The petitioner argued that, because home detention constituted imprisonment and, therefore, a "sentence of confinement," and because Anne Arundel County was not among those counties authorized to impose "a sentence of confinement" as a condition of probation, the home detention requirement was illegal. *Id.* at 291.

The Court of Appeals declined to "determine on a case-by-case basis whether the particular terms and conditions of home detention imposed as a condition of probation are so onerous as to constitute the equivalent of imprisonment or equate to a 'term of confinement'." *Id.* at 298. It explained that if the General Assembly intended to include home detention as a condition of probation, it would have expressly done so. *Id.* at 300 ("As is evident from the enactment of Article 27, § 641A(a)(2), when the General Assembly chooses to permit home detention as a condition of probation, it knows how to do so."). Accordingly, the Court held that in the absence of statutory authority, a court

may not impose home detention as a condition of probation. *Id*. at 299. In conjunction with its holding, the Court invited the General Assembly to sort out a court's ability to order home detention as a condition of probation:

> Solution of this issue by the Legislature is most appropriate and is supported by sound practical reasons. The Legislature is better suited to crafting the limitations of the program and the permissible duration of the home confinement *viz a viz* the maximum period of incarceration. We recognize that home detention might be beneficial in many cases; nonetheless, we believe that "this policy and the limits which should be placed upon it are matters properly for the legislature to consider and not for this court to attempt to read into the present statute(s)."

Id. at 300–01 (citations omitted).

In 2001, in response to *Bailey*, the General Assembly re-codified Article 27, §§ 639, 641, and 641A, by the Acts of 2001, Chapter 356, effective October 1, 2001, which now appear in §§ 6-219, 6-220, and 6-225 of the Criminal Procedure Article. First, the General Assembly resolved the home detention/confinement quandary highlighted in *Bailey* by distinguishing "home detention" from "imprisonment" in the definition of "custodial confinement." *See* Dep't Legis. Servs., *Fiscal Note (Revised)*, Senate Bill 91, at 1 (2001 Session) ("The bill defines 'custodial confinement' to mean home detention…The definition specifically excludes imprisonment."); *see* Criminal Procedure § 6-225(a)(2) ("'Custodial Confinement' does not include imprisonment."). Second, the General Assembly expressly empowered courts to order home detention, a form of "custodial confinement," as a condition of probation. *See id*. ("This emergency bill expands, statewide, the authority of the courts to impose "custodial confinement" as a condition of a suspended sentence, probation before judgment or probation following judgment.").

In 2020, nearly twenty years after the recodification of the probation statutes, the Court of Appeals, in *State v. Alexander*, synopsized a court's broad authority to impose conditions of probation as it deems proper:

> It has frequently been said that, when a court sentences a defendant following conviction in a criminal case, it is "vested with virtually boundless discretion." In particular, it generally has the option of including a period of probation with respect to one or more counts. "Probation is a creature of statute, and as such, the terms of probation are derived from statutory authority." For example, a sentencing court may suspend the imposition or execution of a sentence of imprisonment and place the defendant on probation. *Or the court may impose what is often referred to as a "split sentence," in which it suspends execution of a sentence of imprisonment, but requires the defendant to serve part of that sentence followed by a period of probation.* In some cases in which a defendant has been found guilty, the court may choose to stay the entry of judgment, defer further proceedings, and place the defendant on probation – what is known as probation before judgment.
>
> *In any of those situations, probation may be* supervised or unsupervised, and *subject to conditions set by the court.* In practice, the defendant's continuation on probation is made subject to various standard conditions of probation – for example, obey all laws, report as directed to probation officer, appear in court when notified to do so, make restitution. *The court may also impose special conditions of probation related to the particular case or the particular defendant* – for example, participate in an alcohol or substance abuse program, complete a specified number of hours of community service, refrain from contact with certain persons. [FN 3 omitted]

467 Md. 600, 605–06 (2020) (citations omitted) (emphasis added). In footnote 3, the Court noted that among other special conditions, "[a] court may also impose a sentence of *custodial confinement* or imprisonment *as a condition of probation*." *Id.* at 606 n.3 (citing Criminal Procedure §§ 6-219, 6-225(d)) (emphasis added).

II.

Home Detention is Not Imprisonment Under Criminal Procedure § 6-225

Relying on *Dedo v. State*, 343 Md. 2 (1996), appellant contends that, because a violation of a home detention requirement exposes an individual to liability under the escape statute, home detention is equivalent to incarceration. *Dedo*, however, is premised "on the construction of *different words* of a *different statute*, having a *different purpose.*" *Deville v. State*, 383 Md. 217, 231 (2004) (emphasis in original). In *Dedo*, the Court evaluated former Article 27, § 638C,[6] which "mandate[d] that where an individual is in custody before trial and is subsequently convicted on the charge for which that individual was held, the 'time spent in custody prior to the imposition of sentence must be credited against the sentence imposed.'" 343 Md. at 8–9. The purpose of § 638C was "to ensure that a defendant receive as much credit as possible for time spent in custody as is consistent with constitutional and practical considerations." *Id.* at 9 (quoting *Fleeger v. State*, 301 Md. 155, 165 (1984)). Citing to the escape statute, the Court held that "[w]here a defendant is punishable for the crime of escape for an unauthorized departure from the place of confinement, the custody requirement of Art. 27, § 638C is met." *Dedo*, 343 Md. at 11. Section 638C is distinguishable from the probation statutes because its purpose was to provide credit for time spent in "custody," whereas the purpose of the probation statutes is to afford a sentencing judge a supply of tools with which to tailor conditions of probation to suit a particular case and defendant. The decision in *Dedo*, which equated home

[6] Section 638C was repealed by 2001 Md. Laws, Ch. 10 § 1 at 80, and replaced by Criminal Procedure § 6–218(b). *Deville*, 383 Md. at 231 n.12.

detention to custody for purposes of the credit statute, cannot be analogized to appellant's case. *Deville*, 383 Md. at 231 (rejecting the State's contention, relying on *Dedo*, that home detention qualified as confinement in a correctional institution under the enhanced penalty statute).

As noted *supra*, and applicable in the instant case, Criminal Procedure § 6-225(a)(2) expressly excludes imprisonment from the definition of "custodial confinement" in the context of probation after judgment. § 6-225(a)(2). By excluding "imprisonment" from the definition of "custodial confinement," the General Assembly addressed the concern raised in *Bailey* that courts might be tasked to determine, for probation purposes, whether home detention is tantamount to imprisonment on a case-by-case basis. *See* 355 Md. at 298-99 ("A bright-line rule that in order to impose home detention as a condition of probation, statutory authorization is necessary, will eliminate any uncertainty for trial judges and defendants alike. Judicial economy will also result because courts will not have to determine on a case-by-case basis whether the conditions as such amount to confinement [and] whether the defendant can be punished by escape[.]") (Citations omitted). In the case before us, the imposition of home detention was a condition of probation within the parameters of statutory authority. Accordingly, appellant's sentence is not illegal.

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