Circuit Court for Baltimore County
Case No.: 03-K-07-002978

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1801

September Term, 2021

STEPHEN NIVENS

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 26, 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.

In 2008, a jury in the Circuit Court for Baltimore County convicted appellant, Stephen Nivens, of first-degree sex offense and first-degree burglary for an incident that occurred in 1987. On direct appeal, this Court reversed the convictions and remanded for a new trial. *Nivens v. State*, No. 1389, September Term, 2008 (filed February 23, 2010).[1] In 2011, following the remand, Nivens entered an *Alford* plea to second-degree sex offense and first-degree burglary. The court sentenced him to a total term of 40 years imprisonment. Although the sentencing court did not mention sex offender registration at the sentencing hearing, the Commitment Record reflects that Nivens must register as a Tier III sex offender. Since his sentencing, Nivens has filed numerous papers in the circuit court attacking his conviction, his sentence, and the sexual offender registration requirement.[2,3]

[1] A panel of this Court determined that the trial court had committed reversible error when it allowed the victim to testify that Nivens had also raped her prior to the incident for which he was tried.

[2] In an Amended Memorandum Opinion and Order Denying Post-Conviction Relief dated August 5, 2020, the circuit court noted that, since his sentencing on October 31, 2011, "despite being periodically represented by counsel, [Nivens] has personally filed some 53 papers" in the Circuit Court for Baltimore County.

[3] In his brief filed in this appeal, Nivens states that, on November 15, 2019, the "Federal *Habeas* Court [ ] vacated the requirement to register" as a sex offender. He did not attach any proof of that assertion. We note that in a Memorandum Opinion filed on November 15, 2019, the United States District Court for the District of Maryland in Civil Action No. TDC-16-2648 denied Niven's petition for habeas relief. In footnote 1 of that Memorandum Opinion, the District Court stated that since the publication of the Court of Appeals' decision in *Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535 (2013), the Department has removed from the sexual offender registry "individuals who were convicted of sexual offenses for conduct prior to 1995." (Citation omitted.) The District Court then stated that, "[w]hile nothing in the record suggests Nivens has been removed from the registry, the Court notes that he may no longer be subject to the [Maryland Sex Offender registration] requirement." *See* 2019 WL 6067407. An on-

(continued)

On November 16, 2021, Nivens—representing himself—filed, among other things, pleadings he captioned "Motion To Correct Illegal Sentence," "Petition Complaint For Declaratory Judgment," "Motion For Sentence Modification And/Or For Reduction of Sentence," and "Motion To Recuse From Motion To Correct Illegal Sentence And Petition Complaint For Declaratory Judgment." On December 29, 2021, the circuit court entered an order denying two of those motions: the motion to recuse and the motion to correct an illegal sentence. Nivens appealed those rulings. For the reasons to be discussed, we shall affirm the judgments.

DISCUSSION

Denial of Motion to Correct an Illegal Sentence

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, 370 (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

line search by this Court, on August 9, 2022, for "Stephen Nivens" in the Maryland Sex Offender Registry maintained by the Department revealed 0 results.

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)).

In this appeal, Nivens asserts—as best we can discern—that his sentence is illegal because the sex offender registration requirement violated the terms of his plea agreement. We disagree. First, the plea agreement, as placed on the record at the September 15, 2011 plea hearing, provided that Nivens would enter an *Alford* plea to second-degree sex offense and to first-degree burglary; the State would request the court to impose the maximum 20-year term for each offense, with the sentences run consecutively; the defense was free to advocate for any sentence it felt appropriate; and sentencing would be deferred to a later date. Registration as a sex offender was not a term of the plea agreement. Although registration was raised at the hearing, all parties believed the registration requirements were retroactive and would apply in this case.[4]

Next, Nivens seems to assert that, because "the registration requirement has been removed and vacated," he is entitled to a "belated motion for modification or reduction of sentence." He cites no authority for his position, but rather claims that prior trial counsel

[4] In its plurality opinion in *Doe*, the Court of Appeals held that the retroactive application of the 1995 enactment of the Maryland Sex Offender Registration Act to a person convicted after 1995 for a sex offense committed prior to that date violated the *ex post facto* prohibition contained in Article 17 of the Maryland Declaration of Rights. 430 Md. at 568. *Doe* was decided in 2013, approximately 17 months after Nivens was sentenced in this case. Thus, it appears that Nivens is not subject to registration based on his conviction in this case. Moreover, in an Answer filed on February 24, 2020 to a previously filed Rule 4-345(a) motion Nivens had filed, the State's Attorney for Baltimore County "agree[d] that [Nivens'] registration violates Article 17 under *Doe*[.]" As noted in footnote 1 *supra*, it does not appear that Nivens is currently on the Maryland Sex Offender Registry. He does not allege that he is on the registry, and he makes no allegation that anyone is presently directing him to register.

rendered ineffective assistance of counsel for various reasons. We shall not address any ineffective assistance of counsel claims, however, as they are not properly before us in this appeal.

In sum, because the sentence Nivens is serving is not inherently illegal, the circuit court did not err in denying his motion to correct it.[5]

Denial of Motion to Recuse

Although Nivens noted an appeal from the order which denied both his motion to correct an illegal sentence and his motion to recuse, on appeal he does not present any argument related to the recusal decision. Accordingly, we shall not address it. *See* Maryland Rule 8-504(a)(5) (requiring an appellant's brief to contain "[a]rgument in support of the party's position on each issue"); *Darling v. State*, 232 Md. App. 430, 465-66 (2017) (declining to address an issue on appeal where the appellant offer no support for his position).

JUDGMENTS OF THE CIRCUIT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[5] If the sex offender registration requirement remains on Nivens' Commitment Record, as it appears it does so, in our view he could seek to remove that by filing a motion under Rule 4-351(b) to amend that record.