

Circuit Court for Baltimore County  
Case No. 03-K-05-000266

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1835

September Term, 2022

---

THURMAN SPENCER, JR.

v.

STATE OF MARYLAND

---

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

JJ.

---

Opinion by Tang, J.

---

Filed: December 12, 2023

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Thurman Spencer, Jr., appellant, appeals the decision of the Circuit Court for Baltimore County denying his motion to correct an illegal sentence. He challenges the validity of his convictions for various crimes of violence, and thus maintains that his sentence is illegal.<sup>1</sup> Because his claim is not cognizable under Maryland Rule 4-345(a), we shall affirm.<sup>2</sup>

In 2006, a jury found appellant guilty of first-degree rape, two counts of armed robbery, use of a handgun in the commission of a crime of violence, and first-degree burglary in connection with the robbery and rape of a woman at gunpoint after appellant forced entry into her house. The court sentenced appellant to an aggregate of life imprisonment plus 80 years. On direct appeal, we affirmed the convictions. *See Spencer v. State*, No. 168, Sept. Term, 2006 (filed Apr. 16, 2008).

In 2022, appellant filed a motion to correct an illegal sentence, in which he asserted, as he does on appeal, that the convictions for first-degree rape, armed robbery, and use of a handgun in a crime of violence cannot stand because the State entered a *nolle prosequi*

---

<sup>1</sup> The question presented by appellant in his brief is, “Did the Circuit Court err in denying the Appellant’s Motion to Correct Illegal Sentence without a hearing?”

Appellant did not include any argument about the propriety of the court’s ruling without a hearing. *See* Md. Rule 8-504(a)(6) (a brief must contain argument in support of party’s position on each issue). Accordingly, we do not address the point. *See Diallo v. State*, 413 Md. 678, 692 (2010) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”). In any event, a court may deny a motion to correct an illegal sentence without holding a hearing. *Scott v. State*, 379 Md. 170, 191 (2004).

<sup>2</sup> Under Maryland Rule 4-345(a), “[t]he court may correct an illegal sentence at any time.”

to a related charge of wearing and carrying a handgun (“handgun charge”) after the defense rested its case. Appellant asserts that the handgun charge served as the predicate for, and is a lesser included offense of, the other offenses.<sup>3</sup> On that premise, the entry of a *nolle prosequi* to the “lesser” handgun charge without his consent “functioned as an acquittal” of that charge, thus making it “impossible” for appellant to stand convicted of first-degree rape, armed robbery, and use of a handgun in a crime of violence. Therefore, he contends, any sentence stemming from these illegal convictions is an illegal sentence.

Appellant does not dispute that he is challenging his sentence by attacking the underlying convictions. A motion to correct an illegal sentence, under Maryland Rule 4-345(a), however, “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). The scope of the Rule is “narrow,” and the illegality must “inhere in the sentence itself.” *Rainey v. State*, 236 Md. App. 368, 381 (2018).

---

<sup>3</sup> For support, appellant cites to *Hook v. State*, 315 Md. 25 (1989) and *State v. Smith*, 223 Md. App. 16 (2013). In *Hook*, the Supreme Court of Maryland explained that while the entry of a *nolle prosequi* is generally within the prosecutor’s sole discretion, the power is not absolute. 315 Md. at 35–36. When the evidence is legally sufficient for the trier of fact to convict a defendant of either the greater offense or a lesser included offense, it is fundamentally unfair for the State, over the defendant’s objection, to *nol pros* the lesser included offense and deprive the trier of fact of a third option of convicting the defendant of a lesser included offense. *Id.* at 43-44. In *Smith*, this Court applied the *Hook* exception to crimes that were “so inter-related that principles of fundamental fairness demand[ed]” that the lesser related offense be treated as a lesser included offense under the factual situation of that case. 223 Md. App. at 38. As best as we understand, appellant primarily relies on *Smith* to support his claim that the handgun charge is so inter-related with the convicted offenses that it should be treated as a lesser included offense.

Our courts have addressed whether a challenge based on an alleged illegality of an underlying conviction falls within the scope of Rule 4-345(a). In *Johnson v. State*, 427 Md. 356 (2012), the defendant was convicted of and sentenced for an offense for which he was not charged. *Id.* at 362–63. In that circumstance, the Court explained that “[w]hen the illegality of a sentence stems from the illegality of the conviction itself, Rule 4-345(a) dictates that both the conviction and the sentence be vacated.” *Id.* at 378.

In *Rainey v. State*, the defendant moved to correct an illegal sentence because he had been acquitted of the lesser included offenses. 236 Md. App. at 371–72. Under his theory, the defendant’s acquittal of the lesser included offenses should have precluded him from being convicted of the greater offense. *Id.* at 376. We held that the defendant’s illegal sentence claim was not cognizable under Rule 4-345(a) because the challenge to his sentence was derivative of his complaint about his conviction. *Id.* We distinguished *Rainey* from *Johnson*, explaining that *Johnson* is “limited to situations in which the illegality of the conviction exists because the trial court lacked the ‘power or authority’ to convict.” *Id.* at 381 (noting that *Johnson* did not intend to significantly expand the scope of challenges allowed under Rule 4-345(a)). Unlike in *Johnson*, we concluded that the defendant’s claim did not allege an illegality that “inheres in the sentence” for purposes of Rule 4-345(a). *Id.*

Here, appellant’s theory for his sentencing claim is like that asserted by the defendant in *Rainey*—the *nol pros* of the handgun charge functioned as an acquittal of a lesser offense that should have precluded appellant from being convicted of the greater

offenses. Because his sentencing claim is not premised on the sentence itself but is derivative of his complaint about his underlying convictions, appellant's claim is not cognizable under Rule 4-345(a).

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