Circuit Court for Kent County
Case No. C-14-CR-20-000048

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2013

September Term, 2023

WILLIAM GODFREY BLACK, JR.

v.

STATE OF MARYLAND

Berger,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: July 16, 2025

*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).

In the Circuit Court for Kent County, appellant, William Godfrey Black, Jr., based upon a binding plea agreement, entered a guilty plea to the charge of conspiracy to possess a controlled dangerous substance with intent to distribute.

Appellant presents a single question for review which we have rephrased as follows:

> Did the court err in denying appellant's motion to correct an illegal sentence?[1]

We shall hold that the circuit court did not err and shall affirm.

I.

Appellant was indicted by the Grand Jury for Kent County on eight counts related to conspiracy to possess a controlled dangerous substance with intent to distribute and manufacture controlled dangerous substances, and two counts related to active participation in a gang.[2] On December 10, 2021, pursuant to a binding plea agreement, appellant entered a plea of guilty to Count 2, conspiracy to possess a controlled dangerous

[1] Appellant presented the following question for our review: "Whether, at a hybrid motion hearing held on November 21, 2023, the Kent County Circuit Court properly denied Black's motion to correct his illegal sentence?"

[2] The Grand Jury charged appellant as follows: conspiracy to possess a controlled dangerous substance with intent to distribute (Count 1); conspiracy to possess a controlled dangerous substance (Cocaine) with intent to distribute (Count 2); conspiracy to possess a controlled dangerous substance (Fentanyl) with intent to distribute (Count 3); conspiracy to distribute a controlled dangerous substance (Cocaine) (Count 4); conspiracy to distribute a controlled dangerous substance (Fentanyl) (Count 5); possession of a controlled dangerous substance (Count 6); possession of production equipment to produce and distribute controlled dangerous substances (Count 7); conspiracy to manufacture a controlled dangerous substance (Count 8); participation in a gang (Count 9); and organize, supervise, and finance a gang (Count 10).

substance with intent to distribute. The court recognized the plea as binding, stating that the agreement "is in the nature of a binding plea agreement." In referring to the "Examination of Defendant Prior to Acceptance of Guilty Plea" form, the court asked that defense counsel "take a minute to summarize in writing on paragraph 28 of this form what the nature of the binding plea is" and then asked defense counsel to read the paragraph into the record. Defense counsel stated as follows:

> "The writing says, 'Plea to Count 2 for eight years, agreed by the parties. Mr. Black waives any claim to cash (U.S. currency) seized. State agrees to return other property including two vehicles and Navy Federal bank account funds.'"

Appellant stated that he understood the terms of the plea agreement and the court accepted his guilty plea.

At the sentencing hearing on February 25, 2022, the prosecutor requested that the court impose the agreed upon sentence of "8 years of active incarceration." Defense counsel agreed that both parties were asking the court to impose an 8-year active sentence with 2 years of credit for time served. Defense counsel asked the court to decide "where [appellant] serves the remainder of his sentence," and requested he be placed in home confinement with Advantage Sentencing Alternative Programs, Inc. ("ASAP"). Defense counsel's reasons for the request were that appellant had been released on pretrial supervision for 2 years, he was employed at a travel agency and home detention would allow him to continue that work, and a home sentence would allow him to care for his two-year-old daughter as her only parent. The State objected, citing appellant's "lengthy and major criminal record." The sentencing court ruled as follows:

> "So I am going to take a chance on you. I am going to structure this sentence and allow you to continue on home detention.
>
> So, Madame Clerk, the sentence of the Court is 12 years to the Division of Corrections, all of which will be suspended except for 8 years of active incarceration, and will be followed by a period of supervised probation for 3 years. The active portion of the sentence in the amount of 8 years may be served under the Advantage Sentencing Alternative Program as outlined in the document that will be made part of the record."

The court noted that appellant was entitled to 2 years credit for time served and neither defense counsel nor the State objected on the ground that the sentence was inconsistent with the parties' plea agreement.

The court signed an "Order for Home Detention," reflecting that appellant be placed on "Home Detention for a period of 6 years, as a Condition of Probation." The court did not execute a commitment order.

Approximately three months after sentencing, the State filed a "Motion to Revise Illegal and Fraudulent Sentence, or in the alternative, Revoke Home Detention." At the hearing on the motion on June 7, 2022, the State presented three arguments: (1) that appellant's sentence to home detention was illegal because the agreed upon sentence was for 8 years' incarceration to the Division of Corrections; (2) that there is no legal authority for the court to sentence appellant to 8 years to the custody of the Division of Corrections but to direct that the sentence be served in home detention; and (3) that a sentence of 6 or 8 years exceeds the permissible time for sentences to local custody. Defense counsel maintained that the sentence was legal, stating: "This was an agreed disposition, and we are not arguing to the contrary, and the agreement called for 8 years of incarceration, but critically, it was silent as to the form of the incarceration." In addition, defense counsel

argued the doctrine of laches and "that the State absolutely did not object on this ground back on February 25th."

The court agreed with defense counsel and rejected the State's argument that the original sentence was illegal, stating it "disagreed with the State's basic position that incarceration is mutually exclusive of home detention," and that the State "was tardy" in asserting that the sentence was illegal where the State did not object at the time of sentencing. The court revoked appellant's home detention, finding that despite appellant's representation that he would be working for a travel agency, he was not working for a travel agency, but instead was employed ostensibly for a trucking company. GPS records from ASAP, the home detention service, indicated appellant traveled to various locations in Maryland and Delaware at all hours, but never showed him going to the address of the trucking company or the distribution center. Law enforcement conducted visual surveillance of appellant that showed him engaged in a suspected hand-to-hand drug transition on March 7, 2022, and that on March 15, 2022, while seated in an orange Dodge Charger, appellant had been shot six times.

The court found that appellant had "violated the trust of the Court and he has violated the conditions of his release." Revoking the home detention, the court ordered appellant remanded to the custody of the Division of Corrections, stating as follows:

> "I cannot ignore what I think is the safety of this community is at stake in this case, and therefore, notwithstanding the Defendant's denials that this was all innocent, the Court believes that there is evidence—persuasive evidence that he has violated the conditions of his home detention, and for that reason I am terminating the home release. He will be remanded to the Division of Corrections."

The court issued a commitment record and ten days later, issued a corrected commitment record that changed only the start date and the credit for time served. The corrected commitment record indicated appellant's sentence as 12 years, suspend all but 8 years with 3 years of supervised probation, to begin upon release from physical incarceration. The sentence runs concurrent with any other or outstanding sentence, and begins on February 25, 2020, with no credit for time served.

In March 2023, appellant requested a hearing on the motion for modification of sentence that the court had held *sub curia*. On May 5, 2023, at the hearing, defense counsel requested that the court suspend appellant's remaining sentence, and that appellant serve the remainder of his time on probation to better receive care for his health conditions, including complications from injuries he had sustained in a shooting. Appellant acknowledged to the court that his sentence was "the sentence I agreed to, an 8-year sentence" and stated, "I am asking that today that you suspend the balance of that 8 years and place me on probation." The State opposed the modification request. The court took the request under advisement. Appellant never stated that his sentence was illegal.

On June 30, 2023, the court granted appellant's modification of sentence request in a written order, stating as follows:

> "Whereas the Court has reviewed the Parole Commissioner's Report indicating that Defendant has been accepted at drug treatment program at Port Recovery, in Baltimore City, Maryland; whereas Defendant's parole release date appears to be January, 2024; and whereas it appears Defendant can benefit from the Port Recovery program at this time, it is therefore this 30th day of June 2023 by the Circuit Court for Kent County, hereby:
>
> ORDERED, that Defendant's sentence shall be and is hereby modified to reduce the active portion of Defendant's sentence to time served

> with the balance suspended upon condition that his period of probation shall require that he participate in and successfully complete drug treatment at Port Recovery, and that all the conditions of probation previously ordered shall remain in effect."

The court did not issue a new commitment record with the Order and most relevant to this appeal, did not read the modification in open court.

On August 30, 2023, appellant filed a Motion to Correct Sentence, arguing that the period of probation and suspended sentence was illegal because his original sentence from the plea agreement consisted of a "binding sentence of eight years of incarceration, without any suspended portion." He argued that the court originally imposed an illegal sentence when it "suspended an additional four-year term and placed [appellant] on supervised probation for three years."

Appellant's probation agent submitted a report to the court advising that, on August 14, 2023, appellant was the victim of another shooting and had been hospitalized. The State opposed appellant's motion and following a hearing, the court denied the motion to correct an illegal sentence, ruling as follows:

> "Well, my inclination is to agree with the State, and I will put my reason on the record. The—I agree with the reasoning of the State that but for the Defendant's request to modify his sentence, the probation would not have been a factor. But I don't think that Defendant can have his cake and eat it, too. I don't think he can ask the Court to on the one hand modify his sentence and ask the Court to impose or suspend the balance of a sentence and have him be on a period of probation, accomplish that and then come back and say, oh, by the way, that's an illegal sentence that I asked for.
>
> So I am going to deny the defense motion."

Appellant noted this appeal.

II.

Before this Court, appellant argues his original sentence of 12 years' incarceration with all but 8 suspended, followed by 3 years' probation, issued on February 25, 2022, is illegal because his original sentence was a binding plea agreement where the court had agreed to impose an 8-year sentence, without any portion suspended or term of probation. Appellant notes that when his sentence was later modified, at his request, he received a suspended sentence, which "in his view violates the terms of the original agreement because his original deal called for him to receive only a straight sentence of 8-years." In his reply brief, for the first time, appellant argues that the sentence modification was illegal, and hence void, because the sentencing court did not read the sentence aloud in open court. Citing Rule 4-345(f), arguably in response to the State's argument that appellant's original sentence is not before this Court because the sentencing court modified the sentence at his request, appellant maintains that the Rule permits the correction of an illegal sentence at any time and, thus, he is justified in this request to correct his original sentence to match the terms of his binding plea agreement.

The State argues that appellant's Motion to Correct Illegal Sentence was denied properly. The State asserts that appellant may only challenge his current, modified sentence, and therefore, any issues with appellant's original sentence are moot because appellant is no longer serving that sentence. The State argues that appellant actively defended the original sentence against the State's contention that the sentence was illegal at the hearing on June 7, 2022, and appellant's current sentence is a result of his request that the court suspend the balance of his sentence. Recognizing that Rule 4-345 provides

that an illegal sentence may be corrected at any time, the State points out that the issues cognizable on a motion to correct an illegal sentence are very narrow and are limited to whether the defendant's sentences are intrinsically and substantively unlawful. Applying this bedrock principle, the State argues that appellant is not now serving his "illegal sentence" and, that any error, if there be court error in not announcing the modified sentence in open court, is not an intrinsically illegal sentence cognizable under the Rule. The State's view is that the only issue before this Court is the current sentence appellant is now serving and that sentence is the only one he can now challenge. For that reason, the State argues, whether appellant's original sentence of 12 years with all but 8 years suspended, to be served in private home detention, is a peripheral matter, as it is no longer the sentence that appellant is now serving, as the court has modified his sentence on two occasions.

Alternatively, the State argues that if appellant's complaint is with the amount of suspended time, this fails also, because appellant defended his original sentence against the State's claim that the sentence was illegal. Thus, appellant agreed to the deviation in his sentence, noting that in the context of a binding plea agreement, a sentence that deviates from a binding plea agreement is illegal *if* the parties do not agree to the deviation. *See Bonilla v. State*, 443 Md. 1, 11 (2015). As to appellant's argument that the sentence is illegal because no commitment record was issued or that the modified sentence was not read in open court, those are not issues of illegality because the sentence is not inherently illegal. Appellant's appropriate relief, the State asserts, is to seek an amended commitment record to reflect the modified sentence pursuant to Rule 4-351(b).

III.

Rule 4-345(a) states that the "court may correct an illegal sentence at any time." The Rule "creates a limited exception to the general rule of finality and sanctions a method of opening a judgment otherwise final and beyond the reach of the court." *State v. Griffiths*, 338 Md. 485, 496 (1995). Rule 4-345(a) applies when *"the illegality . . . inhere[s] in the sentence itself, rather than stem[s] from trial court error during the sentencing proceeding.*" *Matthews v. State*, 424 Md. 503, 512 (2012) (emphasis added). Accordingly, "we have denied relief pursuant to Rule 4-345(a) because the sentences imposed were not inherently illegal, despite some form of error or alleged injustice." *Id*. at 513. We review the denial of a motion to correct an illegal sentence *de novo*. *Johnson v. State*, 467 Md. 362, 389 (2020). A motion to correct an illegal sentence is cognizable only if "there is some illegality in the sentence itself or where no sentence should have been imposed." *Barnes v. State*, 423 Md. 75, 84 (2011) (citations omitted).

As a preliminary matter, we address whether appellant remains subject to his original sentence from February of 2022. We agree with the State that he is not. The Supreme Court of Maryland has held that if the sentencing court grants a motion for modification, the subsequent sentence becomes the effective sentence. *Greco v. State*, 347 Md. 423, 433 (1987).

At the original sentencing hearing in February of 2022, appellant requested he serve what amounted to a 6-year term of incarceration in home detention, after receiving credit

for time served. The court granted his request and imposed the sentence to the Division of Corrections but permitted appellant to serve the sentence in home detention.

Three-months later, the State filed its motion to "Correct an Illegal Sentence or in the Alternative, Revoke Home Detention," arguing that the plea agreement did not contemplate home detention for the period of incarceration. Appellant argued at the hearing that the original sentence was not illegal stating, "[t]his was an agreed disposition, and we are not arguing to the contrary, and the agreement called for 8 years of incarceration, but critically, it was silent as to the form of the incarceration." The court rejected the State's argument that the sentence was illegal, but did revoke the home detention and remanded appellant to the custody of the Division of Corrections.[3] The court amended this commitment record 10 days later and stated appellant's sentence as 12 years, suspending all but 8 years with 3 years' supervised probation, commencing on release from physical incarceration. The amended record listed appellant's start date as February 20, 2020, without credit for time served. This ruling replaced appellant's original sentence and subjected him to this new sentence without objection from appellant.

We next consider whether the sentence modification granted in June 2023, the sentence he is currently serving, is illegal. In March of 2023, appellant requested a modification of the new sentence imposed in June 2022. Appellant requested that his remaining sentence be suspended and that he serve that time on probation based on health

[3] Whether the court initially determined that it had the authority to sentence appellant to home detention and at the same time to the Division of Corrections is irrelevant here. That is not the sentence he is currently serving, and his home detention has long since been revoked.

reasons. At the hearing, appellant acknowledged the sentence was the one that he agreed to. The State opposed modification of the sentence. After holding the request *sub curia*, the court granted the modification in a written order on June 3, 2023, but never read the modification in open court. Appellant argues, as noted, for the first time in his reply brief, that this modification does not comply with Rule 4-345(f) because the sentencing court did not revise the sentence on the record in open court, and it is therefore illegal and void.

Rule 4-345(f) states as follows:

> "(f) Open Court Hearing. The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection (e)(2) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based."

In modifying a sentence, the Rule permits a court to modify a sentence only on the record in open court, and, if granting the motion, ordinarily prepare and file or dictate into the record a statement setting forth the reasons for the ruling. The Rule is silent, however, as to whether a court that holds the decision *sub curia* needs to hold another hearing to announce the modification in open court and cannot simply file a written order detailing its decision.

In the case *sub judice*, the motions court held a hearing on the modification request, heard arguments from both parties, and then held the motion *sub curia*. The court provided details as to why it was granting the modification in its written order in accordance with Rule 4-345(f). The Rule requires the issuing court to "prepare and file or dictate into the

record a statement setting forth the reasons on which the ruling is based" when the motion is granted. The court explained that given the proximity of appellant's January 2024 parole release date and his acceptance to a drug treatment program, it modified appellant's sentence to time served with the balance suspended pending successful completion of the program and compliance with the terms of his probation. Even if the court erred by not reading this decision in open court, this alleged error was a procedural error, not an inherently illegal sentence. *See Matthews*, 424 Md. at 512. We hold appellant's modified sentence as of June 3, 2023, was not an illegal sentence.

Finally, the State asserts that appellant may seek relief in the form of clarification as to his sentence by requesting an amended commitment record pursuant to Rule 4-351(b). We agree. Rule 4-351(b) states that in the event of an "omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction. The commitment record may be corrected at any time upon motion, or, after notice to the parties and an opportunity to object, on the Court's own initiative." At appellant's request, his remedy is to request a correction to the commitment record.

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