UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0391

September Term, 2015

WILLIAM McKNIGHT

v.

STATE OF MARYLAND

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: May 27, 2016

From the denial, by the Circuit Court for Prince George's County, of a motion to correct an illegal sentence (hereinafter "the motion"), appellant, William McKnight, presents for our review a single question: Did the court err in denying the motion? Finding no error, we shall affirm the judgment of the circuit court.

Facts and Proceedings

In August 1997, McKnight was charged by indictment in case number CT97-1572X (hereinafter "the 1997 case") with first degree burglary with intent to commit theft and related offenses. In November 1997, McKnight pleaded guilty to first degree burglary with intent to commit theft. In April 1998, the court sentenced McKnight to a term of fifteen years' imprisonment, all but eight years suspended, with a term of two years' supervised probation upon release. In November 2000, the court modified the sentence to a term of fifteen years' imprisonment, all but six years suspended, with a term of two years' supervised probation upon release. In January 2003, the court issued a warrant for McKnight for violation of that probation.

Later in 2013, McKnight was charged by indictment in case number CT03-0553X (hereinafter "the 2003 case") with manslaughter by vehicle and related offenses. In 2005, McKnight pleaded guilty in the 2003 case to manslaughter by vehicle, and in so doing, admitted to violation of probation in the 1997 case. In the 2003 case, the court sentenced McKnight to a term of ten years' imprisonment, all but five years suspended, with a term of five years' supervised probation upon release. In the 1997 case, the court sentenced McKnight to a term of fifteen years' imprisonment, all but eleven years suspended, with a

term of three years' supervised probation upon release. The court ordered that the sentence in the 1997 case "run concurrent with" the sentence in the 2003 case.

In February 2007, McKnight was charged by indictment in case number CT07-0355X (hereinafter "the 2007 case") with four counts of armed carjacking, three counts of armed robbery, and related offenses. The court subsequently issued warrants for McKnight for violation of probation in the 1997 and 2003 cases.

In June 2007, McKnight was convicted in the 2007 case of carjacking, two counts of robbery, and related offenses. On September 14, 2007, the court sentenced McKnight to a total term of sixty years' imprisonment for the offenses. That same day, McKnight admitted that the 2007 case was a violation of his probation in the 1997 and 2003 cases. The court sentenced McKnight to a term of four years and 235 days' imprisonment in the 1997 case, and a term of five years' imprisonment in the 2003 case. The court ordered that the sentences in the 1997 and 2003 cases run concurrently with each other, but "consecutive to any and all other sentences imposed in any other case." The court also "terminated [the probations in the 1997 and 2003 cases] unsatisfactorily."

In 2015, McKnight sent to the court a letter in which he contended that the sentence imposed in the 1997 case is illegal. McKnight stated:

> The [illegality] of this sentence comes by way of [its] modification upwards from [its] terms as [o]riginally imposed on 4-17-1998. [In 2005, the 2003 c]ase, was made [c]oncurrent to it also.
>
> Yet, on [its] 3rd imposition, this sentence was made [c]onsecutive to any and all sentences imposed in any other cases.
>
> This is impermissible by [l]aw as it changes the terms of the sentence itself.

> My second issue is that, irregardless of this final imposition serving to essentially [m]ax this sentence out, I was given a 3 [y]ear [p]robation [o]rder to follow this term of incarceration. This is no longer a [s]plit-[s]entence.

The court subsequently issued an Order in which it stated that it would "treat [McKnight's] letter as a Motion to Correct an Illegal Sentence," and denied the motion.

State's Suggestion of Dismissal

Preliminarily, we address the State's suggestion, included in its appellate brief, that we "should decline to consider [McKnight's] claim," because he "identifies no inherent illegality in his 1997 sentence that is cognizable under Md. Rule 4-345(a)" (a "court may correct an illegal sentence at any time"). We disagree. McKnight contends that the court exercised its revisory powers to modify the sentence upward, which is prohibited. *See Collins v. State*, 69 Md. App. 173, 198 (1986) ("when a concurrent sentence is made consecutive, there has been a modification upward," and "a court may not increase a sentence in exercising its revisory powers" (citations omitted)). If McKnight is correct, the illegality is cognizable under Rule 4-345(a), and hence, we reject the State's suggestion to dismiss the appeal at the outset.

Discussion

We read McKnight to contend that the trial court erred in denying the motion to correct illegal sentence for two reasons. First, he contends that the trial court erred in ordering that the sentences for violation of probation in the 1997 and 2003 cases run consecutive to the sentences in the 2007 case. We disagree. We have stated that, when a court "revoke[s a defendant's] probation and thereby revoke[s] the suspension of the

execution of the earlier imposed sentence of incarceration," the court "ha[s] the unfettered prerogative to make that reinstated sentence of incarceration either concurrent with or consecutive to" any sentence "actually being served or . . . unequivocally scheduled to be served[.]" *DiPietrantonio v. State*, 61 Md. App. 528, 532 & 535 (1985). Here, at the time of sentencing in the 1997 and 2003 cases, McKnight was unequivocally scheduled to serve sentences totaling sixty years in the 2007 case. The court had the prerogative to make the reinstated sentences of incarceration in the 1997 and 2003 cases consecutive to the sentences in the 2007 case, and hence, the court did not err in denying the motion on this ground.

McKnight next contends that the court erred in ordering "a period of 3 years[']" probation to follow th[e] term of incarceration" in the 1997 case. If it had, that might have been an impermissible upward modification. But the court did not order any such term. The term of which McKnight complains was ordered upon his first admission of violation of probation in 2005. In 2007, the court expressly terminated the probation in the 1997 case unsatisfactorily. McKnight will not be on probation following completion of the sentence in the 1997 case, and hence, the court did not err in denying the motion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.