UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1035

September Term, 2015

MARK STEVEN ERBE

v.

STATE OF MARYLAND

Meredith,
Leahy,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 23, 2016

On August 3, 2011, Mark Steven Erbe ("Appellant"), entered an *Alford* plea[1] for one count of distribution of a controlled dangerous substance (oxycodone), in violation of Maryland Code (2002), Criminal Law Article ("C.L."), § 5-602.[2] Because the State had filed a notice of subsequent offender status pursuant to C.L. § 5-905, the circuit court sentenced Appellant to a term of imprisonment of 24 years.[3] On June 9, 2015, Appellant filed a motion to correct an illegal sentence, which the court denied without a hearing on June 25, 2015. Appellant, acting *pro se*, filed an application for leave to appeal, which the court interpreted as a timely notice of appeal, and raises three questions for our review, which we have consolidated into one:[4]

[1] An *Alford* plea refers to the United States Supreme Court case *North Carolina v. Alford*, 400 U.S. 25 (1970). We have described an *Alford* plea as a "'specialized type of guilty plea where the defendant, although pleading guilty, continues to deny his or her guilt, but enters the plea to avoid the threat of greater punishment.'" *Abrams v. State*, 176 Md. App. 600, 603 n.1 (2007) (quoting *Ward v. State*, 83 Md. App. 474, 478 (1990)).

[2] We note that the General Assembly has amended this statute, effective October 1, 2016. We cite to the version of the statute as it appeared at the time Appellant committed his crime in 2011.

[3] The General Assembly has also amended this section, effective October 1, 2016. Now C.L. § 5-905(a) provides: "A person convicted of a subsequent crime under this title is subject to: (1) a term of imprisonment twice that otherwise authorized; (2) twice the fine otherwise authorized; or (3) both."

[4] Appellant's questions presented, verbatim from his brief, are:

> 1. Did the Trial Court err in denying Appellant's Motion to Correct Illegal Sentence by failing to prove whether Appellant is actually a subsequent offender under Criminal Law Article 5-905 and as specified pursuant to Md. Rule 4-245(e)?
>
> 2. Did the Trial Court err in denying Appellant's Motion to Correct Illegal Sentence by failing to clarify the ambiguity as to (continued…)

Did the trial court err in denying the motion to correct an illegal sentence, and in denying him a hearing on the motion? Discerning no error, we affirm the decision of the circuit court.

BACKGROUND

On January 31, 2011, Appellant was arrested and charged with, among other offenses, distribution of a controlled dangerous substance (oxycodone). At sentencing, Appellant entered an *Alford* plea to this charge. After finding that Appellant's plea was knowing and voluntary, the following occurred:

> [THE STATE]: Your Honor, had the State proceeded to trial, the State would have produced witnesses who would have testified that on January 31st, 2011, Detective Jeff Johns of the Ocean City Police Department Narcotics Unit was operating in conjunction with members of the Worcester County Sheriff's Office Criminal Enforcement Team, and contacted an individual known to them as Mark via a cellular telephone, at which point a drug-related conversation occurred.
>
> At that point in time, Detective Johns, who was operating in an undercover manner, asked to purchase 20 Oxycodone pills from the individual known as Mark.
>
> The individual who was known as Mark advised that he would sell Detective Johns 20 Oxycodone pills for $400 in U.S. currency.
>
> They agreed to meet at the Wa-Wa store located in West Ocean City, Worcester County, Maryland.
>
> Subsequently, on that very same day, at approximately 5:24 [in the] afternoon, a vehicle arrived at that location, which was later found to be occupied and driven by Mark Erbe, who is currently seated to

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whether or not Appellant received adequate notice pursuant to Md. Rule 4-245(b)?

3. Did the Trial Court err in denying Appellant's Motion to Correct Illegal Sentence by failing to conduct an open hearing pursuant to Md. Rule 4-345(f) to hear Appellant's argument and allow opportunity for additional evidence to be presented?

the left of defense counsel at defense table, and an individual who was identified as Angela Chang was in the passenger's seat, Your Honor.

Upon arrival at the Wa-Wa store, they met with Detective Johns. Detective Johns approached the vehicle and immediately recognized the driver of that vehicle to be Mark Steven Erbe, the Defendant before you today.

Detective Johns entered the rear passenger's seat of that vehicle, and a drug-related conversation ensued whereby the, or between Detective Johns, Mark Erbe and Ms. Angela Chang. The drug conversation ensued where Mark Erbe confirmed and received the money for the drugs, confirmed that Detective Johns had been handed the pills by Angela Chang, and confirming that Detective Johns count those drugs, to make sure that they were all there.

The drugs were actually handed to Detective Johns by Angela Chang but Mark Erbe based upon the conversation was a clear participant in the drug transaction and did receive the money.

Subsequently –

THE COURT: The undercover police officer handed the money to who [sic]?

[APPELLANT'S COUNSEL]: To Mr. Mark Erbe, Your Honor.

THE COURT: Okay. And how much was it?

[THE STATE]: I believe it was $400

THE COURT: All right.

[THE STATE]: Your Honor, subsequently, Detective Johns, once the transaction was over with, they agreed to contact each other again, whereby that particular portion of the conversation was between Detective Johns and the Defendant before you today where Detective Johns confirmed that he could reach the Defendant at the same number that they had just communicated on.

Subsequently, Detective Johns exited the vehicle. When he exited the vehicle, the vehicle began to drive away. A traffic stop was conducted on the vehicle by Detective Wells and Sergeant Passwaters of the Worcester County Criminal Enforcement Team. And the Defendant was taken into custody at that time.

A search incident to arrest of the Defendant's person revealed the $400 that had been previously photocopied by Detective Johns.

In addition to that, inside the vehicle there was a prescription bottle located where the Oxycodone that had just been purchased, it was the same milligram, dosage, the same type of drug, that prescription bottle issued to Mark Erbe. The amount of pills that were purchased were 20 pills. There were 80 pills found in the prescription bottle remaining. The prescription on that date was to be filled for 100 total pills, Your Honor.

Those pills were submitted to the Maryland State Police Lab for analysis, where it did show that they were, in fact, Oxycodone, a Schedule II controlled dangerous substance.

All the above occurred in Worcester County, Maryland.

THE COURT: Any additions or corrections?

[APPELLANT'S COUNSEL]: I don't know.

Do you want me to tell – do you want me to tell your version of what happened, or do you want to just accept what they say?

[APPELLANT]: Tell them.

[APPELLANT'S COUNSEL]: Listen, he set this deal up with Officer Johns. But he did so because this woman Angelo Chang owed him some money. So he had this fellow, Johns called him and he agreed to sell him these Oxycodone for $400. But they were Ms. Chang's Oxycodone.

Is that correct?

[APPELLANT]: Yes, sir.

[APPELLANT'S COUNSEL]: And that's why Ms. Chang ended up –

THE COURT: Well, I thought the pill bottle indicated they were, that it was a prescription for Mr. Erbe.

[THE STATE]: That's correct.

[APPELLANT'S COUNSEL]: There was a prescription for him in the car.

But whose Oxycodone did Ms. Chang give to Detective Johns?

[APPELLANT]: Her own.

[APPELLANT'S COUNSEL]: And why did you take the money?

[APPELLANT]: Because she owed me some money.

[APPELLANT'S COUNSEL]: That's his story. I sit down. We pled guilty. We admit we're guilty.

Because Appellant had previously been convicted of possession of a controlled dangerous substance (cocaine) in violation of C.L. § 5-601 and distribution of a non-controlled dangerous substance in violation of C.L. § 5-617, the State advised Appellant of its intention to seek an enhanced sentence pursuant to C.L. § 5-905 and Rule 4-245. After the colloquy as to the facts of the case, the following occurred:

THE COURT: Based on those facts I'm going to find you guilty.

* * *

Do you have a record on Mr. Erbe?

[THE STATE]: Yes, Your Honor, it's quite a – well, first of all, I'm going to file with the Court the notice of intention to seek enhanced penalty based on the fact that Mr. Erbe is a subsequent offender. I have true test copies of the prior convictions to submit to the Court.

And I also have a record for Mr. Erbe.

Your Honor, I thought that I had written down the amount of the guidelines. I need to just grab a worksheet real quick to –

THE COURT: Go ahead. It looks like it'll take me a while to wade through this.

[THE STATE]: Your Honor, I'll be right back.

* * *

Your Honor, I have the offenses listed out. I just want to confirm with [Appellant's counsel] it was appropriate to send it up.

THE COURT: All right.

* * *

All right. Does the State want to be heard any further as to sentence?

[THE STATE]: Your Honor, with regards to the sentence in this matter, I think that Mr. Erbe's criminal history speaks for itself. Mr. Erbe was on probation at the time that this particular offense occurred. And I think it would be fair to say that Mr. Erbe has been a common occurrence or a common player in the drug culture in Ocean City for quite some time.

And it's the State's belief that no longer should he be given an opportunity to be out in society where he can continue to deal drugs. The State believes that the only solution to dealing with Mr. Erbe is warehousing him.

THE COURT: [Appellant's counsel].

[APPELLANT'S COUNSEL]: Mr. Erbe is serving two three-year sentences from Judge Bloxom, one for a violation of probation, a second one is for a possession charge. He's currently at the Diagnostics Center in Baltimore waiting for placement in the State Corrections, State Department of Corrections. He has no other charges pending.

Is that correct, Mr. Erbe?

[APPELLANT]: Yes, sir.

[APPELLANT'S COUNSEL]: And he's been in our county jail since January 31st, 2011, when he was arrested that afternoon, as you may have heard they stopped the car, arrested him, he's been detained ever since.

Is that correct?

[APPELLANT]: Yes, sir.

[APPELLANT'S COUNSEL]: He tells me he lives in Ocean Pines with his brother. That he works as a painter when he's employed.

That's the information that I would share with you about Mr. Erbe.

THE COURT: Mr. Erbe, now is your opportunity to tell me anything you feel that might affect the sentence in this case.

[APPELLANT]: Sir, I've had drug problems for a while, and I have –

THE COURT: You've had criminal problems for a while, too. 30 years.

Go ahead.

[APPELLANT]: Yes, sir. But I'm not really a bad person. I've done drugs because, I mean I've sold a little bit of drugs to do my habit. That was it. I've never sold large quantities of things.

And I have a really bad drug problem. I've never had or been in a drug program or anything for it.

THE COURT: You're telling me none of the times you were on probation did you have drug counseling as a condition of that probation?

[APPELLANT]: I've never been into a drug program in my life, sir.

THE COURT: Well, that didn't answer my question. You've been placed on probation numerous times, and you're telling me that none of those times ordered drug counseling as a condition of probation?

[APPELLANT]: One time, sir, many years ago.

THE COURT: Well, you say you're not a bad person, and I can't pass judgment on that. But many of the things that you've done would fit into the bad category. You have a second degree assault. You have an assault on a police officer. You've got a resisting arrest. You've got a battery. You've got a forgery. I mean you run the gamut. You fit into what's known as a career criminal.

[APPELLANT]: I was young then, sir.

THE COURT: But it hasn't subsided. It hasn't abated. It's continued for 30 years. You continue to violate the law. You go to jail, come back out and violate the law all over again.

You're, what, 53? Is that what you told me?

[APPELLANT]: Yes, sir.

> THE COURT: What is going to cause you to stop doing that?
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> [APPELLANT]: This right here, sir. This right here. I'm completely done. Mentally and physically.
>
> THE COURT: One way to make sure that you don't violate any more laws is to have you in jail, as pointed out by the State's Attorney.
>
> All right. Anything else you want to tell me, Mr. Erbe?
>
> (No response.)
>
> THE COURT: [Appellant's counsel], anything else?
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> [APPELLANT'S COUNSEL]: Well, what he says it's been my experience to be true, that he's always come back – and I think those charges are consistent with a history of adult drug abuse causing him to come into contact with the police and to steal and to, but for this distribution charge he may have been somebody to be considered for our drug court program. But obviously he's not eligible.
>
> But that which he shares with you is, has been my experience as a lawyer in Worcester County representing Mr. Erbe, or seeing him in court.
>
> That's my final comment.
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> THE COURT: Mr. Erbe, what I'm going to do, based on your record, is to sentence you to 24 years in the Division of Corrections. And that sentence dates from January the 31st, 2011.

In June 2015, Appellant filed a motion to correct an illegal sentence pursuant to Rule 4-345(a), which provides: "The court may correct an illegal sentence at any time." In his motion, Appellant presented two grounds upon which he based his request for relief: (1) that the State failed to prove that he was a subsequent offender under Maryland Rule 4-245, and; (2) that the trial court had failed to state on the record in open court that the State had proven he was a subsequent offender and that the court was imposing an

enhanced sentence. After the circuit court denied the motion without a hearing, Appellant filed an application for leave to appeal, which the court interpreted as a notice of appeal.

DISCUSSION

Prior to a consideration of the merits, we note that there are several deficiencies with Appellant's brief. First, Appellant fails to provide any discussion as to the appropriate standard of review for this case. *See* Rule 8-504(a)(5) (providing that brief shall contain "[a] concise statement of the applicable standard of review for each issue . . ."). Next, although Appellant lists several cases and applicable statutes in his table of citations, he fails to note on which pages, if any, those appear. *See* Rule 8-504(a)(1) (providing that brief shall contain a table of contents and table of citations). Furthermore, although Appellant lists several cases in his table of citations, those cases do not appear anywhere in the body of Appellant's brief. Additionally, Appellant failed to include the text of the cited provisions in his brief. *See* Rule 8-504(a)(8) (providing that brief shall contain "verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations . . ."). As such, the rules provide us with the authority to dismiss this appeal. *See* Rule 8-504(c).

Compliance with the rules of procedure is mandatory. *See Lisy Corp. v. McCormick & Co., Inc.*, 445 Md. 213, 229 (2015) (citing *Gen. Motors Corp. v. Seay*, 388 Md. 341, 344 (2005)). This Court has noted that "*pro se* parties must adhere to the procedural rules in the same manner as those represented by counsel. Indeed, this Court has stated that '[t]he principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-

evident.'" *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999) (quoting *Tretick v. Layman*, 95 Md. App. 62, 68 (1993)).

This Court has also recognized, however, that "dismissing an appeal on the basis of an Appellant's violations of the rules of appellate procedure is considered a 'drastic corrective' measure." *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (quoting *Brown v. Fraley*, 222 Md. 480, 483 (1960)). We note that "reaching a decision on the merits of a case 'is always a preferred alternative.'" *Id.* (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007)). Indeed, we will not ordinarily dismiss an appeal for non-compliance with the rules of appellate procedure, unless there has been prejudice to the appellee, or Appellant deliberately violated the rules. *See id.* at 202-03 (citing *Joseph*, 173 Md. App. at 348).

In this case, we do not perceive that the State has been prejudiced by Appellant's non-compliance with the rules, nor do we consider Appellant's non-compliance to be deliberate. Moreover, as it is possible to reach a decision on the merits in this matter, we decline to dismiss Appellant's appeal for his failures to comply with Rule 8-504.

Turning to the merits, Appellant contends that the circuit court erred in denying his motion to correct an illegal sentence for any one of four reasons. First, he argues that he is not a subsequent offender subject to the enhanced penalty because he has not committed a subsequent offense, as that term is defined by C.L. § 5-905. He maintains that his past drug convictions – for violations of C.L. §§ 5-601 and 5-617 – may properly serve to enhance the penalty for a violation of C.L. § 5-602.

Second, he contends the court should have granted his motion because the trial court failed to decide on the record that he was a subsequent offender, and, therefore, the court failed to observe the requirements of Rule 4-245(e). Third, he argues that prior to his sentencing hearing, he did not receive adequate notice of the State's intention to seek an enhanced penalty, in violation of Rule 4-245(b). Lastly, Appellant contends that the circuit court erred in refusing to hold a hearing prior to denying his motion in violation of Rule 4-345(f).

The State contends that Appellant's understanding of C.L. § 5-905 is fundamentally flawed, in that the statute permits *any* drug-related conviction to serve as the basis for a subsequent offender penalty enhancement. Furthermore, the State argues that the court is not required to state on the record its finding of subsequent offender status prior to imposing an enhanced penalty. As to any other of Appellant's claims, the State asserts that we should decline to review those, as Appellant has failed to provide any argument on them in his brief.

First, we agree with the State as to the presentation of Appellant's arguments, or, rather, the lack thereof. Appellant has failed to present any argument or citations to authority for his assertions that the circuit court erred in determining that the State had properly notified him of its intention to seek an enhanced penalty and the court's denial of his motion without holding a hearing. The Court of Appeals has noted: "'[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.'" *Anne Arundel Cnty. v. Harwood Civic Ass'n, Inc.*, 442 Md. 595, 614 (2015) (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999)). Moreover, the issue as to whether he was

properly notified by the state of its intention to seek an enhanced penalty is not preserved. Not only is the issue not raised in Appellant's Motion to Correct Illegal sentence, but in that motion, Appellant affirmatively represents that "[t]he State notified both [Appellant] and the trial court of its intention to seek enhancement penalty against [Appellant] as a subsequent offender." We will, accordingly, decline to review this argument, or Appellant's unsupported argument that the court erred in denying his motion without a hearing, any further.

Proceeding to the arguments that Appellant has presented and preserved, we are not persuaded that the circuit court committed any error. The Court of Appeals has recognized that "[a]llowing a court to correct an illegal sentence at anytime is a narrow exception to the general rule of finality." *Meyer v. State*, 445 Md. 648, 682 (2015) (citing *Barnes v. State*, 423 Md. 75, 83 (2011)). "An illegal sentence is one not permitted by law." *Id.* (citing cases). Accordingly, in order for a sentence to be illegal such that it can be corrected by a motion filed pursuant to Rule 4-345(a), the illegality must inhere in the sentence itself. *See id.* (citing cases). The Court of Appeals has explained the distinction as follows:

> The distinction between those sentences that are "illegal" in the commonly understood sense, subject to ordinary review and procedural limitations, and those that are "inherently" illegal, subject to correction "at any time" under Rule 4-345(a), has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings.

Bryant v. State, 436 Md. 653, 663 (2014).

In *Carlini v. State*, this court examined an appeal from a denial of a motion to correct an illegal sentence, stemming from a guilty plea. 215 Md. App. 415, 421 (2013). In

reviewing the appellant's contention that the orders of restitution the trial court imposed exceeded the sentencing cap of his plea agreement, Judge Moylan writing for this Court instructed:

> There are countless illegal sentences in the simple sense. They are sentences that may readily be reversed, vacated, corrected or modified on direct appeal, or even on limited post-conviction review, for a wide variety of procedural glitches and missteps in the sentencing process. Challenges to such venial illegalities, however, are vulnerable to such common pleading infirmities as non-preservation and limitations. There is a point, after all, beyond which we decline to revisit modest infractions. There are, by contrast, illegal sentences in the pluperfect sense. Such illegal sentences are subject to open-ended collateral review. Although both phenomena may casually be referred to as illegal sentences, there is a critically dispositive difference between a procedurally illegal sentencing process and an inherently illegal sentence itself. It is only the latter that is grist for the mill of [Rule 4-345(a)]."

Id. at 419-20 (footnote omitted).

Accordingly, we dispense with Appellant's argument that the sentencing court erred in failing to state on the record its finding as to subsequent offender status. We do not graft onto Rule 4-245(e) a requirement that the sentencing court state on the record such a finding, especially when consideration of the subsequent offender status is plain from the proceedings before the court as in this case. Even assuming *arguendo* that Rule 4-245(e) required the court to state this finding on the record, such an error does not inhere in the sentence, itself, and is, therefore, a procedural error not subject to review pursuant to Rule 4-345(a).

Whether Appellant should have been considered a subsequent offender, however, inheres in the sentence itself. *See Bryant*, 436 Md. at 664-65. We review this issue *de novo* as a matter of law. *See Bonilla v. State*, 443 Md. 1, 6 (2015) (citing cases).

Appellant contends that he is not a subsequent offender subject to an enhanced penalty pursuant to C.L. § 5-905. He argues that in order to be considered a subsequent offender, the principal crime must be the same as – in fact identical to – a prior conviction. Appellant's argument requires us to interpret C.L. § 5-905 to determine if his past drug convictions – for violations of C.L. §§ 5-601 and 5-617 – may properly serve to enhance the penalty for a violation of C.L. § 5-602.

This Court has remarked that "[o]ur goal when undertaking to interpret a statute is 'to ascertain and effectuate the intention of the legislature.'" *Wallace H. Campbell & Co., Inc. v. Md. Comm'n on Human Relations*, 202 Md. App. 650, 665 (2011) (quoting *Johnson v. Mayor & City Council of Balt. City*, 387 Md. 1, 11 (2005)). "'Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology. When a statute's plain language is unambiguous, we need only to apply the statute as written, and our efforts to ascertain the legislature's intent end there.'" *Carven v. State Retirement & Pension Sys. of Md.*, 416 Md. 389, 407-08 (2010) (internal citations omitted) (quoting *Crofton Convalescent Ctr., Inc. v. Dep't of Health & Mental Hygiene, Nursing Home Appeal Bd.*, 413 Md. 201, 216 (2010)). Furthermore, "[w]hen the statutory language is unambiguous, the court may not 'add or delete language so as to reflect an intent not evidenced in that language, nor may it construe the statute with forced or subtle interpretations that limit or extend its application.'" *Posner v. Comptroller of the Treasury*, 180 Md. App. 379, 386 (2008) (quoting *Mayer & City Council of Balt. v. Chase*, 360 Md. 121, 128 (2000)).

Importantly, "when a provision 'is part of a general statutory scheme or system, the sections must be read together to ascertain the true intention of the Legislature.'" *Nelson v. State*, 187 Md. App. 1, 12 (2009) (quoting *Mazor v. Md. Dep't of Corr.*, 279 Md. 355, 361 (1977)). As to interpreting a subsequent offender statute, this Court has recognized that "'we construe any ambiguity of the subsequent offender statute in favor of the accused, and against the State.'" *Id.* at 13 (quoting *Cantine v. State*, 160 Md. App. 391, 413 (2004)).

C.L. § 5-905(b) provides: "For purposes of this section, **a crime is considered a subsequent crime, if, before the conviction for the crime, the offender has ever been convicted of a crime under this title or under any law of the United States or of this or another state relating to other controlled dangerous substances.**" (Emphasis added). The statute, therefore, unambiguously states that the enhanced penalty may be added when a person "has ever been convicted" of a crime "under this title" (Title 5 of the Maryland Criminal Code) or for any drug-related violation of state or federal law.

In *Price v. State*, 405 Md. 10, 29-34 (2008), the Court of Appeals vacated Price's enhanced sentences, which had been doubled as a result of the application of C.L. § 5-905. The Court recognized that the enhanced penalty applied to "'**any** controlled dangerous substance offense[.]'" *Id.* at 32 (quoting Dep't of Leg. Servs., *Fiscal Note & Analysis*, S.B. 345 at p. 1-2). In that case, however, the court had enhanced each of Price's three convictions for drug-related offenses. *Id.* at 13-14, 17. The Court held that the subsequent penalty may only be added to one charge stemming from any one criminal episode. *Id.* at 33-34. *See also Whack v. State*, 338 Md. 665, 669-70, 682-83 (1995) (affirming application of predecessor statute to C.L. § 5-905 where Whack had previously been convicted of

possession with the intent to distribute a controlled dangerous substance and was presently convicted of importing a controlled dangerous substance); *Byrd v. State*, 98 Md. App. 627, 632-33 (1993), *abrogated on other grounds by*, *Winters v. State*, 434 Md. 527 (2013) (affirming application of sentence enhancement for subsequent drug offense where Byrd had previously been convicted of possession of marijuana in the District of Columbia and was presently convicted of the distribution of marijuana in Maryland).

We conclude that Appellant's interpretation of C.L. § 5-905 is incorrect and adds language to the statute that it does not presently include. We will not add language to an unambiguous statute. *See Posner*, 180 Md. App. at 386 (citing *Chase*, 360 Md. at 128). As the statute clearly provides that the enhanced penalty may be added for any previous conviction pursuant to Title 5 of the Criminal Code, both of Appellant's convictions that were included on the State's notice of its intention to seek an enhanced penalty could properly serve as the basis for so doing.

Appellant's sentence was, therefore, not inherently illegal, and the court committed no error in denying the motion to correct an illegal sentence.

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