UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1440

September Term, 2014

ANTHONY K. WELLS, JR.

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Kehoe, J.

Filed: April 19, 2016

Anthony K. Wells, Jr., appeals from a judgment of the Circuit Court for Montgomery County, denying his Motion to Correct an Illegal Sentence. Appellant presents one issue, which we have reworded:

> Did the circuit court err in denying appellant's motion to correct an illegal sentence on the ground that notice of the State's intention to seek life imprisonment without the possibility of parole was served on appellant's attorney?

We shall affirm the judgment of the circuit court.

Background

In July 1990, appellant was convicted of two counts of first degree murder, two counts of use of a handgun in the commission of a crime of violence, and one count of armed robbery, as a result of his involvement in the shooting deaths of Walter Williams, III, and Earl Jerome. Appellant was sentenced to two concurrent terms of life imprisonment without the possibility of parole and three terms of twenty years' imprisonment to run consecutive to his life sentences.

Appellant appealed his convictions. Among the contentions raised in the direct appeal was that his sentence to life imprisonment without the possibility of parole was illegal. Appellant argued that the State failed to comply with what was then Criminal Law Article 27, § 412(b)'s requirement that the State provide a defendant with notice of its intention to seek life imprisonment without the possibility of parole at least 30 days before trial. In *Kevin Lamonte Hernandez, Frank Miranda, and Anthony K. Wells, Jr. v.*

State, No. 1723, September Term 1990, filed October 31, 1991, a panel of this Court addressed the issue as follows (emphasis in original):

> The life sentences which Hernandez and Wells received were imposed under authority of art. 27, § 412(b). That statute requires that the State notify the person "in writing at least 30 days prior to trial" of its intent to seek a sentence of life imprisonment without parole. The record shows that the notice required by this statute was received by Hernandez and Wells on April 7, 1990. Trial was initially set for March 19, 1990. The trial was postponed, however, and did not begin until June 25, 1990. Hernandez and Wells argue that the original trial date should control for purposes of the thirty day notice requirement. We do not agree. The statute clearly states that notice must be given thirty days **prior to trial**. This means the day the trial begins controls for purposes of measuring the thirty day period. The notice given in this case was received more than thirty days before the trial began and thus complied with the statute.

Appellant filed a Petition for Post Conviction Relief in March 1997. The petition was denied after a hearing before the circuit court, and his application for leave to appeal that judgment was denied in May 1999.

Appellant initiated the action now before us, filing, pro se, a Motion to Correct an Illegal Sentence, in April 2014. The circuit court denied appellant's motion in July 2014, without holding a hearing, and appellant filed this timely appeal.

Analysis

Appellant's motion to correct his sentence was filed pursuant to Md. Rule 4-345(a), which authorizes a court to "correct an illegal sentence at any time." He asserts that the State failed to provide him with proper notice that it intended to seek an enhanced sentence – life imprisonment without the possibility of parole. Appellant

argues that Criminal Law Article 27, § 412(b),[1] now codified as Criminal Law Article §§ 2-201[2] and 2-203[3], requires the State to provide written notice of its intention to seek life imprisonment without the possibility of parole. He concedes that the prosecution in his case served such notice on his trial counsel. Appellant asserts that the statute requires the State to notify a defendant personally. Because the State failed to do this in his case,

[1]In pertinent part, Criminal Law Article 27, § 412(b) provided:

> Except as provided under subsection (g) of this section, a person found guilty of murder in the first degree shall be sentenced to death, imprisonment for life, or imprisonment for life without the possibility of parole. The sentence shall be imprisonment for life unless: . . . (2) the State notified the person in writing at least 30 days prior to trial that it intended to seek a sentence of imprisonment for life without the possibility of parole under § 412 or § 413 of this article.

[2]Criminal Law Article § 2-201(b) states:

> (b)(1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:
>
> (i) imprisonment for life without the possibility of parole; or
>
> (ii) imprisonment for life.
>
> (2) Unless a sentence of imprisonment for life without the possibility of parole is imposed in compliance with § 2-203 of this subtitle and § 2-304 of this subtitle, the sentence shall be imprisonment for life.

[3]Pursuant to Criminal Law Article § 2-203:

> A defendant found guilty of murder in the first degree may be sentenced to imprisonment for life without the possibility of parole only if:
> (1) at least 30 days before trial, the State gave written notice to the defendant of the State's intention to seek a sentence of imprisonment for life without the possibility of parole[.]

appellant seeks to have his sentence reduced to life imprisonment with the possibility of parole.

The State counters that appellant's contentions are barred by the doctrine of law of the case because this Court addressed appellant's challenge to the legality of his sentence in his first appeal. We do not agree. At issue in the direct appeal was whether the State gave notice on a timely basis, not whether the State was required to provide him with a copy of the notice. *See Chaney v. State*, 397 Md. 460, 466 (2007) (When an illegal sentence, **"within the meaning of [Rule 4-345(a)]**," is imposed, "the defendant may file a motion in the trial court to 'correct' it, notwithstanding that (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal." (Emphasis added.)).

As the quotation from *Chaney* suggests, the concept of an "illegal sentence" for purposes of Rule 4-345(a) is narrow. In *Carlini v. State*, 215 Md. App. 415, 431-38 (2013), we explained that Rule 4-345(a) provides a remedy only when the sentence is "inherently illegal," meaning that the sentence exceeds a sentencing cap or that the sentence never should have been imposed. A **procedural** error does not render a sentence "illegal" for purposes of Rule 4-345(a). *See Tshiwala v. State*, 414 Md. 612, 619 (2012) ("A sentence does not become an illegal sentence because of some arguable procedural flaw in the sentencing procedure." (quotation marks and citations omitted)). Appellant does not assert that the trial court lacked the inherent authority to sentence him

to life imprisonment without the possibility of parole, but, rather, that an error on the State's part precluded the trial court from doing so in his particular case. Because appellant's challenge to his sentence is procedural, his claim cannot be sustained under Md. Rule 4-345(a), and dismissal was entirely appropriate.

Moreover, even if appellant's contentions were properly before us, we would conclude that there was no error, procedural or otherwise, in the way that notice was provided in this case. This is because the State provided notice to appellant's trial counsel and delivery of the notice to counsel is sufficient. Md. Rule 1-331 states (emphasis added):

> Unless otherwise expressly provided and when permitted by law, a party's attorney may perform any act required or permitted by these rules to be performed by that party. When any notice is to be given by or to a party, **the notice may be given by or to the attorney for that party**.

Because Md. Rule 1-331 explicitly permits **any** notice required to be provided to a party to be served on the party's attorney, the notice by the State to counsel was sufficient.[4]

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.

[4]Appellant contends for the first time on appeal that the State's failure to provide him with notice is a "deviation from proper 'process or procedure,'" and thus an "irregularity" subjecting it to the revisory power of the court pursuant to Md. Rule 4-345(b). But, as we have explained, there was no error or impropriety in the State's providing notice to trial counsel of its intent to seek life imprisonment without the possibility of parole.