

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2424

September Term, 2014

RODRICK CANNON

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: May 19, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Rodrick Cannon (“Cannon”) appeals from the denial, by the Circuit Court for Prince George’s County, of his motion to correct an illegal sentence.¹ Finding no error on the part of the circuit court, we shall affirm that court’s denial.

BACKGROUND

Following a September 2010 trial, a jury convicted Cannon of attempted second-degree murder, first-degree assault, second-degree assault, and reckless endangerment. The jury acquitted appellant of attempted first-degree murder, and the trial court granted appellant’s motion for judgment of acquittal as to the charges of use of a handgun, carrying a handgun, and two counts of possession of a regulated firearm. As a third-time offender, the trial court sentenced Cannon to a total prison term of 35 years, the first 25 years without the possibility of parole.²

Cannon, by counsel, filed a timely notice of appeal, which was later voluntarily dismissed. On August 13, 2014, Cannon, representing himself, filed a “bifurcated petition for post-conviction relief,” claiming that his appeal had been dismissed without his consent, and as a consequence, he had been denied his right to file a direct appeal.³

¹Appellant, in his brief, phrases the question presented as follows:

Did the circuit court judge err in failing to grant appellant a hearing on a properly filed motion?

² The court imposed a 30 year prison term for the attempted murder conviction, merging the assault convictions therein for sentencing purposes, along with a consecutive five-year sentence for the reckless endangerment conviction.

³ A hearing on appellant’s petition for post-conviction relief was held in the Circuit Court for Prince George’s County on April 20, 2016.

On November 7, 2014, Cannon, again representing himself, filed the motion to correct an illegal sentence that forms the basis of the instant appeal. He alleged that prior to his conviction in this case, he was denied his right to a preliminary hearing and that the trial court erred by accepting an inconsistent verdict from the jury. According to appellant, the court imposed an illegal sentence when the court sentenced him because he had been acquitted of “all the firearms counts” and all of the charges of which he was convicted related to the firearms charges. By order dated December 11, 2014, the trial court denied the motion without a hearing, explaining that appellant was indicted by a grand jury, and therefore a preliminary hearing was not required and that, because he was not convicted of any weapons offenses, the remaining issue was moot. On December 31, 2014, appellant, *pro se*, filed a timely notice of appeal.

DISCUSSION

In his brief, appellant puts forth no argument that would, if valid, support his contention that any sentence he received was illegal. In fact, appellant raises no substantive issue as to the legality, *vel non* of his sentences. Instead, he simply reiterates the contentions made in his motion to correct an illegal sentence and adds an assertion that the trial court should not have denied his motion without a hearing.

Of course, an illegal sentence may be challenged on direct appeal, but Maryland Rule 4-345(a) permits an illegal sentence to be challenged at any time, even in the absence of either: 1) an objection to the sentence at the circuit court level, or 2) a challenge to the sentence by way of direct appeal.

An illegal sentence as contemplated by a Rule 4-345(a) motion to correct an illegal sentence has been described consistently by Maryland courts

as limited to those situations in which the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.

Chaney v. State, 397 Md. 460, 466 (2007)(citations omitted). Any “other deficiency in the sentence that may be grounds for an appellate court to vacate it[,]” such as impermissible considerations in imposing it, “must ordinarily be raised in or decided by the trial court and presented for appellate review in a timely-filed direct appeal.” *Id.* at 466-67 (citing *Randall Book Corp. v. State*, 316 Md. 315, 321-323 (1989)). In other words, “Rule 4–345(a) may not be used as a vehicle to obtain belated appellate review of the proceedings that led to the imposition of judgment and sentence.” *Meyer v. State*, 445 Md. 648, 682 (2015)(citation omitted).

Appellant does not argue that he was sentenced for an offense for which he was not convicted, nor does he argue that the sentence imposed was not permitted for the crimes of which he was convicted.⁴ Instead, he claims error because he was denied a preliminary hearing and because an “inconsistent verdict” was created when the trial court granted his motion for judgment of acquittal with regard to the firearm charges and the jury later

⁴The trial court’s sentence was expressly authorized by statute: Md. Code (2002, 2010 Supp.), §2-206 of the Criminal Law Article (“CL”), authorized a prison term “not exceeding 30 years” upon conviction of the felony of attempted second-degree murder, and CL §3-204 imposed a penalty of “imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both” upon conviction of the misdemeanor of reckless endangerment.

convicted him of the remaining charges. According to appellant, the verdicts were inconsistent because all the charged offenses related to the use of a handgun.

Neither of these claims of error inheres in the sentence. Instead, the “error[s]” concern pretrial and trial proceedings that led to the imposition of judgment and sentence, both of which could have been the subject of a timely filed direct appeal.

Additionally, appellant contends that the trial court should not have denied his motion to correct an illegal sentence without a hearing. Although we are not required to consider this claim because appellant fails to supply any supporting argument in his brief—*see* Md. Rule 8-504(a)(6) and *Klaunberg v. State*, 355 Md. 528, 552 (1999) (arguments not presented with particularity in a brief will not be considered on appeal)—we point out that Rule 4-345(f), which governs the revisory power of the trial court over sentencing, expressly requires an open court hearing only when the court modifies, reduces, corrects, or vacates a sentence. *See also Scott v. State*, 379 Md. 170, 190 (2004) (the open hearing requirement found in Rule 4-345 ordinarily applies only when the court intends to “modify, reduce, correct, or vacate a sentence”). Neither Rule 4-345 nor any other authority requires a hearing when a motion to correct an illegal sentence is denied.

**DENIAL BY THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY OF
MOTION TO CORRECT ILLEGAL
SENTENCE AFFIRMED; COSTS TO BE
PAID BY APPELLANT.**