

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 766

September Term, 2016

KENNETH LAWRENCE HIGGINS

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 1, 2017

*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.

From the denial, by the Circuit Court for Anne Arundel County, of a motion to correct illegal sentence, Kenneth Lawrence Higgins, appellant, contends that the court erred in denying the motion. For the reasons that follow, we shall dismiss the appeal.

In 2005, Higgins was charged by indictment with first degree murder, second degree murder, and manslaughter. The indictment was signed by the foreman of the grand jury and a representative of the State’s Attorney for Anne Arundel County. Prior to trial, Higgins filed a motion in which he requested that the court “order the State to produce a transcript of the [g]rand [j]ury [t]estimony.” The court denied the motion as moot, on the ground that the State had informed the court that “[t]here is no grand jury testimony.” Higgins was subsequently convicted of first degree murder, and sentenced to life imprisonment without the possibility of parole.

In 2016, Higgins filed the motion to correct illegal sentence, in which he contended that the indictment was “not . . . forwarded from a duly impaneled grand jury, or a grand jury foreman, thus depriving the court [of] the legal jurisdiction to convict . . . or sentence” him. The court subsequently issued an order in which it stated: “Upon review of the file and consideration of the Defendant’s Motion to Correct Illegal Sentence, and pursuant to Md. Rule 4-345(e)(1), it is hereby ORDERED, that the Motion to Correct Illegal Sentence be, and the same is, DENIED.” (Boldface and indentation omitted.)

On appeal, Higgins contends that the court erred in denying the motion because the trial court did not “have the jurisdiction to try and sentence [him] for a crime from an indictment that is not factually proven on the record to be from a duly impaneled grand jury or grand jury foreman.” Higgins claims that the signatures on the indictment are

“illegible without the aid of typed names . . . so as to identify the signing parties,” and “[a]n illegible signature without the aid of a typed name, or the [g]rand [j]ury [t]estimony/[m]inutes being non-existent[,] makes the record fatally defective, which inhibits [Higgins’s] procedural due process rights and the court’s legal jurisdiction to convict and impose . . . sentence.”

The State moves to dismiss the appeal on the ground that “the ‘illegality’ [Higgins] claims does not fall within the narrow scope of claims that are cognizable under Md. Rule 4-345(a).” The State contends that “just as a procedural flaw in the conduct of the trial or sentencing does not render a sentence inherently illegal, a procedural flaw in the indictment process is insufficient to demonstrate that a sentence imposed on a conviction thereafter obtained is illegal in the sense contemplated by Rule 4-345(a).” In the alternative, the State requests that the judgment be affirmed, on the ground that Higgins “failed to rebut the presumption of regularity in grand jury proceedings.”

We agree with the State that Higgins’s claim is not cognizable under Rule 4-345(a). The Rule states that a “court may correct an illegal sentence at any time.” But, the scope of this privilege, allowing collateral and belated attacks on the sentence and excluding waiver as a bar to relief, is narrow. . . .

An illegal sentence, for purposes of Rule 4-345(a), is one 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. A sentence does not become an illegal sentence because of some arguable procedural flaw in the sentencing procedure. A motion to correct illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.

Colvin v. State, 450 Md. 718, 725 (2016) (internal citations, quotations, and brackets omitted).

Here, Higgins does not dispute that he received a conviction warranting a sentence for the offense with which he was charged, that the sentence is a permitted one for the conviction, or that the sentence is intrinsically and substantially lawful. Instead, Higgins contends that there is a flaw in the procedure by which the indictment was issued. This alleged flaw does not render Higgins’s sentence illegal, and he cannot obtain belated appellate review of the grand jury proceeding through a motion to correct illegal sentence. The sentence is not inherently illegal, and hence, the court did not err in denying the motion to correct illegal sentence. Accordingly, we grant the State’s motion to dismiss the appeal.¹

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

¹Higgins also contends that the court “misappl[ied] Rule 4-345(e)(1) to the facts.” We conclude that the court’s citation of Rule 4-345(e)(1), which governs a court’s “revisory power over [a] sentence,” rather than Rule 4-345(a), is merely a typographical error. There is no evidence that the court treated the motion as a motion to revise the sentence, and indeed, correctly recognized the motion as a motion to correct an illegal sentence.