UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1144

September Term, 2016

SHADID TURNER

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.

Shadid Turner is serving a total term of thirty-five years' imprisonment for convictions he incurred in 2005. In 2016, he filed a motion, in the Circuit Court for Montgomery County, to correct an illegal sentence in which he asserted that, in 2014, the circuit court improperly re-sentenced him without a hearing. Turner appeals the circuit court's denial of his motion. For the reasons that follow, we affirm.

BACKGROUND

In 2005, a jury convicted Turner of robbery with a dangerous weapon (Count 6), first-degree assault (Count 7), conspiracy to commit robbery with a dangerous weapon (Count 8), and use of a handgun in the commission of a crime of violence (Count 9). The court sentenced him to a total term of forty years' imprisonment, to be served as follows:

Count 6: 20 years
Count 7: 15 years consecutive to count 6
Count 8: 15 years concurrent with count 7
Count 9: 5 years consecutive to counts 6 & 7

Turner appealed, and this Court vacated the conviction and sentence for first-degree assault (Count 7) because it should have merged with robbery with a dangerous weapon (Count 6), but otherwise affirmed the judgments. *Turner v. State,* No. 2373, Sept. Term, 2005 (filed May 31, 2007). Following that appeal, the Department of Corrections sent a letter to the circuit court requesting an amended commitment record. The circuit court then authored a memo stating that the sentence for Count 8 should be served consecutive to the sentence for Count 6 and that the sentence for Count 9 should be served consecutive to Count 6.

On December 20, 2007, a hearing was held in the circuit court with Turner and his counsel present. The docket entries reflect that, on that day, the court re-imposed Turner's sentences to reflect a total term of thirty-five years' imprisonment, with the sentences to be served as follows:

Count 6: 20 years
Count 8: 15 years consecutive to count 6
Count 9: 5 years consecutive to count 6

An amended commitment record was also issued. Turner did not appeal. But in 2012, Turner filed, *pro se*, a motion to correct an illegal sentence pursuant to Rule 4-345(a). He complained that when he was re-sentenced in 2007, the court "changed Count 8 from a concurrent sentence to a consecutive sentence" and he asserted that, by running the sentence for Count 8 consecutive to Count 6, the result was an illegal increase in his overall sentence. He contended that Count 8 should have been run concurrent with Count 6, for a total term of twenty-five years' imprisonment. The circuit court denied Turner's motion and he appealed.

Upon consideration of that appeal, a panel for this Court stated that the 2007 "re-sentencing hearing was held without authority and mandate from the Court" and, therefore, concluded that "the results of the re-sentencing hearing" must be vacated. *Turner v. State,* No. 646, Sept. Term, 2012 (filed November 7, 2013), *slip op.* at 3. We nonetheless agreed with the circuit court that Turner's sentences should be served as it had determined. *Slip Op.* at 3-4. Specifically, we held that "count 8, the count 'orphaned' by the vacation of count 7, *shall be served consecutively to count 6*," as this "maintains the original relationship between the sentences," "absent the vacated count 7." *Id.* at 4 (emphasis

added). We also agreed with the circuit court "that count 9 should run consecutively to count 6, because count 9 had no relationship whatsoever to count 8 in the original sentence." *Id.*

On July 1, 2014, the circuit court issued an amended commitment record reflecting that Turner's sentences totaled thirty-five years' imprisonment and should be served as follows:

Count 6: 20 years
Count 8: 15 years consecutive to count 6
Count 9: 5 years consecutive to count 6

The amended commitment record, and more precisely the order in which Turner's sentences are to be served, is consistent with this Court's 2013 decision. Moreover, running Count 8 consecutive to Count 6 (after Count 7 was vacated upon appeal) was in accordance with the sentencing court's intent in 2005, as the sentence for Count 8 clearly was not intended to begin until the sentence for Count 6 had been served. Turner did not appeal or otherwise challenge the amended commitment record.

Two years later, however, Turner filed a motion to correct an illegal sentence in which he challenged the legality of his sentence based on the fact that "he was never brought back into court for resentencing and he was not allowed to be present before the court amended his sentence" and, therefore, his right "to be present at every stage of the trial" was violated. He also asserted that he "was unable to argue that, even assuming that the 'orphaned' count [Count 8] could be changed to be served consecutively [to Count 6] (as opposed to concurrently), there are compelling reasons for not doing so." Accordingly, he asked that "the sentence imposed" in his "absence be vacated, set-aside" and that he be

returned to court for "resentencing." The circuit court denied the motion. Turner appeals that judgment.

DISCUSSION

Turner maintains that the circuit court erred by "sentencing" him "in absentia." He also asserts that the circuit court erred in dying his motion to correct his sentence without a hearing.

The State responds that a hearing is not required before a court may *deny* a motion to correct an illegal sentence. The State also asserts that because "the mandate of the 2013 opinion did not authorize a new sentencing hearing, [the circuit court] correctly did not hold a hearing" before it issued the amended commitment record. The State further points out that "the issuance of an amended commitment record ordinarily does not require a hearing." Moreover, the State maintains that the court "did not 'resentence' Turner," but "simply performed the administrative task of applying this Court's 2007 opinion vacating Turner's conviction and sentence for first-degree assault to the sentence it previously imposed, and properly issued an amended commitment record to inform DOC of Turner's sentence."[1]

In reply, Turner states that he is asking this Court to "resolve" this Court's 2013 opinion "which vacated the results of the re-sentencing hearing that was held on December

[1] The State asserts that Turner's underlying claims are not cognizable in a motion to correct an illegal sentence and accordingly moves to dismiss the appeal. Although we agree that Turner's sentence is not illegal, we deny the State's motion to dismiss the appeal, choosing instead to affirm the circuit court's denial of his Rule 4-345(a) motion.

20, 2007, in addition to the overall sentence, and how counts 8 & 9 are affected by the vacating of count 7." He states:

> When [the sentencing judge] imposed the initial sentence, he designated the relationship to each counts, and how he wanted them to be served. Appellant contends that [the judge] did not intend for count 8 to be served consecutive to 6, or he would have employed the same standard he used when he ran count 9 consecutive to counts 6 & 7. Therefore, appellant urge this Court to take de novo [review] on the issue of the overall sentence[.]

As for the court's failure to hold a hearing on his motion to correct his sentence, Turner replies that "an open court hearing was mandatory" because "this Court [pursuant to the 2013 opinion] vacated the results of the re-sentencing hearing held on December 20, 2007." But assuming that vacation was not required to be done "on the record in open court," Turner contends that the "issuance of an amended commitment record, which changed the terms in count 8, would constitute a new sentence, and his presence was required" as that was "a critical stage of his trial." Finally, he asserts that "his right to allocution was violated[.]"

We agree with the State that the circuit court was not required to hold a hearing before denying Turner's motion to correct an illegal sentence. Rule 4-345(f) provides that a "court may modify, reduce, correct, or vacate a sentence only on the record in open court," but does not preclude a court from *denying* a motion to correct an illegal sentence without a hearing. *Scott v. State,* 379 Md. 170, 190 (2004) (acknowledging that the "hearing requirement found in Rule 4-345 ordinarily applies only when the court intends to 'modify, reduce, correct, or vacate a sentence.'").

We also agree with the State that, following this Court's 2013 decision, the circuit court did not re-sentence Turner, but merely amended his commitment record to reflect the order in which his sentences must be served in light of this Court's 2007 decision vacating his sentence for Count 7. As the Court of Appeals noted in *Scott, supra,* correcting a commitment record is governed by Rule 4-351 and that rule "does not require a hearing in open court." 379 Md. at 191. Hence, Turner's presence was not required and he was not entitled to allocution.

We reject Turner's suggestion that we review *de novo* his "overall sentence, and how counts 8 & 9 are affected by the vacating of count 7." We addressed this issue in our 2013 opinion and that decision is the law of the case. *See State v. Garnett*, 172 Md. App. 558, 562 (observing that "the law of the case doctrine would prevent relitigation of an 'illegal sentence' argument that has been presented to and rejected by an appellate court."), *cert. denied,* 399 Md. 594 (2007). But even if we were not bound by our 2013 decision, we would not decide the issue any differently. For the same reasons discussed in our 2013 opinion, we agree that, as a result of the vacating of the sentence for Count 7, the sentence for Count 8 must be served consecutive to the sentence for Count 6.

STATE'S MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.