UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2391

September Term, 2015

PASHEKA SESAY,

v.

STATE OF MARYLAND

Meredith,
Leahy,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: February 9, 2017

On September 2, 2015, Pasheka Sesay ("Appellant") was tried by a jury in the Circuit Court for Prince George's County and convicted of theft scheme over $100,000, conspiracy to commit theft scheme over $100,000, theft scheme over $500, conspiracy to commit theft scheme over $500, and three counts of filing a false tax return. Afterward he was sentenced to a total of 20 years of incarceration, with all but 8 years suspended, to be followed by 5 years of supervised probation. Appellant was also ordered to pay restitution in the amount of $100,000.00.

In his timely appeal, Appellant maintains that his jury trial, convictions and sentences are void for lack of jurisdiction because on May 1, 2015, the circuit court erred in granting his belated request to withdraw his guilty plea, thereby allowing the case to proceed to trial. He also contends that the sentence imposed following his guilty plea was illegal, so that, should we determine his convictions are void and restore his case to the posture that it was in on May 1, 2015, we should also vacate his illegal sentence.[1]

We hold that the circuit court had jurisdiction to correct Appellant's illegal

[1] Appellant's questions are:

> 1. "Did the circuit court violate Maryland Rule 4-242 when on May 1, 2015, it permitted Appellant to withdraw his guilty plea after being sentenced on April 17, 2015?"
>
> 2. "Because the September 2015 convictions following a jury trial and November 2015 sentences were null and void, must this Court also vacate the sentence imposed on April 17, 2015, remand the case for resentencing, and order the circuit court to impose no more than 6 months of incarceration?"

sentence on May 1, 2015, and did so by accepting Appellant's request to withdraw his guilty plea. Maryland law does not provide Appellant the right to have his illegal sentence corrected more than once. We affirm.

BACKGROUND

Appellant was indicted in the Circuit Court for Prince George's County, Maryland, and charged with multiple counts of theft scheme over $100,000, and related offenses, including conspiracy to commit theft scheme. On November 1, 2013, Appellant agreed to plead guilty to one count of conspiracy to commit theft scheme over $100,000 and to be sentenced to "a cap of six months." The parties agreed that the maximum sentence was 25 years, the sentencing guidelines for Appellant called for a sentence between two to five years, and that there was a matter of restitution exceeding $100,000. Pertinent to our discussion, the court engaged in the following colloquy with Appellant:

> THE COURT: Sir, I understand that you want to enter a plea to Count II that charges you with conspiracy to commit theft, a scheme that was over $100,000; is that correct?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: You can stand up.
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: The maximum penalty being 25 years. You've agreed to the sentence. We will cap your sentence at six months. The guidelines range would be two to five years. Is that your understanding as well?
>
> THE DEFENDANT: Yes.

After ascertaining that the Appellant understood his rights, the State provided the

following statement of facts in support of the guilty plea:

> [PROSECUTOR]: Thank you. Your Honor, if we had gone to trial in this matter, we would have proven beyond a reasonable doubt by calling Clyde Long, Bobby Long, Rusty Scufflane (ph.), all of the Long Fence Company, Sonco Worldwide, Incorporated, and they would have testified along with L.A. Williams of the Prince George's County police force that between the dates of October 1st, 2009 and May 25, 2012, Mr. Pasheka Sesay seated next to his attorney [Defense Counsel], engaged in a conspiracy with Steven Donoian, D-O-N-O-I-A-N, throughout the state of Maryland, but particularly in the county of Prince George's County Maryland to steal more than $100,000 from Sonco, Incorporated, trading as Long Fence.
>
> THE COURT: I actually knew Jack Long who was the Jack Long Fence Company. He's no longer involved, just so you know that. I think he may have passed.
>
> [PROSECUTOR]: I believe that's true.
>
> [DEFENSE COUNSEL]: He has. These are the sons.
>
> [PROSECUTOR]: Thank you, Your Honor. Through a series of fraudulent transactions drawn upon a company gas fleet card. Donoian as a CFO provided Sesay with various fleet cards over a three-year period allowing Sesay to purchase gasoline and other fuel products directly at a variety of gas stations. Though Sesay was employed for a brief period in 2009, he was at no time authorized by any law abiding member of the Sonco Worldwide Company to have a fleet card as he was not employed as a driver. Mr. Donoian as CFO hid the transactions and otherwise permitted [sic] any other Sonco employee or any of the owners to discover purchases. As such, all transactions against the card were fraudulent, as Mr. Sesay was never fully authorized to use it.
>
> His total transactions grossly exceeded $100,000 totaling more than $500,000 with restitution to be determined later at a hearing. All of the events occurred in Prince George's County.

The court found the facts sufficient to sustain the plea. After numerous postponements, Appellant eventually was sentenced on April 17, 2015. At that time, he was sentenced to 25 years of incarceration, with all but six months suspended, to be

followed by five years of supervised probation. He was also ordered to pay $760,000.00 restitution to Sonco Worldwide, Incorporated. As part of the sentence, the court authorized home detention and stayed execution of home detention so that Appellant did not have to report until May 5, 2015.

Eleven days after sentencing, on April 28, 2015, Appellant filed a "Motion for Reconsideration of Sentence and/or Stay Pending Appeal" (Rule 4-345(e)). In that written motion, he averred that he had not contacted, nor been qualified to serve, home detention, and that his interview for that form of detention was scheduled for May 26, 2015, or twenty-one days after he was ordered to report for imposition of sentence. Appellant also indicated that he intended to file an application for leave to appeal his conviction in order to challenge the effectiveness of defense counsel, alleged coercion by counsel, and "other things." Because Appellant would serve the entirety of his sentence pending said application, he requested to remain free on bond.

On May 1, 2015—a total of fourteen days after sentencing—Appellant and the State appeared at a hearing before the sentencing court on the aforementioned written motion for reconsideration of sentence. There, and for the first time, his counsel informed the court that Appellant actually wanted "to request to withdraw his plea in the case." Over the State's objection, the court stated: "I am going to grant him a new trial because his wish is my command here." The court then directed the clerk to "[s]et it down for a trial, please." Appellant exclaimed, "God bless you, Your Honor." The

docket entries indicate that Appellant's motion to withdraw plea was granted.[2]

Appellant elected a jury trial. The underlying facts are consistent with the statement of facts elicited at Appellant's initial plea hearing. In brief,[3] Appellant used company gas cards without permission to steal over $100,000.00, apparently in the purchase of products, in a conspiracy involving the comptroller of that same company.

More specifically, from August 1, 2008 until May 25, 2012, Stephen Donoian was employed as the Chief Financial Officer ("CFO") for Sonco Worldwide, Incorporated, a Prince George's County business. Donoian testified that he previously pleaded guilty to a theft scheme involving Sonco gas cards, as well as a theft scheme involving taking pay checks from the company in excess of $200,000.00. Donoian had already served time and paid restitution in connection with those convictions at the time of appellant's trial.

As part of his job as CFO, Donoian provided gas cards to drivers for the company. Sometime in 2008, Donoian gave Appellant—whom he also employed as a caregiver for his elderly father—one of these company gas cards. Donoian also gave Appellant a

[2] Appellant did not request to withdraw his guilty plea in his written motion for reconsideration of sentence. Considering that the applicable rule for motions for reconsideration of sentence, Rule 4-345(e), does not provide any authority to revise a guilty plea, *see State v. Griswold*, 374 Md. 184, 194 (2003), the applicable motion for purposes of this appeal was Appellant's oral motion to withdraw made at the May 1 hearing.

[3] Although we have reviewed the record as a whole, "[i]t is unnecessary to recite the underlying facts in any but a summary fashion because for the most part they [otherwise] do not bear on the issues we are asked to consider." *Teixeira v. State*, 213 Md. App. 664, 666 (2013) (citations and internal quotation marks omitted); *accord Hill v. State*, 418 Md. 62, 66-67 (2011).

second gas card about a year later. Although Appellant was temporarily employed by Sonco, he was not authorized to have a company gas card. Donoian was able to conceal Appellant's transactions because Donoian was the only person in the company assigned to account for them. The jury received documentation detailing Appellant's use of the gas cards over the relevant time periods, demonstrating that was able to use the gas cards to charge thousands in illicit purchases until February 2012.

After the jury considered the aforementioned evidence, they found Appellant guilty of: theft and conspiracy to commit theft of property valued over $100,000.00 from October 1, 2009 to May 25, 2012; theft and conspiracy to commit theft of property valued over $500.00 between August 1, 2008 and September 30, 2009; and, three counts of filing a false tax return for the years 2009, 2010, and 2011.

DISCUSSION

Appellant contends that his conviction and sentence following the September 2, 2015 jury trial must be vacated because the circuit court did not have jurisdiction to honor his request to withdraw his guilty plea on May 1, 2015. Specifically, Appellant asserts that Maryland Rule 4-242(h) and this Court's prior opinion in *Bereska v. State*, 194 Md. App. 664 (2010), impose a limit on the circuit court's subject matter jurisdiction, requiring a motion to withdraw a guilty plea to be filed no later than ten days after sentencing. Thus, according to Appellant, his subsequent trial, convictions, and sentences are void for lack of jurisdiction. Moreover, Appellant continues that reinstatement of the sentence imposed following his guilty plea is not appropriate, under

the circumstances of this case, because "by sentencing Mr. Sesay to 25 years of incarceration, with all but 6 months suspended, and 5 years of supervised probation, the lower court imposed an illegal sentence."

The State responds initially by citing to the general principle that "one cannot appeal from a favorable ruling" and by suggesting that Appellant invited error. *See Rush v. State*, 403 Md. 68, 95 (2008); *see also Burch v. State*, 346 Md. 253, 289 (1997) (providing, generally, that defendants may not "sandbag" trial courts and may not ordinarily "freely be allowed to assert one position at trial and another, inconsistent position on appeal"). Regardless, the State maintains that the court could have granted the motion to withdraw the guilty plea pursuant to Maryland Rule 4-331(b)(1)(B), Rule 4-345(a), or both.

In reply, Appellant asserts that there has been no "favorable ruling" in this case because, following the jury trial, he was convicted of multiple offenses and sentenced to a significant term of incarceration. Appellant continues that invited error has no application in jurisdictional claims and that Rule 4-331(b) does not apply. With respect to Maryland Rule 4-345(a), although Appellant acknowledges that the rule permits the correction of a sentence on an invalid guilty plea and that the remedy is either withdrawal of the plea or some form of specific performance, Appellant contends he never had the opportunity to choose his remedy.

We begin our analysis with the matter upon which both Appellant and the State agree; namely, that Appellant's sentence on the original guilty plea was illegal.

Maryland Rule 4-345(a) provides that a "court may correct an illegal sentence at any time." "We review the legal issue of the sentencing in this case as a matter of law." *Bonilla v. State*, 443 Md. 1, 6 (2015) (citations omitted). A sentence is "illegal," for purposes of Rule 4-345(a), where it has been imposed despite there having been "no conviction warranting any sentence for the particular offense" or where "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). The latter category includes any sentence "that is not permitted by statute," *Holmes v. State*, 362 Md. 190, 195–96 (2000), as well as any "sentence that exceeds the sentence agreed upon as part of a binding plea agreement." *Matthews v. State*, 424 Md. 503, 514 (2012).

If a trial court approves a plea agreement, it "shall embody in the judgment the agreed sentence . . . encompassed in the agreement." Md. Rule 4-243(c)(3). "Whether a trial court has violated the terms of a plea agreement is a question of law, which we review *de novo*." *Cuffley v. State*, 416 Md. 568, 581 (2010). In reviewing such a claim, that a sentence was imposed beyond that which had been agreed upon as part of a binding plea agreement, we must examine "solely" the record of the plea hearing to ascertain precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement, to determine what the defendant reasonably understood to be the sentence the parties negotiated and the court agreed to impose. *Id*. at 582. The test for determining what the defendant reasonably understood to be the terms of the plea

agreement is

> what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding.

Id. The *Matthews* Court explained:

> [W]hen the record of a plea proceeding reflects that a defendant reasonably could have understood that the sentencing court agreed to be bound to a certain maximum sentence, inclusive of any suspended portion, then the court that imposes a sentence in excess of that maximum breaches the plea agreement. In that circumstance, the original sentence is illegal and the court must re-sentence the defendant, if that is the defendant's wish, in accordance with the terms of the plea agreement.

Matthews, 424 Md. at 511; *see also Carlini v. State*, 215 Md. App. 415, 432–33 (2013) (discussing *Cuffley*, *Baines*, and *Matthews* and stating "that a sentence in excess of the sentencing cap established by the plea agreement was illegal *per se*").

We have considered the record from the plea hearing and agree that Appellant was not informed on the record that he could receive either a split sentence, a total sentence of suspended and unsuspended time exceeding six months, or a period of probation. Indeed, we are persuaded that a reasonable lay person in Appellant's position would understand that the court would impose a total sentence of no more than six months' imprisonment, as well as restitution, in an amount to be determined later in excess of $100,000.00. By imposing a sentence that exceeded six months, the court—in Appellant's view—breached the agreement, and, hence, the sentence was illegal.

The question then becomes what is the appropriate remedy. In *Solorzano v. State*, 397 Md. 661 (2007), the Court of Appeals stated that "where the plea agreement is

breached, and it was not caused by the defendant, the general remedy for the breach is to permit the defendant to choose either specific performance *or withdrawal of the plea*." *Id*. at 668 (emphasis added, citations omitted); *see also Tweedy v. State*, 380 Md. 475, 489 (2004) (observing that, in light of a breached plea agreement, the defendant is "entitled to the benefit of his bargain"). Based on the fact that withdrawal of a guilty plea is a recognized remedy to correct an illegal sentence, the State avers that the circuit court was authorized to grant Appellant that relief on May 1, 2015.

Appellant does not dispute that withdrawal of the plea is an available remedy for an illegal sentence. Instead, Appellant responds that the issue of an illegal sentence was not before the circuit court on May 1, 2015 when he requested to withdraw his plea. According to Appellant, he "was never given the opportunity to choose between withdrawing his plea due to the illegality or asking the court to enforce the plea agreement as he reasonably understood it." Appellant continues that he is now, for the first time, making a choice and that choice is specific performance of the original terms of his plea agreement.

Appellant's argument entirely disregards the fact that he already made his choice —to withdraw his guilty plea in the circuit court. Moreover, even though the specific ground—an illegal sentence on the guilty plea—was not raised in the circuit court, our review is *de novo*. And, the Court of Appeals has made plain that "the issue of whether the trial court imposed an illegal sentence can be raised for the first time in an appellate court." *Stubbs v. State*, 406 Md. 34, 48 n.1 (2008) (citing *Walczak v. State*, 302 Md. 422,

437 (1985)); *see also Dixon v. State*, 364 Md. 209, 235 n.25 (2001) ("We have determined that the legality of a sentence can be decided at 'anytime'"). As the Court of Appeals has further explained: "[A]ny illegality must inhere in the sentence, not in the judge's actions. In defining an illegal sentence the focus is not on whether the judge's "actions" are *per se* illegal but whether the sentence itself is illegal." *State v. Wilkins*, 393 Md. 269, 284 (2006). Furthermore:

> It is true of course, as a general principle, that an appellate court will not ordinarily consider an issue that has not previously been raised, and this applies to an appellate court exercising certiorari jurisdiction. *See, e.g., United States v. Lovasco*, 431 U.S. 783, 788 n.7, 97 S. Ct. 2044, 2048 n.7, 52 L.Ed.2d 752 (1977). *See also* Maryland Rule 885. However, there are well-recognized exceptions to this general principle. One exception is that where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm. In other words, a trial court's decision may be correct although for a different reason than relied on by that court.

Robeson v. State, 285 Md. 498, 501–02 (Md. 1979); *see also Joseph H. Munson Co. v. Sec'y of State*, 294 Md. 160, 168 (1982) (recognizing "the principle that a judgment will ordinarily be affirmed on any ground adequately shown by the record, whether or not relied on by the trial court or raised by a party") *aff'd sub nom. Sec'y of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 104 S. Ct. 2839 (1984). And:

> Apart from the exceptions previously noted, this Court has consistently taken the position that an appellee is entitled to assert any ground adequately shown by the record for upholding the trial court's decision, even if the ground was not raised in the trial court, and that, if legally correct, the trial court's decision will be affirmed on such alternative ground.

Unger v. State, 427 Md. 383, 406 (2012).

Here, Appellant moved to withdraw, what amounted to, an illegal sentence on his guilty plea. Maryland cases hold that withdrawal, under such a circumstance, is an authorized remedy. *See Cuffley*, 416 Md. at 583 (citing *Solorzano*, 397 Md. at 667–68). But before we conclude that the court did not err by permitting Appellant to withdraw his guilty plea, we must address Appellant's contention that the circuit court did not have jurisdiction to permit withdrawal at the hearing on May 1, 2015.

We acknowledge that "[l]ack of subject-matter jurisdiction may be raised at any time." *Lewis v. State*, 229 Md. App. 86, 101 (2016), *cert. granted*, 450 Md. 420 (2016) (citations omitted). We also concur with Appellant's position that his convictions and sentence following the September 2, 2015 jury trial were not a "favorable ruling" and that invited error does not apply to a claim of lack of subject matter jurisdiction, such as alleged here. *See In re Professional Engineering Consultants, P.A.*, 134 P.3d 661, 665 (Kan. 2006) ("[T]he invited error rule does not apply where the error is jurisdictional"); *see also People v. Evans*, 38 N.E.3d 541, 543–44 (Ill. App. Ct. 2015) ("[I]t is axiomatic that the lack of subject matter jurisdiction is not subject to waiver and may not be cured through consent of the parties"); *State v. Minker*, 957 N.E.2d 829, 834 (Ohio Ct. App. 2011) ("Parties to an action cannot, through invited error, confer jurisdiction where none exists"); *In re Marriage of Chester*, 18 P.3d 1111, 1115 (Or. Ct. App. 2001) ("Likewise, subject matter jurisdiction is not susceptible to the principle of invited error"); *Alford v. Commonwealth*, 696 S.E.2d 266, 268 n.3 (Va. Ct. App. 2010) (recognizing that there is an exception to the invited error doctrine in cases concerning a court's subject matter

jurisdiction); *Angelo Property Co., LP v. Hafiz*, 274 P.3d 1075, 1092 (Wash. Ct. App. 2012) ("The invited error doctrine, however, does not apply to subject matter jurisdiction issues"); *Appeal of Williams*, 626 P.2d 564, 571 (Wyo. 1981) (observing that subject matter jurisdiction can not be waived and is not subject to the doctrine of invited error).

Appellant bases his jurisdictional argument on Maryland Rule 4-242(h), which provides:

> **Withdrawal of plea**. At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty or nolo contendere when the withdrawal serves the interest of justice. *After the imposition of sentence, on motion of a defendant filed within ten days*, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty or nolo contendere if the defendant establishes that the provisions of section (c) or (d) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty or nolo contendere.

(Emphasis added).

The meaning of the immediate predecessor to this provision—Maryland Rule 4-242(g)—was discussed in *Bereska*, *supra*, 194 Md. App. 664.[4] Although that case has a somewhat convoluted procedural history, the heart of the issue before this Court was whether the circuit court had jurisdiction, under Rule 4-242, to allow Bereska to withdraw a guilty plea more than 8 years after he was convicted and sentenced on that

[4] At the time this Court issued its decision in *Bereska*, what is now subsection (h) of Rule 4-242 was subsection (g).

plea. *Bereska*, 194 Md. App. at 670–71, 678.[5]

This Court began its analysis by recognizing that "[u]nder the common law, Maryland courts possessed certain inherent powers over cases, including the authority to modify or vacate judgments, during the 'term of court' in which the case was heard." *Id.* at 680-81. However, "[s]ince 1951, the power has been set forth in the Maryland Rules of Practice and Procedure." *Id*. at 681. We then explained:

> Given that today the Maryland rules extend the court's jurisdiction to revise sentences and judgments beyond the term of court, when a court alters an enrolled judgment in a manner not envisioned by the Maryland rules, the judicial act may not merely be improper, but instead may exceed the jurisdiction of the court. *See Cardinell v. State*, 335 Md. 381, 385, 644 A.2d 11, 13 (1994), *overruled on other grounds by State v. Green*, 367 Md. 61, 78, 785 A.2d 1275, 1285 (2001) (holding that where a defendant's "so-called 'supplemental' motion for modification was filed months later [than prescribed under Md. Rule 4-345], [the court] simply had no efficacy under the Rule [to modify the sentence]."). Judge John F. McAuliffe, writing for the Court in *Cardinell* later reiterated that "[t]his defect is not simply procedural, it is jurisdictional." *Id*. at 398, 644 A.2d at 19.

Id. at 684. However, we also recognized that there is a difference "between when a court acts *in excess of* its jurisdiction, and when a court acts *without* jurisdiction." *Id.* at 684–85 (emphasis added). This Court quoted from Judge Eldridge's dissent in *Cardinell*, as follows:

'A statute which seeks to limit the period in which a court should exercise

[5] We noted in our opinion that, in addition to having been convicted and sentenced on March 14, 1996, pursuant to the guilty plea, appellant had already completed his sentence on that plea when he asked to withdraw the plea on August 9, 2004. *Bereska*, 194 Md. App. at 671 n.5. Without recounting all the procedural twists and turns, we glean that the purpose of Bereska's request to withdraw the 1996 plea was related to his overall desire to expunge the sexual assault conviction from his criminal record.

> its authority does not deprive it of jurisdiction. . . . Thus, if the court exercises its power outside the prescribed period, its judgment is not thereby rendered void but only voidable.'

Bereska, 194 Md. App. at 685 (Eldridge, J., dissenting) (quoting *Cardinell*, 335 Md. at 424–25 n.8).

We continued by explaining the difference between an action that is "void" and one that is "voidable" as follows:

> "What is meant by the lack of jurisdiction in its fundamental sense such as to make an otherwise valid decree void is often misunderstood. As Judge Horney noted for this Court in *Moore v. McAllister*, 216 Md. 497, 507, 141 A.2d 176 (1958):
>
> > 'Juridically, jurisdiction refers to two quite distinct concepts: (i) the power of a court to render a valid decree, and (ii) the propriety of granting the relief sought. 1 Pomeroy, Equity Jurisprudence (5th ed. 1941), Secs. 129-31.'
>
> It is only when the court lacks the power to render a decree, for example because the parties are not before the court, as being improperly served with process, or because the court is without authority to pass upon the subject matter involved in the dispute, that its decree is void."

Id. at 686 (quoting *First Federated Commodity Trust Corp. v. Maryland Comm'r of Securities*, 272 Md. 329, 334 (1974) (emphasis omitted).

We continued:

> The Court of Appeals explained more recently that "the main inquiry in determining **'fundamental jurisdiction'** is whether or not the court in question had general authority over the class of cases to which the case in question belongs." *County Comm'rs v. Carroll Craft Retail, Inc*., 384 Md. 23, 45, 862 A.2d 404, 417 (2004). "[A]ny action taken by a court while it lacks 'fundamental jurisdiction' is a nullity, for to act without such jurisdiction is not to act at all." *Pulley v. State*, 287 Md. 406, 416, 412 A.2d 1244, 1249 (1980).

Id. at 686. (Emphasis added).

The Court of Appeals expounded on this distinction between when acts that appear jurisdictional and void are, instead, voidable, in *Downes v. Downes*, 388 Md. 561, 572 (2005). In that case, the court was presented with an issue concerning the time limits that govern when a person may elect to take a certain percentage of an estate in lieu of amounts expressly set forth in a will. *Id.* at 565. Judge Wilner explained the distinction as follows:

> We do not regard the requirement as jurisdictional in nature, in the sense that our current case law has defined "jurisdictional." In *Carey v. Chessie Computer*, 369 Md. 741, 755, 802 A.2d 1060, 1068 (2002), we pointed out that, in earlier days, courts seemed more willing to view limitations on their authority or discretion as jurisdictional in nature, but that we had moved away from that approach, in part because of its consequences. An action in excess of a court's "jurisdiction" was regarded as utterly void, subject to being disregarded or attacked at any time and by anyone. *See Fooks' Executors v. Ghingher*, 172 Md. 612, 619, 192 A. 782, 785, cert. denied, 302 U.S. 726, 58 S.Ct. 47, 82 L.Ed. 561 (1937). That characteristic of utter nullity, we noted in *Carey*, necessarily flowed from the very concept of the rule of law, but carried with it the prospect of serious mischief and thus required some circumscription.

Id. at 574–75.

However:

> The proper balance, we have concluded, is to view jurisdiction in terms of whether the court "'is given the power to render a judgment over that class of cases within which a particular one falls.'" *See Carey v. Chessie Computer, supra*, 369 Md. at 756, 802 A.2d at 1069 (quoting *First Federated Com. Tr. v. Comm'r*, 272 Md. 329, 335, 322 A.2d 539, 543 (1974)). *See also Board of License Comm. v. Corridor Wine, Inc*., 361 Md. 403, 417-18, 761 A.2d 916, 923-24 (2000). In furtherance of that approach, we have tended, whenever possible, to regard rulings made in violation of statutory restrictions on a court's authority or discretion as inappropriate *exercises* of jurisdiction, voidable on appeal, rather than as an inherently

> void excess of fundamental jurisdiction itself. *See also County Commissioners v. Carroll Craft*, 384 Md. 23, 44-45, 862 A.2d 404, 417-18 (2004).

Id. at 575 (emphasis in original); *see also Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 67 (2013) (recognizing that, although acts by a court lacking fundamental jurisdiction are a nullity, "[b]y contrast, if a trial court's ruling on a post-judgment motion affects the subject matter of a pending appeal, it 'may be subject to reversal on appeal, but it is not void *ab initio* for lack of jurisdiction to enter it'") (citations omitted).

Applying these concepts to the facts in *Bereska*, we explained that:

> Rule 4-242(g) governs the power of the court to allow the withdrawal of a guilty plea. That Rule provides for withdrawal of guilty pleas subsequent to sentencing, "in the interest of justice," upon a motion filed within ten days of sentencing, under the following three circumstances: (1) Where the provisions of Rule 4-242(c), concerning the required guilty plea colloquy, are not complied with; (2) where the provisions of Rule 4-242(d), concerning when a plea of nolo contendere can be entered, are not complied with; and (3) where there is a violation of a plea agreement.

Bereska, 194 Md. App. at 687.

As none of these three circumstances were applicable, we were persuaded that the 2004 agreement to withdraw Bereska's guilty plea was clearly untimely under Rule 4-242:

> Rule 4-242(g) addresses the circumstances under which a court may allow a defendant to withdraw a guilty plea. The Rule provides for withdrawal of a guilty plea under three specific, limited sets of circumstances. The record indicates, and appellant acknowledges, that none of those three situations is implicated here. Perhaps more important, appellant's motion, which the circuit court held *sub curia*, was not filed within ten days of the imposition of his sentence as required by Rule 4-242(g), and furthermore, was by appellant's admission, a motion for

> modification of sentencing under Rule 4-345, and not for withdrawal of his guilty plea. Not only did appellant fail to file a Rule 4-242(g) motion within ten days of his sentencing, but no such motion, even a belated and untimely one, has ever been filed by appellant to this very day.

Id. at 689.

Thus, the circuit court in *Bereska* lacked jurisdiction to consider the request to withdraw the 1996 guilty plea and its act in so doing was void:

> In sum, by August of 2004, appellant had completed his probation, and the criminal matter over which the circuit court had exercised its jurisdiction was concluded. No provision of the Maryland rules, and no motion by appellant, provided the circuit court with the authority to allow appellant to withdraw his 1996 guilty plea and exchange it for a different plea. By this advanced stage, his original guilty plea is inviolate. Because the circuit court lacked the jurisdiction to allow appellant to withdraw his plea and enter a new plea, the 2004 proceedings were ***void for lack of jurisdiction.*** The case is restored to its posture on March 14, 1996, the day of the court's original acceptance of appellant's guilty plea. We shall remand this case to the circuit court, with directions to vacate appellant's second plea, to reinstate appellant's initial, 1996 guilty plea for third-degree sexual assault, and to reinstate appellant's sentence.

Id. at 690–91 (emphasis added, footnote omitted).

Here, Appellant's request to withdraw the plea was raised at the May 1, 2015 hearing, or 14 days after sentencing and was untimely under Rule 4-242(h). However, we have concluded, and the parties agree, that the court in this case imposed an illegal sentence on Appellant's guilty plea. An illegal sentence constitutes an issue that can be raised at any time. Rule 4-345(a); *Johnson v. State*, 427 Md. 356, 371 (2012). When the circuit court sentenced Appellant on his guilty plea, it did so in a manner that violated the terms of that plea. We are persuaded that the court had jurisdiction to correct the illegal sentence and permit withdrawal of the plea as a remedy. *See Solorzano*, *supra*, 397 Md.

at 668. Therefore, in this case where Appellant was subsequently tried by a jury at his own election, we shall uphold the trial court's May 1, 2015 order granting Appellant's motion to withdraw his guilty plea. Appellant cannot now demand that the circuit court correct the same illegal sentence a second time. Accordingly, Appellant's convictions and sentences following the September 2, 2015 jury trial remain inviolate and are affirmed.[6]

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.

[6] Because of this resolution, it is unnecessary to address the State's alternative argument that his guilty plea can be upheld under the court's revisory power provided in Maryland Rule 4-331(b)(1)(B).