Circuit Court for Baltimore County
Case No: 03-K-14-004179

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2071

September Term, 2019

PARRISH ANTONIO KENDALL

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 29, 2020

In 2014, a grand jury in the Circuit Court for Baltimore County returned an 18-count indictment charging Parrish Antonio Kendall, appellant, with multiple counts of robbery, attempted robbery, multiple counts of second-degree assault, theft, and attempted theft. Mr. Kendall rejected the State's plea offer - a plea of guilty to one count of robbery and a sentencing recommendation of 10 years' imprisonment. Following a trial, a jury convicted Mr. Kendall of five counts of robbery and one count of attempted robbery. The court sentenced him to a total term of 90 years' imprisonment, suspending all but 45 years, to be followed by a five-year term of probation upon release. On direct appeal, this Court affirmed the judgments. *Parrish Antonio Kendall v. State*, No. 1137, September Term, 2015 (filed September 27, 2016).

In November 2019, Mr. Kendall, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence.[1] He asserted that "the trial court, State's Attorney, and [defense] counsel had entered into the agreement that, if he were convicted," he would be sentenced within the Maryland Sentencing Guidelines. He claimed, however, that the trial court breached the agreement by running his sentences consecutively "and without application of the sentencing guideline to any count." He also asserted that the agreement provided that, under the rule of lenity, "count one and count three of the indictment [would] be concurrent" because "they were the product of the same act." Instead, the sentences for

[1] In the alternative, Mr. Kendall sought a modification of his sentence. The post-conviction court, however, had previously granted Mr. Kendall the right to file a belated motion for modification of sentence, which counsel had filed on his behalf in November of 2018. Following a hearing held on March 11, 2019, the circuit court denied the motion for modification of sentence.

counts 1 and 3 were run consecutively. The circuit court denied the motion. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Mr. Kendall was charged with 18 offenses stemming from the robberies of several "dollar" stores in Baltimore County between January and July of 2014. On June 17, 2015, Mr. Kendall appeared with counsel in court for trial. Prior to the start of that proceeding, the court reviewed with Mr. Kendall the charges he was facing and the maximum sentences for each offense. The court further advised Mr. Kendall the sentences could be run consecutively and confirmed that he understood what "consecutive" meant.

The State informed the court that it had previously conveyed a plea offer of guilty to one count of robbery with a State recommendation of a 10-year sentence and a nol pross of the remaining charges, but Mr. Kendall had rejected it. Mr. Kendall confirmed that fact. The court then discussed the State's plea offer with Mr. Kendall and clarified for him that if he accepted it, the court would not be bound by the State's 10-year sentencing recommendation, but the maximum term that could be imposed would be 15 years' incarceration. If he chose not to accept the plea, the court made sure that Mr. Kendall understood that the State would no longer be bound by its 10-year sentencing recommendation. The court summarized the discussion by stating that, "it comes down to this, do you want to risk going to trial and, with an exposure of substantial period of time or do you want to limit your possible exposure to a maximum 15 years by pleading guilty?" The court then recessed for 20 minutes so that Mr. Kendall could discuss the matter with his counsel.

After the recess, Mr. Kendall confirmed that he had had sufficient time to discuss the plea offer with his attorney. The court also elicited that Mr. Kendall was 44 years old, had completed 11 years of school, and understood everything that had been discussed thus far. Mr. Kendall, again, rejected the State's plea offer and informed the court that he wished to proceed with the scheduled jury trial. Defense counsel, however, then told the court that Mr. Kendall wished to delay the trial for a day so that he could discuss the plea offer with his family. The following colloquy then ensued:

> THE COURT: I really don't see that happening. He's an adult. Does he have any record?
>
> STATE: He does.
>
> THE COURT: What kind of record does he have?
>
> STATE: He has conviction, from starting in '89, CDS possession, '93, reckless endangerment, '93 conspiracy, '96, theft, '95 theft, '99, theft --
>
> THE COURT: What are his guidelines?
>
> STATE: His guidelines are five years to ten years.
>
> THE COURT: Okay.
>
> STATE: It includes, without going through everything, Your Honor, it also includes a 2006 conviction for robbery, deadly weapon.
>
> THE COURT: And the State's not seeking enhanced punishment?
>
> STATE: Correct.
>
> THE COURT: Okay. No, [defense counsel], given his record, his involvement in the criminal justice system and his age, my discussion with him, he seems to be a bright young man. It's his call.

The court noted that the "jurors are available and ready to go" and declined to continue or postpone the trial. At the conclusion of the trial, the jury convicted Mr. Kendall of robbery of Kayla Grimes on January 31, 2014, robbery of Adrian Parker on January 31, 2014, robbery of Felicia Long on June 6, 2014, robbery of George Campbell on June 8, 2014, robbery of Jessica Foreman on June 23, 2014, and attempted robbery on July 19, 2014.

Mr. Kendall requested that sentencing be postponed so that his family could be present. The following colloquy then ensued:

> THE COURT: All right. All right, we'll reschedule disposition for July the 13th. Hopefully that will give you enough time to gather whatever family members and as well as give you an opportunity to have any further discussion you wish with [defense counsel] to present information to the Court. Mr. [prosecutor], you indicated earlier that, I believe when the plea was offered, that guidelines are five to ten?
>
> STATE: For each count, yes.
>
> THE COURT: So now it becomes thirty to a hundred?
>
> STATE: Actually, two of these will stack because they're the same incident so it's twenty-five to sixty.
>
> THE COURT: Twenty-five to sixty.
>
> STATE: Right.
>
> THE COURT: All right, twenty-five, gotcha, all right.

At the subsequent sentencing hearing, the court sentenced Mr. Kendall to 15 years' imprisonment for count 1 (robbery of Kayla Grimes); 15 years for count 3 (robbery of Adrian Parker), to run consecutive to the sentence imposed for count 1; 15 years for count 6 (robbery of Felicia Long), to run consecutive to the sentence imposed for count 3; 15

years for count 9 (robbery of George Campbell), all suspended, to run consecutive to the sentence imposed for count 6; 15 years for count 14 (robbery of Jessica Foreman), all suspended, to run consecutive to the sentence imposed for count 9; and 15 years for attempted robbery, all suspended, to run consecutive to the sentence imposed for count 14. The total sentence was 90 years' imprisonment, with all but 45 years suspended, to begin on July 13, 2015. The court also imposed a five-year term of supervised probation upon release.

DISCUSSION

On appeal, Mr. Kendall asserts that he had "entered into an agreement with the State," and the trial court had "bound itself" to the agreement, which "called for separate sentences on each count within the sentencing guidelines range of five-to-ten years' incarceration, and one count concurrent according to the rule of lenity." Specifically, he seems to claim that "count 1" (robbery of Kalya Grimes) and "count 3" (robbery of Adrian Parker) should have been run concurrently - we assume his reasoning is that they were the victims of the same robbery which took place on January 31, 2014.

Mr. Kendall bases his position on (1) the court's question as to the guidelines in this case, posed to the State prior to the start of trial, and (2) the discussion, after trial, between the court and the State regarding the guidelines when the parties were discussing a sentencing date. The relevant transcript excerpts are set forth above.

The State maintains that, upon Mr. Kendall's rejection of the State's plea offer, there was no sentencing agreement in this case; a failure to sentence within the sentencing

guidelines is not a cognizable claim in a Rule 4-345(a) motion; and there was nothing inherently illegal about running the sentences consecutively.

Rule 4-345(a) provides that a court "may correct an illegal sentence at any time," but the Rule is very narrow in scope and is "limited to those situations in which the illegality inheres in the sentence itself[.]" *Chaney v. State*, 397 Md. 460, 466 (2007). An inherently illegal sentence is one in which there "has been no conviction warranting any sentence for the particular offense," *id.*, where "the sentence is not a permitted one for the conviction upon which it was imposed," *id.*, where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012), or where the court lacked the power or authority to impose the sentence. *Johnson v. State*, 427 Md. 356, 368 (2012). Notably, however, a "'motion to correct an 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) (quoting *Wilkins v. State*, 393 Md. 269, 273 (2006)). We review *de novo* a circuit court's ruling on a motion to correct an illegal sentence. *Bratt v. State*, 468 Md. 481, 494 (2020).

Here, Mr. Kendall's sentences are not inherently illegal. First, he twice rejected the State's plea offer. And given that there was no plea agreement, the court did not bind itself to impose any particular sentence, much less a sentence within the sentencing guidelines. Prior to trial, the court took the time to ensure that Mr. Kendall understood the charges he was facing, the maximum penalties for each offense, and that, if convicted of the offenses, the sentences could be run consecutively. In fact, the court paused to ensure that Mr.

Kendall understood what "consecutive" meant. The conversation between the court and the prosecutor regarding the sentencing guidelines, both prior to and after the trial, was simply an exchange of information. No person in Mr. Kendall's position could have reasonably understood, from either conversation, that the court had agreed to impose a sentence within the guidelines.

We also find no merit to Mr. Kendall's assertion that two of his sentences – for the robberies of Ms. Grimes and Mr. Parker – should have been run concurrently with each other, presumably because they occurred in the same incident. First, as the State points out, the "rule of lenity" and "fundamental fairness" are terms that are used in the context of merger of sentences, not whether sentences should run concurrently or consecutively. But even if we assume that Mr. Kendall's argument is that these two robbery offenses should have merged for sentencing purposes, we are not convinced that merger was required in this instance.

As we noted in our direct appeal opinion, the evidence at trial established that on January 31, 2014, Ms. Grimes and Mr. Parker were working at the Dollar General Store in Rosedale when a man entered with a scarf tied around his face. *Slip op.* at 1. The man "demanded that the two employees give him money" and he "then threw them a bag and ordered them to fill it with the money." *Id.* After they complied, "the man told them that they had five seconds to get to the back of the store or he would kill them." *Id.* at 1-2. The employees did as they were directed, and the man left with the money. *Id.* at 2.

The unit of prosecution for the crime of robbery is "the individual victim from whose person or possession property is taken by the use of violence or intimidation."

Borchardt v. State, 367 Md. 91, 148 (2001). Here, there were two victims of the January 31st robbery, Mr. Kendall was charged with robbing both victims (counts 1 and 3), and the jury found him guilty of both offenses. The court, therefore, properly sentenced Mr. Kendall for each conviction and had the discretion to run the sentences consecutively. *Kaylor v. State*, 285 Md. 66, 70 (1979) (The court has the "power to impose whatever sentence it deems fit as long as it does not offend the constitution and is within statutory limits" and this "judicial power includes the determination of whether a sentence will be consecutive or concurrent, with the same limitations."). Whether counts 1 and 3 should have merged for sentencing purposes based on "fundamental fairness" is an issue Mr. Kendall could have raised on direct appeal, but it is not one that is proper in a motion to correct an illegal sentence. *See Pair v. State*, 202 Md. App. 617, 649 (2011).

Accordingly, we hold that the circuit court did not err in denying Mr. Kendall's motion to correct an illegal sentence because his sentences are legal.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.