Circuit Court for Cecil County
Case No. K-14-1735

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2343

September Term, 2015

HENRY ERIC HAMILTON

v.

STATE OF MARYLAND

Wright,
*Krauser,
Raker, Irma S.
(Senior Judge, specially assigned),

JJ.

Opinion by Raker, J.

Filed: February 14, 2018

*Krauser, J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Appellant Henry Eric Hamilton, pro-se, was convicted by a jury on March 27, 2015, of conspiracy to commit first-degree assault of Harrison Meran-Garcia and sentenced to a term of incarceration of twenty-five years. In this appeal of the circuit court's Order denying appellant's motions to correct an illegal sentence, appellant presents six questions for our review, which the State has rephrased, and we have adopted:

> 1. Did the trial court properly sentence appellant for the crime of conspiracy to commit first-degree assault, notwithstanding that he had been acquitted of conspiracy to commit robbery with a deadly weapon and other offenses?
>
> 2. Should this Court decline to consider the significance of the trial court's comment, at sentencing, that appellant would serve at least half of his sentence, pursuant to statute?
>
> 3. Did the trial court properly sentence appellant for conspiracy to commit first-degree assault, notwithstanding his assertion that he is innocent?

We find no error and shall affirm.

I.

The Grand Jury for Cecil County indicted appellant with first-degree murder of Harrison Meran-Garcia, conspiracy to commit first-degree murder of Mr. Meran-Garcia, second-degree murder of Mr. Meran-Garcia, conspiracy to commit second-degree murder of Mr. Meran-Garcia, armed robbery, conspiracy to commit armed robbery, robbery, conspiracy to commit robbery, first-degree assault of Mr. Meran-Garcia, conspiracy to commit first-degree assault of Mr. Meran-Garcia, conspiracy to commit first-degree murder of Mr. Alexander Meran, conspiracy to commit second-degree murder of Mr.

Meran, attempted first-degree murder of Mr. Meran, and attempted second-degree murder of Mr. Meran.

The circuit court granted appellant's motion for judgment of acquittal as to the following charges: first-degree murder of Mr. Meran-Garcia, second-degree murder of Mr. Meran-Garcia, first-degree assault of Mr. Meran-Garcia, armed robbery, conspiracy to commit armed robbery, robbery, conspiracy to commit robbery, attempted first-degree murder of Mr. Meran, and attempted second-degree murder of Mr. Meran. On March 27, 2015, the jury returned a verdict of guilty for the offense of conspiracy to commit first-degree assault of Mr. Meran-Garcia. The jury acquitted appellant of the following charges: conspiracy to commit first-degree murder of Mr. Meran-Garcia, conspiracy to commit second-degree murder of Mr. Meran-Garcia, conspiracy to commit first-degree murder of Mr. Meran, and conspiracy to commit second-degree murder of Mr. Meran.

Appellant noted a direct appeal to this Court. This Court affirmed the judgment of conviction. *Hamilton v. State*, No. 736, Sept. Term 2015 (filed 2018). While awaiting disposition in his direct appeal, appellant filed multiple motions to correct an illegal sentence.

See *Hamilton*, No. 736, slip op. at 2–16, for the underlying facts of the offense in this case.

Appellant filed a motion for new trial, which the circuit court heard at appellant's sentencing hearing on June 5, 2015. At the hearing, the court stated as follows:

> "I've considered all the information presented. I am going to impose a sentence of 25 years [in the] Department of Corrections. With regard to court costs including special costs, in light of the fact that [appellant] is incarcerated, I will waive those costs. *[Appellant] needs to be aware that he is required to serve at least one-half of the sentence pursuant to the Maryland Annotated Code.*"

(Emphasis added). The circuit court denied appellant's motion for new trial, and sentenced appellant to twenty-five years incarceration with the commitment Order stating he was eligible for parole.[1]

On July 24, 2015, the circuit court held a hearing on appellant's motions to correct an illegal sentence. On September 16, 2015, the trial judge denied appellant's motions.[2] This appeal of the denial of appellant's motions followed.

II.

Before this Court, appellant appears to argue that his sentence violates double jeopardy and due process of law, and hence is an illegal sentence because the elements of the offense for which he was convicted, conspiracy to commit first-degree assault, are included in other counts for which he was acquitted. He maintains that conspiracy to

[1] A person convicted of a violent crime is not eligible for parole until that person has served half of the sentence for those offenses. *See* Md. Code Ann., Corr. Serv. § 7-301(c)(1)(i) (2016).

[2] At the hearing on July 24, 2015, during which the trial court heard argument on appellant's second motion to correct an illegal sentence, the judge indicated that she had previously denied the first such motion. The judge's written Order denying the first motion, however, was dated "9/16/15," the same date as the denial of the second motion, as indicated in the docket entries.

commit first-degree assault (assault with a firearm) is a lesser included offense of armed robbery, an offense for which he was acquitted. In addition, because appellant was found not guilty of second-degree murder, "[a]ny theory of the prosecution under which the decedent, Harrison Meran-Garcia had allegedly been murdered, was therefore nullified by the jury and the court." An acquittal of any conspiracy which led to the death of the decedent while finding that appellant conspired to assault decedent, in appellant's view, was an inconsistent verdict, and therefore he was sentenced improperly in violation of the prohibition against double jeopardy.

Appellant explains that prior to the jury receiving the case for deliberation, the circuit court acquitted him of "armed robbery, and conspiracy thereto," as well as second-degree murder and conspiracy to commit second-degree murder. Further, the "indictment drew no distinction as to what conduct constituted the assault in the first degree, and the [S]tate only presented evidence as to the theory of an alleged armed robbery/murder by ambush . . . ." Appellant claims that his conviction of conspiracy to commit assault is a lesser included offense of both armed robbery and second-degree murder. As he was acquitted of both armed robbery and second-degree murder, his conviction of first-degree assault represents an inconsistent verdict, and therefore he was sentenced improperly in violation of the prohibition against double jeopardy.

Further, appellant notes that the State acknowledges that only one conspiracy existed (*i.e.*, all seven conspiracies resulted from the same initial agreement). He argues that dividing "one conspiracy" into seven conspiracy charges, and "then having the

appellant defend against the same count 7 times and obtaining a verdict following six acquittals for one conspiracy, is inconsistent with due process and subjects the appellant to double jeopardy[.]"

Appellant argues next that the circuit court erroneously imposed a fifty percent service of sentence provision, which is reserved for violent offenses, when the court stated, "[appellant] needs to be aware that he is required to serve at least one-half of his sentence pursuant to the Maryland Annotated Code." Because appellant was convicted of conspiracy to commit first-degree assault, a common law misdemeanor, appellant contends that the court's announcement converted the sentence into the underlying violent offense, thus rendering it an illegal sentence. Appellant further argues that the court failed to correct the pronouncement before appellant left the courtroom, thus subjecting the appellant to sentencing in violation of due process by subjecting him to double jeopardy.

Finally, appellant argues that he is innocent and that the State did not produce evidence showing a meeting of the minds, which is necessary to prove conspiracy. As the evidence supported his innocence, appellant argues that his sentence is cruel and unusual.

The State argues that appellant's claim regarding his acquittal of conspiracy to commit robbery and other offenses is not before this Court properly, and is, in any event, without merit. The State interprets appellant's argument as a claim of inconsistent verdicts, *i.e.*, because, prior to the jury receiving the case for deliberation, appellant had been acquitted by the court's grant of his motion for judgment of acquittal of armed robbery and conspiracy to commit armed robbery and the jury acquitted him of second-degree murder

and conspiracy to commit murder, a conviction of conspiracy to commit first-degree assault is an inconsistent verdict, and thus a violation of double jeopardy. As to any inconsistent verdict, the State maintains that this argument is not preserved for our review because there was no objection below, *see Givens v. State*, 449 Md. 433, 438 (2016), and, moreover, it is not an illegal sentence.

On the merits, the State argues that there is no merger here of offenses because appellant was acquitted of the greater offense of robbery with a deadly weapon, an offense which does not merge into first-degree assault. As appellant was convicted of the lesser offense, not the greater one, double jeopardy does not apply. Assuming that appellant is raising the common law doctrine of *autrefois acquit*, his argument fails, according to the State, because a defendant who has been indicted and acquitted of an offense may only interpose the plea of *autrefois acquit* if later charged with the same offense. First, here there are no successive prosecutions; and second, such argument is not cognizable as an illegal sentence.

Addressing appellant's claim that the circuit court erroneously imposed a fifty percent service of sentence provision, the State argues that this issue is not before this Court because appellant received relief on this claim at the circuit court level. The judge corrected her misstatement and stated that appellant would be eligible for parole as mandated by applicable Maryland law. Moreover, there is no circuit court order limiting appellant's parole eligibility and no adverse effect or impact on his commitment to the

Department of Corrections. In other words, the State contends that the circuit court corrected any mistaken applicability of the statute.

Finally, the State argues that appellant's three final claims of error all relate to a re-evaluation of the evidence presented to the jury, *i.e.*, his assertion of his innocence, and as such, are not cognizable as a motion to correct an illegal sentence. Even if they were, the State maintains they are without merit. Appellant's fifth question presented is not addressed separately in appellant's brief, and should not be considered.[3]

III.

We address first appellant's claim that the circuit court sentenced him improperly for the crime of conspiracy to commit first-degree assault, which violates protections against double jeopardy and therefore renders his sentence illegal. A motion to correct an illegal sentence pursuant to Rule 4-345(a) allows a limited exception to the general rule of finality and permits a court to correct an illegal sentence at any time, notwithstanding that: (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal. *Chaney v. State*, 397 Md. 460, 466 (2007). Rule 4-345, however, provides only a narrow exemption to the preservation requirement. *Chaney* states as follows:

[3] Appellant presents the following question:

> "Does the sentence equate to cruel and unusual punishment, where the verdict was prompted by intrusion into the jury, over objection, after questions posed by the jury were supportive of the innocence of the appellant?"

> "[T]he *scope* of this privilege, allowing collateral and belated attacks on the sentence and excluding waiver as a bar to relief, is narrow, however. We have consistently defined this category of 'illegal sentence' 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 . . . . [A]ny other deficiency in the sentence that may be grounds for an appellate court to vacate it—impermissible considerations in imposing it, for example—must ordinarily be raised in or decided by the trial court and presented for appellate review in a timely-filed direct appeal. The sentence may not be attacked belatedly and collaterally through a motion under Rule 4-345(a) . . . ."

Id. at 466–67 (2007) (internal citations omitted) (emphasis added).

The critical question is whether appellant's claims of error *inhere in the sentence* and are before this Court properly. Protections against double jeopardy prohibit (a) successive prosecutions for the same offense, and (b) multiple punishments for the same offense. *Ingram v. State*, 179 Md. App. 485, 499 (2008).

First, there are no successive prosecutions here. Second, a claim of illegal successive prosecution is not one in which the illegality inheres in the sentence itself. *Ingram*, 179 Md. App. at 488 (rejecting the argument that successive-prosecution double jeopardy caused an illegal sentence and distinguishing it from multiple punishment double jeopardy, which does inhere in the sentence). Third, although a claim of multiple sentences in a single prosecution is one in which the illegality inheres in the sentence itself, there are no multiple sentences here as appellant was sentenced on one count only. *See Britton v.*

State, 201 Md. App. 589, 592 (2011). We hold that appellant's claim is not properly before this Court as a motion to correct an illegal sentence.

Even if we were to examine this claim, we find that it fails on the merits. Appellant seems to argue that because he was acquitted of conspiracy to commit armed robbery and second-degree murder, he cannot be convicted of conspiracy to commit first-degree assault (of the assault with a firearm variety) because the offense for which he was convicted is a lesser included offense of both armed robbery and second-degree murder, offenses of which he was acquitted. Appellant is not correct.

Md. Ann. Code, Criminal Law ("C.L.") § 3-403 (2002, 2012 Repl. Vol., 2016 Supp), defines robbery with a dangerous weapon, assault with a firearm as follows:

> "(a) A person may not commit or attempt to commit robbery under § 3-402 of this subtitle:
>
> (1) with a dangerous weapon; or
>
> (2) by displaying a written instrument claiming that the person has possession of a dangerous weapon."

The common law definition of robbery is "the felonious taking and carrying away of the personal property of another from his person by the use of violence or putting in fear." *Williams v. State*, 302 Md. 787, 792 (1985). Md. Ann. Code, Criminal Law ("C.L.") § 3-202 (2002, 2012 Repl. Vol., 2016 Supp), defines assault in the first-degree, assault with a firearm as follows:

> "(2) A person may not commit an assault with a firearm, including:
>
> (i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short-barreled rifle, as those terms are defined in § 4-201 of this article;

> (ii) an assault pistol, as defined in § 4-301 of this article;
> (iii) a machine gun, as defined in § 4-401 of this article; and
> (iv) a regulated firearm, as defined in § 5-101 of the Public Safety Article."

"The common law crime of assault encompasses two definitions: (1) an attempt to commit a battery or (2) an unlawful intentional act which places another in reasonable apprehension of receiving an immediate battery." *Harrod v. State*, 65 Md. App. 128, 131 (1985).

Sentences for first-degree assault will often merge into sentences for robbery with a deadly weapon. *See, e.g.*, *Morris v. State*, 192 Md. App. 1, 7–8 (2010). The reverse, however, is not true. Appellant could have committed an assault with a firearm without having the intention to take and carry away the personal property of another. Similarly, he could have been convicted of conspiracy to murder decedent even though he was acquitted of the murder. Conspiracy to commit murder and murder are two separate offenses. In both instances appellant was convicted of the lessor offense. Therefore, merger does not apply and there is no double jeopardy violation here.

Appellant appears to argue also that the division of one conspiracy into multiple conspiracies violates double jeopardy when an individual is acquitted of all the conspiracies except one. We addressed this issue in *Hamilton v. State*, No. 736, Sept. Term 2015 (filed 2018). There, we held that because the jury convicted appellant of only one count of conspiracy, there is nothing to merge or vacate, and this argument is without merit. Our view is no different here.

IV.

We next address appellant's argument that the circuit court erroneously imposed a fifty percent service of sentence provision during the sentencing hearing, which is reserved for violent offenses.[4]

This claim has no merit. Because the record confirms that appellant's commitment Order allowed for parole and did not effectuate the court's statement at the sentencing hearing, we affirm the judgment denying appellant's motion to correct an illegal sentence.[5]

V.

Appellant's final claim relates to reevaluation of evidence, specifically that the evidence supported his innocence. Appellant's consolidated questions are as follows:

[4] Md. Code Ann., Corr. Serv. § 7-301(c)(1)(i) (2016) states that a person convicted of "violent crimes" is ineligible for parole until that person has served half of his or her sentence for those offenses. The jury convicted appellant of conspiracy to commit first-degree assault, which does not meet the statutory definition of a crime of violence, and is therefore not subject to the statutory requirement that appellant must serve at least one half of his sentence before he is eligible for parole. *See* Md. Code Ann., Crim. Law § 14-101(a). Therefore, appellant is not required to serve half of his sentence in prison before becoming eligible for parole.

[5] The State also argues that the Judge corrected any misstatement as to parole eligibility during the hearing on the motions to correct an illegal sentence, when she explained:

> "I don't believe my statement on the record required him to serve one-half of his sentence, but to the extent that it would in any way do that, I will modify indicating that [appellant], again, is eligible for parole as mandated by law."

The record, however, does not include the transcript of the hearing on appellant's motions to correct an illegal sentence. As such, we cannot address this argument, but our holding stands based on the commitment Order alone.

> "IV. Did the sentence violate double jeopardy, and due process clauses, if the sentence was based upon an alleged 'single conspiracy' (as stated by the prosecution) that appellant was acquitted of six times, and which was not supported factually by the evidence, nor instructions?
>
> V. Does the sentence equate to cruel and unusual punishment, where the verdict was prompted by intrusion into the jury, over objection, after questions posed by the jury were supportive of the innocence of the appellant?
>
> VI. Is any sentence imposed cruel and usual where appellant is innocent of the charges?"

Appellant failed to provide any argument to this Court whatsoever supporting his fifth claim of error regarding jury instructions.[6] This Court is not required to craft appellant's arguments and discern supporting facts from the record. *See Van Meter v. State*, 30 Md. App. 406, 407–08 (1976). Without any argument provided by appellant, the Court has little to consider.

[6] The entirety of support provided in appellant's brief for all three final claims of error was as follows:

> "Lastly, the appellant states for the record that he is innocent of the charge for which he was found guilty, and no evidence was ever produced showing a meeting of the minds by anyone. The state abandoned the prosecution for first degree assault and sought the plea and conviction of the alleged co-conspirator for second degree murder, for which appellant was acquitted of conspiring to. This is an attempt to maintain a conspiracy count with only one individual within the conspiracy. Appellants acquittal first of the conspiracy to second degree murder mandated the acquittal of the alleged co conspirator on the same count. Therefore, there could be no conspiracy to commit second degree murder, and Maryland does not recognize same as an offense."

The final three claims of error are not properly before this Court. An illegal sentence is cognizable under Rule 4-345(a) if the illegality "inhere[s] in the sentence itself." *Matthews v. State,* 424 Md. 503, 512 (2012). Specifically, a sentence is illegal if:

> "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). Under Rule 4-345(a), a sentence is illegal if the trial court lacked the power or authority to impose the contested sentence. *See Alston v. State,* 425 Md. 326, 339–41 (2012).

Appellant's final three claims of error challenge the merits of appellant's conviction and do not present a claim of illegality in the sentence itself. Illegality does not inhere in the sentence when the appellant's contentions rest on a procedural error or fact-finding effort undertaken by a lower court. *See Chaney*, 397 Md. at 467 (holding that a sentence is not illegal based on an argument for a lack of evidentiary foundation). Appellant's final claims of error address the sufficiency of the evidence supporting his conviction, which gets to the merits of the case, and do not purport to allege any illegality in the sentence itself. As such, we hold that appellant's final claim is not properly before this Court.

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS WAIVED.