

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2379

September Term, 2014

ANTHONY LAMONT HAGENS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 7, 2015

*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.

In 2007, a jury sitting in the Circuit Court for Charles County convicted Anthony Lamont Hagens, appellant, of possession of cocaine with intent to distribute, possession of cocaine, and possession of marijuana. The court sentenced Hagens, as a third-time offender, to twenty-five years' imprisonment, without possibility of parole, for the distribution offense and to a concurrent term of six months for possession of marijuana. Possession of cocaine merged with the distribution offense for sentencing purposes. Hagens appealed and this Court affirmed his convictions in an unreported opinion. *Anthony Lamont Hagens v. State*, No. 1290, September Term, 2007 (filed July 15, 2009).

On February 2, 2011, Hagens filed a motion to correct an illegal sentence, which the circuit court denied on February 8, 2011. In April 2013, he filed a “supplemental motion to correct an illegal sentence.”

About eleven months later, on March 24, 2014, the circuit court denied the supplemental motion finding that Hagens's motion to correct an illegal sentence had been ruled on and denied in February 2011. On May 14, 2014, October 3, 2014, October 14, 2014, and October 17, 2014, Hagens filed letters with the court regarding his supplemental motion to correct an illegal sentence. In the last of those letters, Hagens claimed that he did not receive the circuit court's March 24, 2014, order denying his supplemental motion until October 8, 2014. He included with the October 17th letter a notice of appeal of the March 24th ruling.

In this *pro-se* appeal, Hagens claims that his sentence for possession of cocaine with intent to distribute was illegally enhanced. He asserts that the State “failed to file the notice

for mandatory sentence” and that the State “relied on only one [previous] conviction” for enhancement purposes. A panel of this Court addressed the enhanced sentence issue in Hagens’s direct appeal and held that the “sentencing court did not err in imposing the mandatory sentence.” *Hagens, supra*, slip op. at 11-14.¹ Accordingly, if this appeal were properly before us, we would affirm the circuit court’s denial of Hagens’s motion to correct an illegal sentence. *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). Moreover, a procedural irregularity, like the one Hagens is asserting here, does not render an otherwise legal sentence illegal for Rule 4-345(a) purposes. *State v. Wilkins*, 393 Md. 269, 284 (2006) (to be a proper subject of a motion to correct, the “illegality must inhere in the sentence, not in the judge’s actions.”); *Pollard v. State*, 394 Md. 40, 47 (2006) (the fact that there is some procedural error in the sentencing proceeding does not establish that there

¹ The record before us reflects that, on April 4, 2006, the State filed a “Notice of Mandatory Minimum Sentence” giving Hagens notice that, because he had been convicted of two previous controlled dangerous substance offenses (which were detailed in the notice), the State intended to seek a mandatory sentence of not less than twenty-five years (without the possibility of parole) if Hagens was convicted of the possession with intent to distribute offense. The record also reflects that, on April 5, 2006, the State filed a “Subsequent Offender Notice” indicating its intent to seek an increased penalty or mandatory sentence based on Hagens’s prior convictions. Both notices included a certificate of service certifying that the notice was served on Hagens’s defense counsel.

is an illegal sentence within the meaning of Rule 4-345(a) if the error “does not inhere in the sentence itself[.]”).

The State has moved to dismiss Hagens’s appeal as untimely. Maryland Rule 8-202(a) provides that a notice of appeal “shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Rule 1-204(a) provides that a court may not extend the time for filing a notice of appeal. If an appeal is not timely filed, we have no jurisdiction to consider it and dismissal is mandated. *Lovero v. Da Silva*, 200 Md. App. 433, 449 (2011). Accordingly, we grant the State’s motion to dismiss because it is clear that Hagens’s notice of appeal, filed on October 17, 2014, was filed more than thirty days after the March 24, 2014, order denying his supplemental motion to correct an illegal sentence.

**APPELLEE’S MOTION TO DISMISS
APPEAL GRANTED. COSTS TO BE PAID
BY APPELLANT.**