Circuit Court for Harford County
Case No: 12-K-12-001461

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2463

September Term, 2018

JEFFREY DONALD FRANCE

v.

STATE OF MARYLAND

Wright,
Kehoe
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 30, 2019

*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.

Jeffery France appeals the denial, by the Circuit Court for Harford County, of his motion to correct an illegal sentence. We shall affirm because Mr. France's sentence is legal.

In 2013, Mr. France pleaded guilty to second-degree assault and was sentenced to 10 years' imprisonment, with all but 18 months suspended, to be followed by a three-year term of supervised probation. The assault victim is the mother of Mr. France's son. The sentencing court ordered Mr. France to have "no contact" with the assault victim, except in regard to "visitation and custody matters." In 2014, the court revoked Mr. France's probation, before the probationary period had begun, based on threatening letters he had sent to the assault victim from prison. The court ordered Mr. France to serve eight years and six months of his previously suspended sentence, suspending all but four years of that time, to be followed by three years' supervised probation. This time the court ordered Mr. France to have "no contact" with the assault victim, "not even with respect to the minor child." We denied Mr. France's application for leave to appeal that decision. *France v. State,* No. 2646, Sept. Term, 2014 (filed July 1, 2015).

In 2017, while still incarcerated, Mr. France sent additional threatening letters to the assault victim. Following a hearing, the court revoked Mr. France's probation and ordered him to serve the balance of his sentence, with no time suspended.

In 2018, Mr. France filed a Rule 4-345(a) motion to correct an illegal sentence in which he challenged the legality of the court's actions in 2014. The circuit court summarily denied the motion. Mr. France appeals that decision and argues that (1) the circuit court did not have the authority to revoke his probation before it began for "bad behavior or

misconduct that does not amount to a violation of the criminal law," (2) the sentencing court had erred in failing to advise him that the conditions of probation applied during his time of incarceration, and (3) the court's revocation of his probation breached the terms of his binding plea agreement. The State responds that (1) Mr. France's claims are not cognizable in a Rule 4-345(a) motion to correct an illegal sentence because his sentence is not "inherently illegal," (2) Mr. France was well aware that he was not to have any contact with the assault victim, other than regarding custody and visitation of their child, and he should have known that that directive began immediately upon sentencing, (3) Mr. France's "threatening letter" to the assault victim was evidence of criminal conduct justifying revocation of his probation and, moreover, revocation of his probation before it began was permissible when he demonstrated, after sentencing, that he was not a good candidate for probation, and (4) the court did not violate the sentencing terms of the plea agreement. We agree with the State.

Rule 4-345(a) provides that a court "may correct an illegal sentence at any time." The Rule is very narrow in scope, however, and "only applies to sentences that are 'inherently' illegal." *Chaney v. State*, 397 Md. 460, 466 (2007). In short, a sentence is inherently illegal under Rule 4-345(a) where there was no conviction warranting any sentence, *id.* at 466, where the sentence imposed was not a permitted one, *id.*, or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews v. State,* 424 Md. 503, 519 (2012). Notably, a Rule 4-345(a) motion "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)).

Mr. France's sentence is not inherently illegal and, as such, the claims he is raising are not cognizable in a Rule 4-345(a) motion. The ten-year sentence imposed in this case is a permitted penalty for second-degree assault and the plea agreement did not provide for a lesser term. Mr. France's real complaint is with the revocation of his probation while he was still incarcerated. A court, however, may revoke a defendant's probation before the probationary period begins, *see Matthews v. State,* 304 Md. 281 (1985) and *McKinney v. State,* 239 Md. App. 297 (2018), *cert. denied,* 462 Md. 573 (2019), and whether a court errs in doing so is a matter subject to appellate review upon this Court's granting of a timely filed application for leave to appeal. *See* Md. Code, Courts & Judicial Proceedings § 12-302(g). Mr. France sought and was denied appellate review of the circuit court's 2014 decision revoking his probation, a decision we shall not revisit.

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