Circuit Court for Baltimore County
Case No. K-11-002615

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2543

September Term, 2016

JAMES PEARSON

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 8, 2018

In 2012, James Pearson, appellant, pled guilty to second-degree burglary in the Circuit Court for Baltimore County and was sentenced to five years' imprisonment, to run consecutive to any outstanding sentence. Five years later, he filed a motion to correct an illegal sentence in which he asserted that his sentence was ambiguous because, after the court imposed the term of imprisonment and ordered that it was to run consecutive to any outstanding sentence, it stated that the "sentence begins today." He argued, therefore, that his sentence should be run concurrent with, not consecutive to, the sentence he was serving when sentenced in this case. The circuit court denied the motion. For the reasons to be discussed, we affirm.

BACKGROUND

On March 19, 2012, Pearson pled guilty to second-degree burglary. Before accepting the plea, the court agreed to sentence him to no more than five years' active imprisonment. Nothing was said on the record regarding whether those five years would run concurrent with or consecutive to any outstanding sentence.[1]

Sentencing was deferred until June 4, 2012. The transcript of the sentencing hearing reflects the following:

> THE COURT: The Court's sentence is five years. I will recommend the residential substa – substance abuse treatment program at the D.O.C. **That sentence is consecutive to whatever sentence he is now serving or which has been imposed on him.** I will refer any unpaid costs to the Central Collection Unit.

[1] The second-degree burglary, of a church, occurred on or about August 4, 2010. Pearson was later identified as the perpetrator based on DNA evidence. When charged in this case, Pearson was incarcerated in an unrelated case.

[DEFENSE COUNSEL]: Your Honor would you back date that sentence to the date of the detainer [that] was lodged against him? Which I'm not quite sure when that is? It should be in the Court's file. Do you know when the detainer was lodged against you in this case?

PEARSON: (INAUDIBLE) –

[DEFENSE COUNSEL]: Well, she just gave you five years.

PEARSON: (INAUDIBLE) –

THE COURT: All right, that's a case –

[DEFENSE COUNSEL]: I know that it was way before, it was before December 15th of 2011.

THE COURT: Mr. Clerk, Mr. Barney can you tell when the detainer was lodged against Mr. Pearson? There's the warrant –

[DEFENSE COUNSEL]: She gave you five years (INAUDIBLE) –

PEARSON: (INAUDIBLE)

[DEFENSE COUNSEL]: I, I don't know, maybe.

THE COURT: Mr. Pearson, I'm sorry. All right, you do have thirty days in which to petition the Court of Special Appeals for Leave to Appeal what has happened to – here today. You have thirty days in which to ask three Judges of this Court to review your sentence. I would not be one of those Judges. Those Judges could increase your sentence to the maximum, they could leave it the same or they could decrease your sentence. You also have ninety days in which to file a Motion for Modification with the Court. You have to exercise all of those rights in writing, you have to file papers with the Court.

[DEFENSE COUNSEL]: Thank you Your Honor.

THE COURT: All right. We're looking to see about this start date, if we can tell when the detainer lodged?

PEARSON: Ms. Sowers –

[DEFENSE COUNSEL]: It's Souder.

PEARSON: Ms. Souders?

THE COURT: Yes, Mr. Pearson?

PEARSON: **You said five years consecutive?**

THE COURT: **Yes.**

PEARSON: **To what I'm already serving?**

THE COURT: **Correct.**

PEARSON: So, that's – I have eighteen years now?

THE COURT: Well, just five years on this sentence. I don't know what else you have done or for what else you've been sentenced.

PEARSON: That's eighteen years.

THE COURT: But hopefully you'll get treatment in the Division of Corrections. (PAUSE) –

THE CLERK: It looks like 1/19/2011.

THE COURT: 1/19/2011? All right. This – He was serving that other sentence at that time. **The sentence begins today**.

DEFENSE COUNSEL: Thank you Your Honor.

(Emphasis added.)

Both the docket entry and the commitment record reflect a sentence of five years' imprisonment, to run consecutive to any and all unserved Maryland sentences. The courtroom clerk's "work sheet" and the court's "report" to the county sheriff also stated that the sentence imposed was five years' imprisonment, "consecutive to any/all unserved Md. sentences." Pearson did not seek leave to appeal.

More than two years after he was sentenced, Pearson sent a letter to the court. He informed the sentencing judge of various programs he had completed during his time in prison, claimed he had incurred no "infractions" while in prison, and asked the judge to consider a "modification" of his sentence. He reminded the judge that he had received "five years, and it is to run consecutive to all other sentences," and requested "relief in the form of a concurrent sentence." The court treated the letter as a motion for modification of sentence and denied it.

In May 2016, Pearson sent another letter to the sentencing judge in which he asserted that his commitment record did not reflect that his sentence was to "start that exact day of my hearing 6/04/12." He asked the judge "to correct this mistake between commitment and the judges' orders." The court treated his letter as a motion to correct the commitment record and in a three-page order filed on June 3, 2016, denied relief. The court concluded that the commitment record "correctly reflects the court's pronouncements on the record" that Pearson's sentence "is to be served consecutively to the last sentence to expire of all outstanding and unserved Maryland sentences." The court found that its "comment" made at sentencing that "the sentence begins today" "was clearly not a retraction of the court's earlier unequivocal pronouncements that the Defendant's 5-year sentence was to run consecutively," but rather "was an indication that the Defendant was not entitled to any credit for time already served." The court also noted that the commitment record included 419 days credit for time served before sentencing, which the

court determined was an error made in Pearson's favor.[2] In short, the court concluded that the commitment record correctly reflected that Pearson's sentence was to run consecutively to all outstanding Maryland sentences. Pearson did not appeal that order.

In January 2017, Pearson filed a motion to correct an illegal sentence pursuant to Rule 4-345(a).[3] He argued that his sentence was illegal because "a sentence cannot have a start date of June 4, 2012 [date of imposition] and be consecutive to another sentence regardless of what [the sentencing judge] may have intended." He pointed out that any ambiguity in a sentence must be resolved in the defendant's favor and, accordingly, argued that his sentence must be corrected to reflect that it began when imposed and thus was run concurrently with any other sentence he was then serving. The court denied the motion "for the reasons stated" in its order denying Pearson's request to correct the commitment record. Pearson then noted this timely appeal.

DISCUSSION

Pearson continues to maintain that the sentencing judge's final comment that "the 'sentence begins today' created at least an ambiguity and, even if the court intended [that statement] to be a denial of credit for time served before sentencing, that subjective

[2] The court concluded that when it sentenced Pearson on June 4, 2012, he "was already serving a different sentence" and although it "had *discretion* to award [Pearson] credit for that time spent in custody" prior to sentencing in this case, the court "chose *not* to award" the credit. The court noted that the commitment record's reflection of 419 days credit was "an error from which [Pearson] has benefitted, but which the court could correct." The court, however, chose not to make any corrections to the commitment record, thus leaving in place the 419 days credit.

[3] Rule 4-345(a) provides that a "court may correct an illegal sentence at any time."

intention does not control." The State responds that Pearson's sentence is not "inherently illegal" and, therefore, he is not entitled to the relief he seeks. Pearson replies that his claim "is cognizable under Rule 4-345(a) because the failure to properly correct his sentence will result in an illegal increase in sentence."

The correction of a sentence pursuant to Rule 4-345(a) is very narrow in scope. It applies only where "the illegality inheres in the sentence itself[.]" *Chaney v. State*, 397 Md. 460, 466 (2007). Thus, the Court of Appeals has limited the correction of a sentence under Rule 4-345(a) to those situations where there "has been no conviction warranting any sentence for the particular offense," *id.*, "the sentence is not a permitted one for the conviction upon which it was imposed," *id.*, or the sentence imposed exceeds the sentence agreed upon as a part of a binding plea agreement. *Matthews v. State*, 424 Md. 503, 514 (2012). In *Johnson v. State*, 427 Md. 356, 380 (2012), the Court of Appeals held that a Rule 4-345(a) motion was a proper vehicle for challenging a sentence that should not have been imposed because the offense upon which the defendant was convicted was not charged in the indictment, thus rendering both the conviction and the sentence illegal. None of these scenarios are present here.

Other types of error in a sentence, such as a procedural flaw or a court error committed during the sentencing proceeding, may not be raised in a Rule 4-345(a) motion. *See Tshiwala v. State*, 424 Md. 612, 619 (2012) (noting that "where the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a)."); *State v.*

Wilkins, 393 Md. 269, 284 (2006) (noting that to be subject to correction at any time, the illegality must "inhere in the sentence, not in the judge's actions.").

The sentence Pearson received for second-degree burglary was permitted because it did not exceed the statutory maximum of fifteen years' imprisonment and it did not breach the sentencing terms of his plea agreement. Pearson does not contend otherwise. Moreover, the court had the discretion to run his sentence consecutive to any outstanding sentence, a fact Pearson does not dispute. *See State v. Parker*, 334 Md. 576, 592-93 (1994) (The court's power to impose a sentence "includes the determination of whether a sentence will be consecutive or concurrent" to any outstanding sentence.).

We hold that Pearson's allegation that his sentence is ambiguous, and hence illegal because the court ordered that his sentence was to run consecutive to any outstanding sentence *and* stated that his sentence "begins today," is a contention that does not fall within the narrow concept of an inherently illegal sentence that may be corrected at any time pursuant to Rule 4-345(a). Consequently, the issue Pearson is raising is not properly before this Court.

Given that Pearson did not raise the issue in a timely filed application for leave to appeal following sentencing, the proper course of action was the one he in fact undertook, that is, to file a motion with the circuit court to correct the commitment record. When considering that request, the court concluded that the sentencing transcript was not ambiguous and denied relief. As noted, Pearson did not appeal the court's order denying his request to correct the commitment record and a motion to correct an illegal sentence "is

not an alternative method of obtaining belated appellate review[.]" *Colvin v. State*, 450 Md. 718, 725 (2016) (quotation omitted).

Even if the issue was properly before us, we would conclude that it is without merit as we perceive no actual ambiguity in the sentencing transcript. The court clearly ordered the sentence to run consecutive to any outstanding sentence. Pearson wishes us to view the court's final comment that "[t]he sentence begins today" in isolation, rather than in the context of his request for credit for time served. We decline to do so.

Moreover, any perceived ambiguity in the court's oral pronouncement of sentence was removed by the contemporaneously prepared commitment record and docket entry which both reflect a sentence of five years' imprisonment, "consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences." The courtroom clerk's "work sheet" and the court's "report" to the county sheriff, both prepared on the day of sentencing, also indicated that the sentence imposed was five years' imprisonment, "consecutive to any/all unserved Md. sentences." In *Dutton v. State*, 160 Md. App. 180 (2004), *cert. denied*, 385 Md. 512 (2005), we determined that a review of "the entire record" – the transcript, docket entry, and commitment record – dispelled any potential ambiguity that might have existed as to whether Dutton's sentence was ordered to run consecutive to or concurrent with any other sentence. *Id.* at 193-194. The same is true here.

Finally, we note that Pearson himself clearly understood that his sentence was ordered to run consecutive to his outstanding sentence. After sentence was pronounced

and Pearson was advised of his appeal and sentencing review rights, he asked the judge: "You said five years consecutive?" The judge responded: "Yes." Pearson then asked: "To what I'm already serving?" The judge replied: "Correct." And two years later, in the letter he sent to the sentencing judge requesting a modification of his sentence, Pearson acknowledged that his sentence was "five years, and it is to run consecutive to all other sentences" and he specifically requested "relief in the form of a concurrent sentence."

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