

Circuit Court for Baltimore County
Case No. 03-K-12-001530

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2656

September Term, 2016

ANTWAN DERRELL SMITH

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: March 9, 2018

*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.

Antwan Derrell Smith, appellant, was convicted by a jury in the Circuit Court for Baltimore County of attempted first-degree murder, second-degree assault, and related firearm offenses. He was sentenced to a total term of life imprisonment, with all but sixty-three years suspended, to be followed by a five-year period of supervised probation. This Court affirmed the judgments. *Smith v. State*, No. 118, September Term, 2013 (filed February 24, 2014). In 2016, Smith filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a), claiming that his sentence on a firearm offense was illegal because the court had imposed a split sentence, but no corresponding period of probation. The court denied the motion. Smith appeals that ruling. For the reasons to be discussed, we affirm.

At the February 26, 2013, sentencing hearing, the court sentenced Smith as follows:

Count number one, attempted first degree murder of Newton Adeyele, sentence life, suspend all but fifty years. *Five years supervised probation.* Count number three, use of a firearm in the commission of a felony, twenty years Department of Corrections consecutive to count number one. I'm suspending all but five years to be served without the possibility of parole in that count. Count number seven, the second degree assault, eight years to Department of Corrections, that's consecutive to counts number one and count number five.^[1] I'm not suspending any portion of this eight year sentence.

(Emphasis added.)

Remaining convictions were merged for sentencing purposes. Thus, the total term of active incarceration was sixty-three years, to be followed by a five-year period of supervised probation. The docket entry, order of probation, and commitment record all reflect the same sentencing package.

¹ The sentence on the firearm offense was consecutive to counts one and three.

In his subsequently filed motion to correct an illegal sentence, Smith maintained that his sentence on the firearm offense to twenty years, suspending all but five years (to be served without parole), was illegal because the court “failed to incorporate a period of probation, as to this specific conviction and accompanying sentence.” He relied on *Cathcart v. State*, 397 Md. 320 (2007) for the proposition that “there must be a period of probation attached to the suspended part of the sentence.” *Id.* at 327. In the absence of a period of probation, the *Cathcart* Court held that the period of incarceration is limited “to the unsuspended part of that sentence, that becomes, in law, the effective sentence.” *Id.* at 330. Smith, therefore, asserted that his firearm sentence to twenty years’, all but five years suspended, was effectively a flat sentence of five years without parole. As noted, the circuit court denied the motion.

Smith makes the same contention on appeal that he did in his motion below. His argument fails, however, because, unlike in *Cathcart*, a term of probation was, in fact, included in the sentencing package in this case. Having just ordered a period of supervised probation after pronouncing sentence on the attempted murder conviction, the court was not required, as Smith maintains, to impose an *additional* term of probation for the split sentence imposed for the firearm offense. Clearly, the term of probation that was ordered encompassed both split sentences. Accordingly, the circuit court did not err in denying Smith’s motion to correct an illegal sentence.

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