

Circuit Court for Carroll County
Case No. 06-K-13-043854

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2739

September Term, 2018

WILLIAM JOSEPH COOK

v.

STATE OF MARYLAND

Graeff,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 17, 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.

Appellant, William Cook, appeals the denial of his motion to correct an illegal sentence by the Circuit Court for Carroll County. In his motion, appellant claimed his sentence was illegal because the circuit court improperly extended his probation by three years, resulting in an illegal increase in his sentence. Appellant presents two questions which we have re-phrased and collapsed into one: Did the circuit court illegally increase appellant’s sentence?¹ Because we discern no error, we affirm.

BACKGROUND

On September 17, 2013, appellant was convicted of embezzling his minor son’s social security benefits. The circuit court imposed a suspended sentence with a five-year probationary term and ordered appellant to pay \$8,989.50 in restitution. The court subsequently reduced appellant’s probationary term to three years, effective March 24, 2014. Because the vast majority of the procedural history of this case is irrelevant to our analysis of the purely legal issue at hand, we need not here recite it. All but the final few chapters of it can be found in our unreported opinion in *Cook v. State*, No. 324, Sept. Term 2017 (filed March 13, 2018). The only significant additional procedural fact occurred on March 21, 2017, when the circuit court extended appellant’s probation by three years just

¹ Appellant presented his questions as follows:

1. Did the lower court err in extending Mr. Cook’s probation to an aggregate of six years, absent Mr. Cook’s written consent to that extension?
2. Did the lower court err in unlawfully extending Mr. Cook’s probation, past the initial three year term, absent any pending allegation of a violation of probation or notice that the court intended to take such action?

days before it was set to expire. The circuit court took that action because, at the rate appellant was paying restitution, his probation would terminate before restitution had been fully made. On November 1, 2018, appellant filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345, claiming that his sentence was illegal because the circuit court lacked the legal authority to increase the length of his probationary period. After the court denied his motion, appellant timely noted this appeal.

DISCUSSION

Appellant claims that, pursuant to Md. Code (2001, 2018 Repl. Vol.) § 6-222 of the Criminal Procedure Article (“CP”), the circuit court could not extend his probation beyond five years absent his consent. Without teasing out the minutiae of appellant’s interpretation of the statute, it is sufficient to say that he believes the General Assembly did not intend for the court to have the authority to so extend his probation in this case. We reject appellant’s argument because, in our view, the plain and unambiguous language of CP § 6-222 permitted the court to extend appellant’s probationary period.

“Statutory construction ‘begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology.’” *Kortobi v. Kass*, 410 Md. 168, 177 (2009) (quoting *Bowen v. City of Annapolis*, 402 Md. 587, 613 (2007)).

The germane portion of CP § 6-222 provides:

(b)(1) For the purpose of making restitution, the court may extend the probation beyond the time allowed under subsection (a)(3)(i) of this section for:

(i) an additional 5 years if the probation is ordered by a circuit court[.]

* * *

(c) The court may extend the probation beyond the time allowed under subsection (b) of this section if:

- (1) the defendant consents in writing; and
- (2) the extension is only for making restitution.

We agree with the State that the plain language of CP § 6-222 provides that a court may, pursuant to subsection (b), extend a period of probation for the purpose of making restitution once beyond the initial maximum term of five years in the circuit court without the defendant’s consent. Further, pursuant to subsection (c), the court may again extend probation for the purpose of restitution, but only if the defendant consents in writing. In this case, the circuit court initially placed appellant on probation for a period of five years effective September 25, 2013. The court subsequently reduced appellant’s probation to three years, effective March 24, 2014. When the court extended appellant’s probation by three years on March 21, 2017, for the purpose of collecting restitution, it clearly had the authority to do so under § 6-222(b)(1) because that section expressly permits the circuit court to extend probation for restitution purposes for “an additional 5 years.”²

Appellant’s second argument is not a model of clarity. It deals with the fact that, on September 26, 2018, when the circuit court found him in violation of the terms of his

² As part of the second argument in his brief, appellant argues that, because there was no prior notice that the court would be considering a modification of probation at the March 21, 2017 hearing, appellant was denied a meaningful opportunity to be heard. We reject this argument. Maryland Rule 4-346(b) allows a court, “on its own initiative,” to modify the duration of probation. The only requirement is that the modification be made “after giving the defendant an opportunity to be heard.” *Id.* Here, appellant was given ample opportunity to be heard at the March 21, 2017 hearing.

probation, the court then continued him on probation. Appellant claims that, because the circuit court lacked the power to extend his probation in 2017, it also lacked the power to find him in violation of probation—and to continue probation—in 2018. This second argument is premised on the correctness of his first, which we have found to be meritless. Therefore, because the circuit court lawfully extended appellant’s probation in 2017 to make restitution, it had the authority to find him in violation of that probation, and the authority to continue him on probation in 2018. Thus, appellant’s second argument is likewise without merit.³

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

³ To the extent that appellant’s second argument could be construed as an argument that the circuit court erred in finding him in violation of probation, we decline to address it. Any such argument needed to have been made in an application for leave to appeal from the violation of probation proceeding. *See* Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 12-302(g).