

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2758

September Term, 2013

BERNARD LAMONT STATEN

v.

STATE OF MARYLAND

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: July 14, 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.

This is an appeal from the denial of a motion to correct an allegedly illegal sentence. Following a court trial in the Circuit Court for Baltimore County, Bernard Staten (“Staten”), appellant, was convicted of kidnapping, robbery, second-degree assault, false imprisonment, and theft less than \$1,000. On March 14, 2011, the court sentenced Staten to a mandatory minimum sentence of twenty-five years without the possibility of parole for kidnapping, and a concurrent ten years for robbery. The remaining convictions merged for purposes of sentencing.

On November 12, 2013, Staten filed a motion to correct illegal sentence pursuant to Maryland Rule 4-345(a), and requested a hearing. On December 9, 2013, the court denied the motion without holding a hearing. On December 23, 2013, Staten filed an application for leave to appeal, which we have treated as a timely notice of appeal of the denial of his motion.

In his brief in this Court, Staten did not set out any “questions presented” as required by Maryland Rule 8-504(a)(3), but he divides his argument into four sections, from which we have distilled the following dispositive question: Did the circuit court err in denying Staten’s motion to correct illegal sentence?¹

¹ Staten captioned the sub-sections of the argument in his brief as follows:

I. The trial court erred by failing to grant a hearing on Petitioner’s motion to correct illegal sentence.

II. The trial court erred when it made a decision of denying petitioner’s

(continued...)

Because we perceive no illegality in Staten’s sentence, we conclude that the circuit court did not err in denying the motion without holding a hearing, and we affirm the judgment of the circuit court.

BACKGROUND

On March 14, 2011, Staten appeared before the trial court for sentencing. Defense counsel recapped: “Judge, as you will recall, this case was a contested Court trial in front of you. You found Mr. Staten guilty of kidnapping, robbery. The balance of the charges were merged.” Defense counsel acknowledged that he “believe[d] the State [was] going to seek 25 without parole[.]” The State responded: “Your Honor, we have filed the appropriate notice under Maryland Rule 4-245. It was served on counsel I think at least two times.” Defense counsel confirmed receipt of the notice, replying: “Yes.” “I have it.”

Thereafter, the State called Laurie Smith, a fingerprint identification technician, who testified that Staten’s fingerprint card from the present case matched the fingerprint cards in

¹(...continued)

motion to correct illegal sentence without investigating or holding a hearing to decide if said motion had merit.

III. The trial court erred when it accepted that defendant has been served the appropriate notice according to rule 4-245 without seeing evidence of the notice filed.

IV. The trial court erred by denying the petitioner his rights to due process guaranteed under the fourteenth amendment of the Constitution.

two prior cases. The State then submitted documents that “show[ed] two prior periods of incarceration . . . as well as one prior conviction,” which would qualify Staten as a three-time offender subject to an enhanced sentence under Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article (“CL”), § 14-101. Based upon the testimony and documents, the sentencing court found, beyond a reasonable doubt, that Staten had been previously convicted of the two qualifying offenses. Accordingly, the court sentenced Staten on the kidnapping count to twenty-five years without parole “[p]ursuant to the mandate of the Legislative enactment,” *i.e.*, CL § 14-101(d).

On November 12, 2013, Staten filed a motion to correct illegal sentence, arguing that his mandatory minimum sentence of twenty-five years without parole was illegal because the State did not file the required notice that it was seeking enhanced penalties. The State filed a response to Staten’s motion, and attached a copy of the notice it claimed to have provided. The court denied Staten’s motion without holding a hearing, and this appeal followed.

DISCUSSION

Staten argues that the circuit court erred by denying his motion to correct illegal sentence because, he speculates, the State did not file the subsequent offender notice required by Maryland Rule 4-245. Staten points to the lack of any docket entry confirming that the notice was given as required by Rule 4-245(c), or that the notice was filed with clerk as required by Rule 4-245(d). Based on the lack of such entries on the docket, Staten argues that

the “docket entries prove that the State never filed the notice with the court clerk[,]” and also prove that the copy of the notice which was attached to the State’s opposition to his motion to correct his sentence was “fraudulently created after the present Motion to Correct Illegal Sentence was filed.” The State responds that “Rule 4-245 does not require the clerk to make a docket entry,” and furthermore, “regardless of what the docket entries show, defense counsel admitted on the record that he was aware the State was going to seek 25 without parole and that he had been served appropriate notice under Rule 4-245.” (Internal quotation marks omitted.)

Maryland Rule 4-245 provides, in pertinent part:

(a) Definition. A subsequent offender is a defendant who, because of a prior conviction, is subject to additional or mandatory statutory punishment for the offense charged.

* * *

(c) Required Notice of Mandatory Penalties. When the law prescribes a mandatory sentence because of a specified previous conviction, the State’s Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State’s Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement.

(d) Disclosure of the Notice. After acceptance of a plea of guilty or nolo contendere or after conviction, a copy of the notice shall be filed with the clerk and presented to the court. The allegation that the defendant is a subsequent offender is not an issue in the trial on the charging document and may not be disclosed to the trier of fact without the consent of the defendant, except as

permitted in this Rule. Nothing herein shall prohibit the use of any prior conviction for impeachment purposes, if the evidence is otherwise admissible.

(e) Determination. Before sentencing and after giving the defendant an opportunity to be heard, the court shall determine whether the defendant is a subsequent offender as specified in the notice of the State's Attorney.

Here, Staten does not challenge that his prior convictions qualified him for the mandatory minimum sentence, but simply argues that he believes he was not served with the required notice because the docket entries suggest that the notice was not filed with the clerk or presented to the court. The only possible remedy provided under the rule, however, if the required notice was not provided pursuant to Rule 4-245(c), was to postpone the sentencing *unless* the defendant waived the notice requirement.

At Staten's sentencing, the State's Attorney told the court that she had filed the appropriate notice and served the notice on defense counsel. Defense counsel confirmed on the record that he received the notice and that he was aware the State was seeking a mandatory minimum sentence of 25 years without parole. Under the circumstances, where Staten's attorney indicated that he received the required notice, the requirements of Rule 4-245(c) were satisfied, and defense counsel's express statement that he was ready to proceed waived any issue regarding the sufficiency of the compliance with the notice requirements of Rule 4-245. We also note that Staten has not suggested that he was in any way prejudiced by the lack of any postponement that might have been available under Rule 4-245(c) if the notice had not in fact been timely provided.

Moreover, even if the State’s Attorney did not provide the required notice — which is not a hypothesis that is supported by defense counsel’s comments at the sentencing hearing — that would not establish an illegality *in the sentence* that would be subject to correction pursuant to a motion filed under Rule 4-345(a). The “illegality must inhere *in the sentence*, not in the judge’s actions.” *State v. Wilkins*, 393 Md. 269, 284 (2006) (emphasis added). “[T]he focus,” therefore, “is not on whether the judge’s ‘actions’ are *per se* illegal but whether the sentence itself is illegal.” *Id. Accord Pollard v. State*, 394 Md. 40, 47 (2006) (the fact that there is some procedural error in the sentencing proceeding at which the sentence is imposed does not establish that there is “an illegal sentence within the meaning of Rule 4-345(a)” if the error “does not inhere in the sentence itself”).

Here, the State produced evidence that Staten was convicted of kidnapping on March 3, 1975, and sentenced to seven years, and also produced evidence that Staten was convicted of robbery with a dangerous weapon on December 7, 2005, and sentenced to twelve years, with all but five years suspended. Because of those prior convictions — which

Staten does not deny — Staten was eligible for enhanced penalties under CL § 14-101(c).² Accordingly, Staten’s sentence was not an inherently illegal sentence.

Although Staten argues that “the lower court should have awarded a hearing on the motion,” Rule 4-345(f) provides that a hearing is required only if the court decides to “modify, reduce, correct, or vacate a sentence.” Here, where the court denied Staten’s motion

² That statute provides, in pertinent part:

(c)(1) Except as provided in subsection (f) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:

(i) has been convicted of a crime of violence on two prior separate occasions:

1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and

2. for which the convictions do not arise from a single incident; and

(ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

(2) The court may not suspend all or part of the mandatory 25-year sentence required under this subsection.

(3) A person sentenced under this subsection is not eligible for parole except in accordance with the provisions of § 4-305 of the Correctional Services Article.

to correct illegal sentence and the sentence remained the same, the court was not required to conduct a hearing.

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