Circuit Court for Baltimore County
Case No: 13-K-90-001823

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3445

September Term, 2018

WILLIAM SAVAGE

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 13, 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.

In 1990, in the Circuit Court for Baltimore County, William E. Savage, appellant, pleaded guilty to robbery with a deadly weapon, kidnapping, use of a handgun in the commission of a crime of violence, and first-degree rape. At a subsequent sentencing hearing, the court sentenced Mr. Savage to 20 years' imprisonment for robbery with a deadly weapon, a consecutive term of 30 years for kidnapping, a consecutive 20 years' for the handgun offense, and to a concurrent term of life imprisonment for the rape.

In 2018, Mr. Savage filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that the proffer of facts in support of the plea was insufficient to establish that he had committed first-degree rape, that the sentence imposed exceeded the sentencing cap provided for in the plea agreement, and that the trial court breached the plea agreement when he was not committed to the Patuxent Institution. The circuit court denied the motion. We shall affirm because Mr. Savage's sentence is legal.

Rule 4-345(a) provides that a court "may correct an illegal sentence at any time," but the Rule is very narrow in scope and is "limited to those situations in which the illegality inheres in the sentence itself[.]" *Chaney v. State*, 397 Md. 460, 466 (2007). An inherently illegal sentence is one in which there "has been no conviction warranting any sentence for the particular offense," *id.*, where "the sentence is not a permitted one for the conviction upon which it was imposed," *id.*, where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012), or where the court lacked the power or authority to impose the sentence. *Johnson v. State*, 427 Md. 356, 368 (2012). Notably, however, a "'motion to correct an illegal sentence 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)).

Here, as placed on the record of the plea hearing, the plea agreement provided that Mr. Savage would plead guilty to the aforementioned offenses and in exchange the State would *nol pros* other charges. As for sentencing, the agreement provided that the State would recommend life imprisonment and the defense would be free to argue for a lesser sentence. The court noted that Mr. Savage was facing a total term of life plus 70 years imprisonment and agreed to order a Presentence Investigation. The court, however, did not bind itself to any particular sentence and ensured that Mr. Savage understood that any sentence it imposed would be legal, unless it exceeded the statutory maximums for the offenses.

On appeal, Mr. Savage asserts that the circuit court erred in denying his Rule 4-345(a) motion and reiterates the arguments he made in that court. We find no merit to his contentions. First, his claim that the factual basis was insufficient to support the plea to first-degree rape is not a cognizable issue in a Rule 4-345(a) motion. That allegation is an attack on the underlying conviction and only indirectly on the sentence and, as such, is not properly before us. Second, his claim that the sentence imposed exceeded the sentencing cap provided for in the plea agreement is not supported by the record, as the transcript from the plea hearing establishes that the court did not agree to impose a particular sentence or to cap the period of incarceration. And third, his allegation that the court breached the plea agreement because he was not sent to the Patuxent Institution is meritless as the docket entries reflect that the court did "recommend" placement at that facility and, moreover,

nothing in the record of the plea proceeding suggests that Mr. Savage's placement at the Patuxent Institution was a term of the plea agreement. Accordingly, the circuit court did not err in denying Mr. Savage's motion to correct his sentence.

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