UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1576

September Term, 2014

DON ALEXANDER BROWN

v.

STATE OF MARYLAND

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: August 18, 2015

Don Brown, appellant, appeals from the ruling of the Circuit Court for Carroll County denying his motion to correct an illegal sentence and granting it in part. We shall dismiss appellant's appeal as untimely.

PROCEDURAL FACTS

In the beginning of 1987, appellant was charged in the Circuit Court for Carroll County of first-degree rape and related offenses. In May of that year, appellant was tried and convicted by a jury of first- and second-degree rape; first-, second- third-, and fourth-degree sexual offenses; burglary; unnatural and perverted practice; breaking and entering a dwelling; and assault and battery. On August 11, 1987, the court imposed concurrent life sentences for first-degree rape and first-degree sexual offense, and a consecutive 15 year sentence for burglary. The court merged appellant's remaining convictions except for three – third-degree sexual offense, fourth-degree sexual offense, and assault and battery – where the court "deferred the imposition of sentence." The commitment record stated that appellant was awarded credit for 248 days of pre-trial custody. We affirmed his convictions on direct appeal in an unreported opinion. *See Brown v. State*, No. 1183, Sept. Term 1987 (May 3, 1998). The Court of Appeals denied certiorari review. *See Brown v. State,* 313 Md. 505 (1988).

On June 27, 2013, appellant filed a motion to correct an illegal sentence in which he sought pre-trial credit on his life sentence. On June 17, 2014, following a hearing on May 25, 2014, the court issued a written opinion in which it denied appellant's motion but granted it as to appellant's three deferred sentences, ordering "the [c]lerk correct the

sentencing and commitment in this matter to reflect that Count Six, Count Eight and Count Ten are to be noted as 'guilty and closed effective August 11, 1987.'" The commitment record was amended the following day, June 18, but in addition to closing the sentences on those three counts it also reduced appellant's pre-trial custody credit from 248 days to "ZERO." Six weeks later, on July 30, a second amended commitment record was filed re-instituting the 248 credit days for pre-trial custody. On August 5, 2014, appellant filed a motion for application for leave to appeal.

DISCUSSION

We distill appellant's arguments on appeal to two, that the lower court erred in not granting him credit for pre-trial custody and in "closing" his deferred sentences. The State responds that we should dismiss appellant's appeal for two reasons: it was filed untimely, and appellant has failed to provide transcripts of the proceedings below. We shall dismiss appellant's appeal because it was untimely filed. We note, however, that even if appellant had timely filed his notice of appeal, we would have affirmed the lower court's ruling because appellant has failed to show any prejudice. We explain.

Md. Rule 4-345(a) permits a court to "correct an illegal sentence at any time" but only sentences that "are 'inherently' illegal." *Bryant v. State*, 436 Md. 653, 662 (2014)(citations omitted). An illegal sentence is a sentence that is "'not permitted by law.'" *State v. Wilkins*, 393 Md. 269, 273 (2006)(quoting *Walczak v. State*, 302 Md. 422, 427 (1985)). A sentence is illegal if "there either has been no conviction warranting any sentence for the particular

offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful." *Chaney v. State*, 397 Md. 460, 466 (2007)(citations omitted). Although one may file a motion to correct an illegal sentence at any time after sentencing, "the notice of appeal *shall* be filed within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a)(emphasis added). Otherwise, the appeal will be dismissed as untimely.

Here, the final judgment occurred on June 18, 2014, when the court amended the commitment record, the day after it entered its order. *See Jenkins v. Jenkins*, 112 Md. App. 390, 423 (1996)(explaining that a final judgment occurs when the court's order is an unqualified and final disposition of the matter in controversy, the court's order adjudicates all claims entirely, and the clerk makes a proper record of it in accordance with Md. Rule 2-601). Thus, appellant had until July 18, 2014 to file a notice of appeal. Appellant filed his notice of appeal, however, on August 5, 2014. Thus, we shall dismiss appellant's notice of appeal as untimely. We note that it could be argued that appellant filed his appeal within the required 30 days from when the court entered its second amended commitment record on July 30, 2014. However, because the second amended commitment record reinstated his pre-trial credit, even assuming that his arguments as to pre-trial credit and closing deferred sentences are illegalities that inhere to his sentences, we fail to see how appellant was prejudiced by the lower court's actions.

For the reasons set out above, we shall dismiss appellant's appeal.

APPEAL DISMISSED.

COSTS TO BE PAID BY APPELLANT.