

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2052

September Term, 2015

JEREMY ADEM ALI-SAID

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Reed,

JJ.

Opinion by Nazarian, J.

Filed: April 4, 2017

* 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 2003, Jeremy Ali-Said pled guilty to attempted murder in the Circuit Court for Baltimore County and was sentenced to life in prison with all but thirty-five years suspended, followed by five years of supervised probation. During sentencing, the trial court stated on the record that because attempted murder is a crime of violence, Mr. Ali-Said would be required to serve at least fifty percent of his sentence before becoming eligible for parole. Mr. Ali-Said filed a Motion to Correct Illegal Sentence in May 2015 and a “Motion to Revise The Language of Sentence” (“Motion to Revise Sentence”) in October 2015, both of which were denied. He then filed an untimely notice of appeal for the denial of the former motion, and no notice of appeal for the latter.

In this Court, Mr. Ali-Said contends that the trial court erred by concluding that he must serve at least fifty percent of his sentence before becoming eligible for parole (seventeen years and six months), when, in his view, he should be eligible for parole after serving fifteen years. Unfortunately, his appeal is not properly before us, and we dismiss it.

I. BACKGROUND

After pleading guilty to attempted murder, Mr. Ali-Said was sentenced on October 24, 2003 to life in prison with all but thirty-five years suspended, followed by five years of supervised probation. During sentencing, the trial court announced that because attempted murder was a crime of violence pursuant to Md. Code (1957, 2010 Repl. Vol.), § 643(b) of Article 27 (mandatory sentences for crimes of violence),¹ Mr. Ali-Said would not be

¹ Attempted murder is now codified at Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), § 14-101 of the Criminal Law Article (“CR”).

eligible for parole until he had served at least fifty percent of his sentence. Mr. Ali-Said's counsel did not object or otherwise react to this statement.

Since 2003, Mr. Ali-Said has made many attempts to modify or reduce his sentence. In 2009, he filed a Petition for Post-Conviction Relief, which was granted in part and denied in part. He was permitted to file a belated Motion to Modify Sentence, which he did in March 2011, and the motion was denied. On May 4, 2015, he filed a Motion to Correct Illegal Sentence that was denied on May 22, 2015, and almost five months later, on October 2, 2015, he noted an appeal from that order. Then, on October 21, 2015, he filed a Motion to Revise Sentence that asked the court to correct the sentence to eliminate any reference to his parole eligibility. The court denied that motion on November 9, 2015, and Mr. Ali-Said did not file a notice of appeal.

The State filed a Motion to Dismiss the appeal from the May 22, 2015 order, and Mr. Ali-Said opposed it.

II. DISCUSSION

Mr. Ali-Said contends that the trial court erred by denying his Motion to Revise Sentence.² The issue in that motion was the date he would become eligible for parole, and specifically how to calculate his parole eligibility for his sentence of life, all but thirty-five years suspended. On the one hand, and because attempted murder was a crime of violence under § 643(b) of Article 27, he contends that the Parole Commission is wrongfully

² Mr. Ali-Said phrased the Question Presented as follows: Did the lower court err by not granting relief of Petitioner's Motion to Revise The Language of Sentence?

requiring him to serve fifty percent of the thirty-five years executed time, or seventeen-and-a-half years, before becoming eligible. On the other hand, he contends, his sentence to life imprisonment, suspended time notwithstanding, should make him eligible for parole after he serves fifteen years. Md. Code (1999, 2008 Repl. Vol., 2016 Supp.), § 7-301(d) of the Correctional Services Article (“CS”).

The State asks us to dismiss the appeal for two reasons: *first*, because the appeal is untimely; and *second*, because there is no right to direct appeal from a denial of a motion to modify a sentence. Mr. Ali-Said counters that he should be permitted a belated appeal because he never received a copy of the State’s Opposition to his Motion to Correct Illegal Sentence, and more importantly, because he did not receive a copy of the court’s denial of the motion until July 16, 2015, well after his time to appeal had expired. As such, he asks us to “date” his appeal “forward” to November 9, 2016, the date the circuit court denied his Motion to Revise Sentence. In addition, Mr. Ali-Said urges us to consider the merits of his case because, as a *pro se* litigant, he did not know that he needed to file a new notice of appeal or an amended notice of appeal, and although he did not file either, it is clear from his brief that he intended to proceed on the appeal from the denial of his Motion to Revise Sentence. *Lastly*, Mr. Ali-Said argues that an appeal has been pending for well over eight months, both parties have filed briefs, the matter was set for argument, and the State will not suffer any prejudice if the matter is allowed to go forward.

We start with Maryland Rule 8-202, which requires notices of appeal to be filed within thirty days of the relevant judgment or order:

(a) Generally. Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.

Mr. Ali-Said missed this deadline: he filed his notice of appeal almost five months after the trial court denied his Motion to Correct Illegal Sentence. For that reason alone, we lack jurisdiction to consider the appeal. *See Walbert v. Walbert*, 310 Md. 657, 662 (1987) (“We have repeatedly stated that the timeliness of an order of appeal is jurisdictional, and that if an appeal is not filed within the prescribed time, the appellate court acquires no jurisdiction and the appeal must be dismissed.” (citation and internal quotations omitted)). But even if we had the ability to “date” his appeal “forward” to make it timely, it isn’t properly before this Court on other grounds that we discuss below.

Mr. Ali-Said’s Motion to Revise Sentence sought, in essence, to modify his sentence. Indeed, he filed it pursuant to Maryland Rule 4-345, which grants the circuit court revisory powers to modify a sentence upon a motion filed within ninety days after sentencing. As the State points out, however, he had no right to a direct appeal from a denial of a motion to modify a sentence. *See State v. Rodriguez*, 125 Md. App. 428, 442 (1999) (“As a general rule, ‘[a] motion to modify or reduce a sentence is directed to the sound discretion of the trial court and is not appealable.’” (quoting *State v. Strickland*, 42 Md. App. 357, 359 (1979))). There *is* a right to move to correct an illegal sentence. *See Smith v. State*, 31 Md. App. 310, 322 (1976) (“[I]n this State, the awesome responsibility of imposing sentence is within the exclusive domain of the trial judge . . . and thus his determination in this regard cannot be reevaluated upon appellate review unless either it is

based upon an impermissible consideration or is passed in violation of statute.” (internal citations and quotations omitted); Md. Rule 4-345(a). But this sentence wasn’t illegal when entered, and it isn’t illegal now.

Mr. Ali-Said was sentenced to life in prison with all but thirty-five years suspended, followed by five years of supervised probation. This is a legal sentence for attempted murder, *see* CR § 2-205, and Mr. Ali-Said does not argue otherwise. Rather, he asserts that the trial court incorrectly concluded that he was required to serve fifty percent of his sentence before becoming eligible for parole based on the fact that attempted murder is a crime of violence, which means that he would have to serve seventeen-and-a-half years before he is eligible for parole. Parole eligibility for crimes of violence is governed by CS § 7-301, and § 7-301(c)(1)(i) does provide that an inmate who is convicted of a crime of violence must serve at least one-half of his aggregate sentence before becoming eligible for parole. Mr. Ali-Said contends, however, that because he was sentenced to life imprisonment, the court should have announced that he would be eligible for parole after serving fifteen years in prison pursuant to § 7-301(d)(1), which provides that an inmate sentenced to life in prison must serve at least fifteen years in prison minus diminution credits before becoming eligible for parole.

Mr. Ali-Said cites *Hanson v. Hughes*, 52 Md. App. 246, 253 (1982), in which this Court addressed a similar question: whether an inmate sentenced to life imprisonment with a portion of the sentence suspended would be eligible for parole after serving fifteen years in prison or its statutory equivalent under CS § 122(b), or whether the inmate would be

eligible for parole after serving one-quarter of the unsuspended term pursuant to CS § 122(a).³ We held that where the sentence was life imprisonment, regardless of whether part of the sentence has been suspended, the inmate “has been sentenced to life imprisonment” and not merely the unsuspended part of the sentences, and thus must serve at least fifteen years in prison before becoming eligible for parole. *Hanson*, 52 Md. App. at 253 (citation omitted). Relying on the reasoning in *Hanson*, Mr. Ali-Said asks us to remand his case to the trial court and direct it to correct his sentence so that he will be eligible for parole after serving fifteen years in prison.

Whether or not he has a valid argument, this is the wrong forum for that complaint. Again, life is a legal sentence for attempted murder. The fact that the trial court announced that Mr. Ali-Said must serve fifty percent of his sentence before becoming eligible for parole does not make the sentence illegal, nor does it preclude the parole commission from considering Mr. Ali-Said for parole after fifteen years. In fact, the court’s assertion regarding parole eligibility is not even part of Mr. Ali-Said’s sentence. That is, although Md. Code (2001, 2008 Repl. Vol., 2016 Supp.), § 6-217(a) of the Criminal Procedure Article (“CP”) requires the court to state the minimum time that a defendant must serve before becoming eligible for parole when imposing a sentence for a violent crime, according to CP § 6-217(b), the announcement is purely informational and is not part of the sentence. The trial court has no control over when Mr. Ali-Said will become eligible

³ Parole eligibility is now governed by CS § 7-301.

for parole. That determination must be made in the first instance by the Parole Commission,⁴ *see* CS §§ 7–301-501, and is not before us on this posture.⁵

**APPEAL DISMISSED. COSTS TO BE
PAID BY APPELLANT.**

⁴ Mr. Ali-Said wrote to the Parole Commission asking whether he will be eligible for parole after serving fifteen years in prison. The Commission responded that it must follow the guidelines set forth in the court commitment, which states that Mr. Ali-Said is not eligible for parole until he has served at least fifty percent of his sentence, which is seventeen years and six months. The Parole Commission explained that it wrote to the trial court, stating that Mr. Ali-Said should be eligible for parole after serving fifteen years minus diminution credits, and asked the court to clarify the sentence. The court did not respond, however, and the Attorney General’s Office advised the Parole Commission to follow the court commitment.

⁵ Because we do not reach the merits of Mr. Ali-Said’s appeal, we decline to address his request that we apply the Rule of Lenity.