

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2873

September Term, 2014

ELROY MATTHEWS, JR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Berger,

JJ.

Opinion by Graeff, J.

Filed: September 14, 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, Elroy Matthews, Jr., appellant, pleaded guilty to attempted first-degree murder, two counts of first-degree assault, and use of a handgun in the commission of a felony or crime of violence. The court imposed a life sentence, all but 30 years suspended, on the conviction for first degree murder, 25 years, concurrent for each conviction of first degree assault, and 20 years, concurrent, for the handgun conviction. After the grant of partial post-conviction relief and a remand for resentencing, the Circuit Court for Baltimore County reimposed the original sentence. This Court affirmed the court's subsequent denial of appellant's motion to correct an illegal sentence, *see Matthews v. State*, 197 Md. App. 365, 386-87 (2011), but the Court of Appeals vacated the sentence, *see Matthews v. State*, 424 Md. 503, 526 (2012). Following resentencing, appellant filed a motion to correct an illegal sentence, which the circuit court denied on January 6, 2015.

On appeal, appellant presents three questions for this Court's review,¹ which we have consolidated into the following question:

¹ Appellant presented the following three questions:

A. Did the [c]ircuit [c]ourt impose a sentence in violation of the maximum sentence identified (count 5) in a binding plea agreement and thereby fixed by the agreement as the maximum sentence allowable by law. Causing [appellant's] May 16, 2012 sentence to be inherently illegal.

B. Did the [c]ircuit [c]ourt impose a sentence in violation of [appellant's] Due Process after the April 10, 2012 court order released [appellant] for trial. Effectively ending any issues at controversy and rendering [appellant's] December 3, 2003 convictions MOOT. Thereby, causing [appellant's] May 16, 2012 sentence absent a trial inherently illegal.

C. Did the [c]ircuit [c]ourt[s] failure to award [appellant] "Time Credits" for time spent in pre-trial custody while awaiting the May 16, 2012 re-

Did the circuit court err in denying appellant's motion to correct an illegal sentence?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The Court of Appeals set forth the procedural history following appellant's 2003 sentencing as follows:

[On December 3, 2003, appellant] entered a plea of guilty to charges of attempted first-degree murder, two counts of first-degree assault, and unlawful use of a handgun in the commission of a felony or crime of violence. In exchange for that guilty plea, the State agreed to: (1) enter a *nolle prosequi* to the remaining counts with which [appellant] was charged in that case; (2) enter a *nolle prosequi* to the charges in a related case; and (3) argue, with respect to the charges to which [appellant] was pleading guilty, "for incarceration within the – to the top of the guidelines range . . . [,] twenty-three to forty-three years." The State added that it would "be asking for incarceration of forty-three years That cap is a cap as to actual and immediate incarceration at the time of initial disposition." The sentencing court stated that it "agreed to cap any sentence." In addition, the court advised [appellant] that "theoretically I can give you anything from the mandatory minimum on the one count, which is five years without parole, up to the maximum of life imprisonment."

At the sentencing proceeding several months later, the State asked the court to "impose a sentence of life imprisonment, suspend all but forty-three years of that." [Appellant] requested "a split sentence and a substantial period of incarceration" and argued that "ten years is appropriate." The court sentenced [appellant] on the lead count of attempted first-degree murder to life imprisonment, with all but thirty years suspended, with concurrent sentences of twenty-five years for each of the two assault charges, and twenty years, with a mandatory five-year minimum, for the handgun charge. [Appellant] thereby received a total sentence of life imprisonment, with thirty years of it as executed time.

sentencing. Render [appellant's] convictions MOOT. Thereby, causing the May 16, 2012 sentences imposed as a result of the moot convictions to be inherently illegal.

The postconviction proceeding

Approximately eighteen months later, [appellant] filed a petition for postconviction relief, followed by an amended petition nearly twenty months later. The amended petition asserted ineffective assistance of counsel for, *inter alia*, failing to object to the State's breach of the plea agreement in requesting a life sentence with all but forty-three years suspended, instead of a total sentence of forty-three years, inclusive of any suspended portion.

The postconviction court, evidently having reviewed the transcript of the plea hearing, made a finding that the Assistant State's Attorney had said at the plea proceeding that he would recommend "forty-three years," but then, at sentencing, breached that term of the agreement by recommending "life imprisonment, suspend all but forty-three years." The postconviction court therefore concluded that [appellant] was deprived of the benefit of his bargain. Evidently the parties did not raise, and the postconviction court did not address, what the sentencing court meant by stating at the plea hearing that it had bound itself to "cap" the sentence. The postconviction court nonetheless stated in the order that the plea agreement was "not presented as a binding plea under Rule 4-243(c), [so] the trial court upon resentencing shall be free to impose whatever sentence it feels appropriate." The postconviction court issued an order granting [appellant] a new sentencing hearing.

The Re-sentencing

As is customary, the original sentencing judge presided at the re-sentencing. The Assistant State's Attorney informed the sentencing judge that the postconviction court had "ultimately determined that when I [the State] said 'Life suspend all but forty-three' as opposed to 'forty-three,' that somehow breached the plea agreement that had been reached." The State added that the postconviction court's ruling had no bearing on the legality of the sentence the court originally imposed. The State argued that the sentencing court could "turn around and impose the same very sentence that you imposed before and there would be nothing unlawful."

[Appellant] disagreed with the State's understanding of the import of the postconviction court's ruling. [Appellant], represented by counsel, argued that the court was bound at re-sentencing not to exceed a total sentence of forty-three years, with no more than thirty years of executed time. [Appellant] reasoned that the court had indicated at the plea hearing that it would "cap any sentence" in response to the State's representation that the

guidelines range was “twenty-three to forty-three years” and the State would “argue for the top.” Further, the State’s agreement to recommend “forty-three years” was intertwined inextricably with the court’s stated agreement at the plea hearing to “cap” [appellant’s] sentence. And, given that the postconviction court granted [appellant] a new sentencing proceeding because the State had breached the plea agreement by recommending life imprisonment, suspend all but forty-three years, it necessarily followed that the court’s sentence of life, all but thirty years suspended, was likewise illegal in that it violated the agreed-upon “cap” of forty three years of both executed and un-executed time. Finally, because the court’s original sentence contained only thirty years of executed time, the new sentence, capped at a total of forty-three years, could not contain more than thirty years of executed time.

The court re-imposed the original sentence of life, suspend all but thirty years, on the lead count of attempted murder, with concurrent sentences on each of the remaining three counts. The court explained why it believed it could reimpose that sentence: “[T]he Court is of the opinion I was clear at the time I accepted this individual’s plea, I was clear at the time I sentenced this individual, and that the sentence in this case that I could give [appellant] would be life on the first count suspend all but thirty years.”

Matthews, 424 Md. at 506-10 (footnotes omitted).

The Court of Appeals concluded that the terms of the plea agreement, as placed on the record at the plea hearing, were ambiguous, and the 43-year “cap” referenced by both the State and the court during the plea hearing reasonably could have been interpreted to include both active and suspended incarceration. *Id.* at 524-25. Accordingly, the Court ordered that the sentence be vacated and the case remanded for a new sentencing proceeding. *Id.* at 525. The Court further stated: “We agree with [appellant] that, at the resentencing proceeding, the court is bound not to exceed a total sentence of 43 years, with all but 30 suspended.” *Id.* at 525-26.

On May 16, 2012, on remand, the circuit court held a resentencing hearing. On the count of attempted first-degree murder (count 1), the court sentenced appellant to 43 years, all but 30 suspended. The court further sentenced appellant to concurrent 25-year sentences for the first-degree assault convictions (counts 5 & 6), and a concurrent 20-year sentence, the first five years without parole, for the conviction of use of a handgun in the commission of a crime of violence (count 11).

On November 6, 2014, appellant filed a motion to correct an illegal sentence. The circuit court denied the motion on January 6, 2015.

DISCUSSION

Appellant challenges the circuit court's denial of his motion to correct an illegal sentence on several grounds. We shall address each ground, in turn.

Appellant's first claim is that the sentence on count 5 "was illegally imposed in violation of the maximum twenty (20) year sentence identified by the court in the December 3, 2003 Binding Plea Agreement." This claim is based on the circuit court's explanation to appellant, during the 2003 plea hearing, of the nature of the charges to which he agreed to plead guilty, as follows:

You are entering a guilty plea to the first count of attempted first-degree murder, that carries up to life imprisonment; count five, first-degree assault, carries up to twenty years; count six, first-degree assault, that carries up to twenty-five years; count eleven, use of a handgun in a crime of violence, that carries twenty years with a mandatory minimum of five without parole.

The court then explained that it had agreed to "cap" appellant's sentence to no more than 43 years of incarceration.

Appellant contends that the court's subsequent imposition of a sentence of 25 years, concurrent, on count 5 violated the 20-year maximum sentence as explained by the court during the plea agreement. Appellant argues that this sentence created a "substantive illegality." We disagree.

In *Bryant v. State*, 436 Md. 653 (2014), the Court of Appeals discussed the grounds on which a sentence properly may be reviewed by an appellate court:

There are limited grounds on which a sentence may be properly reviewed by this Court despite the failure to object at the time of the proceedings. One such avenue for review . . . is Md. Rule 4B345(a), which provides that a "court may correct an illegal sentence at any time." This exception is a limited one, and only applies to sentences that are "inherently" illegal. "We have consistently defined this category of 'illegal sentence' as limited to those situations in which the illegality inheres in the sentence itself; i.e., 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."

The distinction between those sentences that are "illegal" in the commonly understood sense, subject to ordinary review and procedural limitations, and those that are "inherently" illegal, subject to correction "at any time" under Rule 4B345(a), has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings. . . . Accordingly, our inquiry . . . is whether [a] sentence itself is inherently illegal.

Id. at 662-64 (citations omitted) (footnote omitted).

To be sure, "[a] sentence in excess of [a] plea agreement" is illegal for purposes of Rule 4-345(a). *Matthews*, 424 Md. at 518-19. Here, however, the circuit court's misstatement as to the maximum allowable sentence for count 5 was not a term of the plea agreement. Instead, the only term of the plea agreement, as it related to the sentence

contemplated by that agreement, was that it would not exceed 43 years. The sentence imposed in 2012, on remand, did not exceed 43 years, and therefore, it was within the terms of the plea agreement. Appellant's contention in this regard is without merit.²

Appellant next contends that he was illegally sentenced in "violation of his Due Process Rights." This contention is based on the order of the circuit court, after the Court of Appeals vacated his sentence, which stated that he "be returned to pretrial status at the Baltimore County Correctional Center to be held without bail until trial." Appellant construes the effect of this order as the court "basically sua sponte vacated [his] guilty pleas and set his case for trial." Based on this construction of the order, he asserts that (1) the circuit court did not have "authority to impose sentence after releasing [him] by court order for a trial"; and (2) the circuit court failed to award him "time credits" for time the time he spent "in pre-trial custody" while awaiting his resentencing. Both of these actions, he asserts, resulted in his convictions being rendered moot, and any sentences thereon "inherently illegal."³

² Appellant does not argue, for good reason, that a 25-year sentence for first-degree assault is outside the maximum allowed. Appellant was charged under Md. Code Art. 27, § 12A-1, which is now codified at Md. Code (2012) § 3-202 of the Criminal Law Article, which provides for a maximum sentence of 25 years. Indeed, with respect to count 6, appellant's other first-degree assault charge, the court correctly identified 25 years as the maximum sentence allowed, and appellant does not challenge that sentence. Accordingly, as appellant implicitly recognizes, his sentence did not exceed the statutory maximum.

³ Subsequent to the filing of his brief, and in support of this contention, appellant filed a Motion For Correction of Record Pursuant to Maryland Rule 8-414, seeking to supplement the record with materials that were obtained pursuant to the Maryland Public Information Act. Maryland Rule 8-414(a), however, provides that "[t]he court ordinarily

The State contends that appellant's "claim that the circuit court somehow *implicitly* vacated his convictions should be rejected because the circuit court lacked any authority to sua sponte set aside his convictions." Moreover it asserts:

[Appellant] fails to present any authority establishing that a simple reference to a "trial," in what is otherwise a routine administrative order, will ipso facto wipe out any conviction that came before that reference. Moreover, as the Court of Appeals' mandate made clear, although [appellant's] sentence was to be vacated, his case was to be "remand[ed] to the Circuit Court for Baltimore County for **re-sentencing** consistent with this opinion." 424 Md. at 526 (Emphasis added; capitalization adjusted). Consistent with that mandate, at a hearing on May 16, 2012, [appellant] was, in fact, re-sentenced. Given that the circuit court took actions entirely contrary to how [appellant] believes the court's order should be interpreted, it is absurd to suggest that the circuit court, through its order, intended to sua sponte vacate his prior convictions. And again, it is unclear how the simple use of the term "trial," in an administrative order designed to facilitate the proper transfer of a prisoner, could somehow morph, without more, into a substantive and dispositive order wiping out convictions that had been secured several years prior.

We agree.

Appellant does not cite any authority in support of his contention that the circuit court somehow set aside his convictions by its order directing that he be returned to the Baltimore County Correction Center and held without bail "until trial." *See Ubom v. SunTrust Bank*, 198 Md. App. 278, 285 (2011) (refusing to address argument because appellants failed to cite any legal authority to support their contention of error).

may not order an addition to the record of new facts, documents, information, or evidence that had not been submitted to the lower court." Accordingly, we deny appellant's motion.

Nor can we envision any circumstance in which the use of the words “until trial” in an order facilitating the transfer of a prisoner amounts to an order vacating a defendant’s convictions and rendering them “moot.” This contention is devoid of merit.

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