

Circuit Court for Howard County
Case Nos.: 13-K-16-057342,
13-K-17-057524, & 13-K-17-058273

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

Nos. 101, 102, & 103

September Term, 2023

EDWARD WITHERSPOON

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 28, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

In 2017, across three cases in the Circuit Court for Howard County, Edward Witherspoon, appellant, was convicted of multiple sex crimes and related offenses.¹ We previously affirmed those convictions.² Six years later, Witherspoon filed identical motions for correction of illegal sentence in each case alleging defects in the indictments. The circuit court denied those motions. These appeals followed.³

On appeal, Witherspoon contends his sentences are illegal,⁴ first, because the indictment by which he was charged was not signed by the foreperson of the grand jury and does not contain Witherspoon’s name on the second page. He alternatively argues that there was “no grand jury held in open court or otherwise.” Neither argument presents a cognizable claim of sentence illegality.

¹ Juries convicted Witherspoon in 13-K-16-057342 of second-degree assault and in 13-K-17-058273 of second-degree rape and related offenses. He was also convicted of a second-degree sex offense, kidnapping, and related offenses in 13-K-17-057524 after a bench trial.

² *Edward Witherspoon v. State of Maryland*, 1476 Sept. Term, 2017 (filed Oct. 15, 2018), *aff’g* 13-K-16-057342; *Edward Witherspoon v. State of Maryland*, 1475 Sept. Term, 2017 (filed Jan. 18, 2019), *aff’g* 13-K-17-057524. Witherspoon withdrew his direct appeal in 13-K-17-058273 prior to a decision from this Court.

³ Although Witherspoon’s underlying convictions involve separate events and different victims, the records for purposes of this appeal are identical across all three circuit court cases: Witherspoon filed a single motion listing all three case numbers, and the court denied them all in a single order. Further, Witherspoon’s briefs in this Court are also identical across all three appeals. In the interest of judicial economy, we will therefore address them in a single opinion.

⁴ Although Witherspoon titled his appeal paper in each case as an “Application for Leave to Appeal,” this Court opened direct appeals because “the denial of a motion to correct an illegal sentence is appealable.” *Hoile v. State*, 404 Md. 591, 617 (2008).

We review the denial of a motion to correct an illegal sentence *de novo*. *Johnson v. State*, 467 Md. 362 (2020). But our review is limited to whether a sentence is “intrinsically and substantively unlawful.” *Chaney v. State*, 397 Md. 460, 466 (2007). It does not encompass every “form of error or alleged injustice” that might have led to the sentence. *Matthews v. State*, 424 Md. 503, 513 (2012). Alleged procedural flaws, for example, are not reviewable as illegal-sentence claims. *State v. Wilkins*, 393 Md. 269, 273 (2006).

To be sure, if a charging document fails to show jurisdiction in the court or to charge the offense for which the defendant was sentenced, the sentence would be illegal and reviewable as such. *See Shannon v. State*, 241 Md. App. 233, 241 (2019); *Middleton v. State*, 238 Md. App. 295, 298 n.1 (2018). But Witherspoon’s claims of missing signatures and irregularities in the grand jury procedure, even if true, would not deprive the court of jurisdiction.⁵ *See State ex rel. Swietkoski v. Swenson*, 195 Md. 707, 710 (1950) (“[T]he lack of signature [on the indictment] does not go to the jurisdiction[.]”); *Gillespie v. State*, 147 Md. 45, 65 (1924) (holding that missing foreperson’s signature did not deprive court of jurisdiction or establish failure to properly return indictment in open court). They,

⁵ We note that the circuit court found that the foreperson’s signature had been redacted from Witherspoon’s copy of the indictment, as is the court’s practice to protect the confidentiality of the grand jury, but would appear on the original. The court also found that the second page—which Witherspoon alleged did not contain his name—was an advice of rights, not part of the indictment itself, and was not required to also contain Witherspoon’s name, since it was addressed “To the Person Charged.” Thus, even if Witherspoon’s claims were cognizable, they lack merit, and we would nevertheless affirm.

therefore, are not cognizable illegal-sentence claims, and the circuit court, thus, did not err in denying Witherspoon’s motions.⁶

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

⁶ There are several additional filings outstanding in this matter. In all three appeals: (1) Witherspoon’s “Motion to Vacate Inherent Illegal Sentences[;]” (2) his “Motion for a Hearing for Immediate Release from Involuntary Incarceration[;]” and (3) his “Motion for Hearing to Vacate Inherent Illegal Sentence[.]” Further, in ACM-REG-102-2023, is Witherspoon’s “Motion for a Hearing to determine Whether the Appellant is in Violation of Md. Rule 1-332[.]” And in ACM-REG-103-2023 are Witherspoon’s “Motion[s] for a Hearing to Determine Whether the Appellant is in Violation of Md. Rule 1-311[.]” Finally, there are Orders to Show Cause to this Court pending in case nos. 102 and 103. In light of our analysis here, we deem all these matters moot.