

Circuit Court for Montgomery County  
Case Nos. 79416C, 79898C, 79517C

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0422

September Term, 2020

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LAMONT GORDON

v.

STATE OF MARYLAND

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Nazarian,  
Reed,  
Shaw Geter.

JJ.

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Opinion by Reed, J.

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Filed: August 19, 2021

\*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.

On June 2, 1997, Lamont Gordon (“Appellant”) pled guilty pursuant to a binding plea agreement on charges from three separate cases. On July 18, 1997, Appellant was sentenced as follows:

In case 79416C, on Count 1, robbery with a dangerous and deadly weapon, Appellant was sentenced to 20 years to run consecutive to an unrelated case. In case 79517C, on Count 1, robbery with a dangerous and deadly weapon, Appellant was sentenced to 20 years to run consecutive to 79416C sentence; on Count 3, second-degree assault, Appellant was sentenced to 2 years to run concurrent with Count 1; on Count 7, carrying a concealed weapon, Appellant was sentenced to 2 years to run concurrent with Counts 1 and 3. Finally, in case 79898C, on Count 1, robbery with a dangerous and deadly weapon, Appellant was sentenced to 20 years to run concurrent with 79517C sentence. Per the terms of the binding plea agreement, the State nol prossed the remaining counts in case 79517C and agreed that Appellant would not be prosecuted for eight other armed robberies he allegedly committed.

On February 13, 2020, Appellant filed a Maryland Rule 4-345(a) Motion to Correct an Illegal Sentence, challenging the validity of his convictions on several grounds. In its response, the State asserted Appellant’s arguments were meritless and contained futile claims that had been rejected by multiple judges in previous filings. The Circuit Court for Montgomery County entered a written memorandum on June 11, 2020 denying Appellant’s Rule 4-345(a) motion. On June 25, 2020 Appellant filed his notice of appeal.

In bringing his appeal, Appellant presents three question, which we have condensed into one<sup>1</sup>:

- I. Did the circuit court err in denying Appellant’s Motion to Correct an Illegal Sentence?

For the following reasons, we answer in the negative and affirm the decision of the circuit court.

### **FACTUAL & PROCEDURAL BACKGROUND**

#### a. Convictions and Sentencing

One June 2, 1997, at a plea hearing in the Circuit Court for Montgomery County, Appellant pled guilty in three separate cases to three counts of robbery with a dangerous and deadly weapon, one count of second-degree assault, and one count of carrying a concealed weapon. Per the binding plea agreement, in exchange for Appellant’s guilty plea on these counts, the State nol prossed the remaining charges and agreed not to prosecute Appellant for eight other robberies he allegedly committed. At a sentencing hearing on July 18, 1997, Appellant was sentenced as follows:

Case No. 79416C- Count 1: robbery with a dangerous and deadly weapon, 20 years to run consecutive to unrelated case No.77918C

Case No. 79517C – Count 1: robbery with a dangerous and deadly weapon, 20 years to run consecutive to case No.79416C; Count 3: second degree

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<sup>1</sup> Appellant presents the following questions on appeal

1. Did the circuit court interfere with the binding plea agreement by sentencing Petitioner Gordon to prison for 16 years above the four (4) years active jail time the State agreed to as part of the plea agreement?
2. Did the [circuit] court improperly sentence Petitioner Gordon based upon the use of a “deadly weapon” although a “BB GUN” was used in the robberies?
3. Was the plea agreement “knowing and intelligent?”

assault, 2 years to run concurrent with Count 1; Count 7: carrying a concealed weapon, 2 years to run concurrent with Counts 1 and 3

Case No. 79898C- Count 1: robbery with a dangerous and deadly weapon, 20 years to run concurrent with sentence for No. 79517C

b. Post-Sentencing Procedural History from 1997-2020

Appellant then filed numerous motions and petitions following his conviction which included an Application for Leave to Appeal filed August 8, 1997; Motion for Reconsideration of Sentence filed September 18, 1997; Motion for Reduction and/or Modification of Sentence filed October 16, 1997; Motion for Appropriate Relief filed November 28, 2006; and an Application for Sentence Review Panel filed April 26, 2007. Appellant's initial Petition for Post-Conviction Relief was filed on July 26, 2007. After the State's response was filed on August 9, 2007, a hearing was held October 20, 2007 where the circuit court dismissed Appellant's petition on the grounds that it was filed more than ten years after his sentencing and was thus time barred.<sup>2</sup> Appellant's Leave to Appeal denial of the petition was denied on October 31, 2008.

Appellant subsequently filed additional motions and petitions over the years: a Petition for Post-Conviction Relief filed October 7, 2008; Application for Leave to Appeal filed December 1, 2008; Petition for Writ of Habeas Corpus filed January 18, 2011; Motion

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<sup>2</sup> In the Circuit Court for Montgomery County, Judge William J. Rowan III entered a Statement of Reasons and Order of the Court dismissing Appellant's petition for the following reason: "Under Section 7-103(b) of the Criminal Procedure Article of Maryland Code, any defendant sentenced after October 1, 1995 is required to file the Petition within 10 years of the sentencing date. Since Defendant filed his Petition for Post-Conviction Relief more than 10 years after his sentencing, it is time barred and will not be considered by this Court."

for Commitment to the Department of Mental Health and Hygiene (DMHH) filed August 12, 2015; Motion to Modify Sentence filed November 2, 2016; Motion for Commitment to DMHH filed June 2, 2017, October 19, 2017 and January 23, 2019; Application for Leave of Appeal, Petition for Writ of Habeas Corpus, and Petition for Post-Conviction Relief all filed September 9, 2019 and; Motion for Appropriate Relief and Petition for Writ of Habeas Corpus both filed February 13, 2020.

c. Current Procedural Posture and Present Appeal

In addition to his Motion for Appropriate Relief and Petition for Writ of Habeas Corpus, Appellant also filed, pro se, a Motion to Correct Illegal Sentence in the Circuit Court for Montgomery County on February 13, 2020. In his motion, Appellant argued his sentence was illegal because the State “improperly charged and convicted” him for use of a dangerous and deadly weapon when he did not have one. Appellant also asserted a litany of other errors rendering his sentence illegal such as his plea was not knowing and voluntary, ineffective assistance of counsel, Miranda violations, and that the trial judge failed to allow him to withdraw his plea despite the illegality of the sentences. Appellant alleged the prosecutor failed to object when the judge sentenced him outside the 8-24-year guideline of the plea agreement.

In its response, the State alleged Appellant’s motion merely mirrored arguments he raised in past filings which were rejected by the circuit court. The State argued that, like his prior petitions, this motion was time barred and Appellant failed to allege any claims to support he received an illegal sentence. On June 11, 2020, the circuit court issued a memorandum, denying Appellant’s motion. In doing so, the circuit court explained that

Appellant primarily sought relief from alleged procedural errors, not an illegal sentence:

The memorandum submitted by Petitioner in support of his motion mentions the voluntariness of his plea, ineffective assistance of counsel, prosecutorial misconduct, Miranda Rights violations, [and] violations by the trial judge. The only part that specifically addresses the sentence is where Petitioner asserts that “the prosecutor offered a range of 8 to 24 but the Judge went outside of the sentencing guidelines.”

The sentencing guidelines permitted a sentence of twenty-five (25) and a half to forty-four (44) years imprisonment. The court sentenced Petitioner to forty (40) years of executed incarceration. The sentence is not illegal.

Appellant filed a pro se notice of Appeal on June 25, 2020 challenging the circuit court’s denial of his Motion to Correct an Illegal Sentence.<sup>3</sup>

#### STANDARD OF REVIEW

We review the denial of a motion to correct an illegal sentence de novo. *Rainey v. State*, 236 Md. App. 368, 374 (2018) (citing *Blickenstaff v. State*, 393 Md. 680, 683

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<sup>3</sup> On November 6, 2020, Appellant, through counsel, filed a brief challenging the circuit court’s February 26, 2020 denial of his Petition for writ of habeas relief. On December 1, 2020, the State filed a Motion to Dismiss or Extend Time, arguing appellants challenge of the denial of his petition is not cognizable under the law and even if it were, the appellant’s appeal is untimely. On December 23, 2020 this Court ordered Appellant to show cause why the appeal should not be dismissed as not allowed by law and/or untimely as argued by the State. Through counsel, Appellant filed his “Response to Show Cause Order,” asserting his notices of appeal were timely as to the circuit court’s June 11, 2020 and July 6, 2020 order. However, Appellant did not address the challenge that denial of a petition for writ of habeas corpus is not appealable without an exception, none of which apply to this appeal. Accordingly, this Court issued an Order on February 2, 2021, stating the Order to Show Cause was satisfied; granting the State’s Motion as to the extension of time but denying as to the request to dismiss; and ordering Appellant to file a new brief limited to the issue of whether the circuit court properly denied his February 13, 2020 Motion to Correct an Illegal Sentence.

(2006)). Maryland Rule 4-345(a) provides that a court “may correct an illegal sentence at any time” but is “limited to those situations in which the illegality inheres in the sentence itself[.]” *Chaney v. State*, 397 Md. 460, 466 (2007). A sentence is inherently illegal if the sentence exceeds the terms of a binding plea agreement, *Matthews v. Johnson*, 424 Md. 503, 519 (2012); if the court lacked authority to impose the sentence, *Johnson v. State*, 427 Md. 356, 368 (2012); if “there 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 of and, for either reason, is intrinsically and substantively unlawful.” *Chaney*, 397 Md. at 466.

## DISCUSSION

### A. Parties’ Contentions

Appellant makes several contentions in support of his argument that the circuit court erred in denying his motion to correct an illegal sentence. First Appellant contends that the prosecutor offered a cap of four years, which was accepted by the circuit court, but completely disregarded at sentencing. Next, along the same lines, Appellant contends he only entered the plea of guilty under the expectation that his sentence would be “restricted to the scope of the State’s allocution: 4 years of active jail time.” As such, Appellant argues his plea was not knowing and intelligent. Appellant proffers the breach of the plea agreement renders his sentence illegal and it must be remedied by allowing him to choose whether he will withdraw his guilty plea or demand specific performance. Finally, Appellant contends the circuit court imposed an illegal sentence for use of a deadly weapon because the State failed to prove the “BB gun” used in the robberies was a dangerous and

deadly weapon.

The State countered Appellant was fully aware that the binding plea agreement specified a sentencing cap of 40 years' incarceration. Specifically, the State asserts that Appellant was fully advised by defense counsel that the plea agreement contemplated a cap of 40 years and, despite any errors in the transcript, the record supports the Appellant knowingly and intelligently accepted the State's offer of 40 years. The State also contends that Appellant's challenge to the sufficiency of the evidence related to the "BB Gun" is not cognizable under a 4-345(a) motion and, even if it was, this claim is meritless because the evidence presented was sufficient to satisfy the dangerous weapon element.

## **B. Analysis**

### Laches Defense

As a preliminary matter, we shall address Appellant's challenge to the State seeking to correct the record. The State filed a motion to correct the transcript from Appellant's plea hearing held on June 2, 1997. A transcriptionist listened to the court recording from the plea hearing and confirmed the references to 4 years in the original transcript were errors. We granted the State's motion and allowed the corrected transcript to be filed as part of the record in this appeal. However, we specified in our order that inclusion of the corrected transcript does not mean it is accurate and both parties are free to challenge the legitimacy of each.

Under Md. Rule 8-414(a) this Court has the authority to correct "a material error or omission in the record." The party moving for a correction must specify which "parts of the record ... are ... erroneous." Md. Rule 8-414(b)(1). A motion that "is based on facts not contained in the record ... and not admitted by all the other parties shall be supported by affidavit." *Id.* If this



Court is unable to “resolve the dispute over what occurred in the lower court, the appellate court may direct the lower court to determine whether the record differs from what actually occurred.” Md. Rule 8-414(b)(2). If appropriate, the lower court can then “conform the record accordingly.”

*State v. Christian*, 463 Md. 647, 652 (2019). Appellant has already challenged the State’s corrected transcript in his reply brief. He asserts the defense of laches, claiming the State slept on their rights and after over 20 years of post-conviction litigation, the State should have known about the discrepancy and cannot now try to correct the transcript.

The equitable affirmative defense of laches applies where (1) an “unreasonable delay in the assertion of one party’s rights” (2) “results in prejudice to the opposing party.” *Jones v. State*, 445 Md. 324, 339 (2015) (cleaned up). “The passage of time, alone, does not constitute laches but is simply one of the many circumstances from which a determination of what constitutes an unreasonable and unjustifiable delay may be made.” *Buxton v. Buxton*, 363 Md. 634, 645. (cleaned up). What amounts to prejudice sufficient to sustain a laches defense is more straightforward: “*anything* that places [the party asserting the defense] in a less favorable position.” *Buxton*, 363 Md. at 646.

A “delay,” for purposes of laches, “begins when an individual knew or should have known of the facts concerning the alleged error.” *Jones v. State*, 445 Md. at 345, (2015). Significant to this analysis is when the State knew or should have known the transcript was in error. Prior to this appeal, all of Appellant’s filings have cited to the transcript to highlight the prosecutor’s statements about the BB Gun in an effort to establish Appellant did not have a deadly weapon. Appellant never cited to the transcript to suggest the Judge and Prosecutor both told him the plea agreement capped his sentence max at 4 years.

Considering this is the first time the State has been made aware of this alleged error, the motion to correct the transcript was not delayed and thus is not barred by laches.

Sentencing Max Per the Binding Plea Agreement

In his brief, Appellant relies on the original transcript from the June 2, 1997 plea hearing, where he identifies specific instances the prosecutor or judge told him his sentence was capped at 4 years, to argue his motion to correct an illegal sentence should have been granted by the circuit court. However, we note that Appellant's Motion does not make this specification. In his motion, Appellant asserts the sentencing guidelines agreed to by defense counsel and the State was 8-24 years. Further, Appellant's motion only cites to the original transcript to support his contention that he did not have a deadly weapon and as such was improperly convicted and sentenced on those counts. Despite the variations in how long Appellant alleges his sentence is capped at, he consistently argues that he received a sentence in excess of the binding plea agreement so we shall extend appellate review over the issue.

Appellant's Motion alleges the prosecutor and circuit court judge engaged in multiple violations of his rights and even asserted his Miranda rights had been violated at the time of his arrest. The State argues such allegations are not cognizable under a 4-345(a) Motion. We agree. The Court of Appeals has made it very clear that the scope of Rule 4-345(a) is narrowly applied to the illegality of a sentence itself, not matters collateral to the sentencing:

[W]hether a sentence illegality is cognizable under Rule 4-345(a) depends *solely* on whether the illegality inheres in the sentence itself, and *not* on the timing of the claim of illegality or the procedural posture of

the case. If the sentence is inherently illegal, then correction of the illegality can be done by way of a motion brought pursuant to Rule 4–345(a). And, again to be clear, a sentence imposed in violation of the maximum sentence identified in a binding plea agreement and thereby “fixed” by that agreement as “the maximum sentence allowable by law,” is, as we held in *Dotson*, an inherently illegal sentence. 321 Md. at 524, 583 A.2d at 714.

*Matthews v. State*, 424 Md. 503, 519 (2012). Appellant’s Motion, and his appellate brief, allege specific procedural violations, which we find are without merit. We shall start with the sentencing maximum under the binding plea agreement. As previously stated, Appellant’s motion alleges the sentencing cap was to fall between 8-24 years. His brief, on the other hand, alleges the cap was 4 years. From the record, we can see Appellant has consistently alleged the cap imposed on his sentence is illegal due to errors of the trial court in relation to the imposition of a cap and his ineffective representation from defense counsel.<sup>4</sup> It is for the first time in his appellate brief that Appellant raises the notion that the prosecutor offered, and the court accepted, a plea agreement that would sentence him to a maximum of 4 years’ incarceration.

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<sup>4</sup> In Appellant’s first application for Leave to Appeal filed pro se on August 8, 1997, he alleged his attorney misled him to believe “the state wouldn’t ask for the binding cap of 40 years.” Here, we see Appellant concedes the binding cap agreed upon by both parties and clearly explained to him was 40 years’ incarceration. Appellant’s Petition for Post-Conviction Relief filed pro se on July 26, 2007 alleged ineffective assistance of counsel rendered his plea not knowing and intelligent but makes no mention of the binding plea agreement being violated. Appellant’s Supplemental Petition for Post-Conviction Relief, filed pro se on October 8, 2008 completely omits reference to the sentencing max and alleges defense counsel and the trial court failed to inform him of the elements of the charges he was pleading guilty to. Over ten years later in his Petition for Writ of Habeas Corpus filed with the assistance of counsel on September 9, 2019, Appellant made allegations of ineffective assistance of counsel and asserted the sentencing cap contemplated by the binding plea agreement was 8-24 years. He continuously asserts this as the cap in his motions and petitions into 2020.

We are not convinced Appellant believed the cap was less than 40 years or that his plea was anything but knowing and intelligent for several reasons. First, the circuit court considered the memorandum signed and submitted by the prosecutor and defense counsel, which contemplated a sentencing cap of 40 years. Next, Appellant cites to two portions of the original transcript where the prosecutor asked the circuit court to accept a sentence cap of 4 years and the circuit court obliged. The elephant in the room has to be the fact that Appellant relies on two instances where the prosecutor and/or judge mentions his sentence will be capped at 4 years but he completely ignores the times in the original June 2, 1997 transcript where the trial judge and prosecutor mention 40 years, as well as the transcript from day of sentencing on July 18, 1997.

Appellant seeks to convince this court that these two brief instances left him with the understanding that he would not be sentenced beyond 4 years. We find it implausible that Appellant would receive a 4-year sentence considering the nature of the offenses and his failure to ever assert, in more than 20 years, that he should have only served a 4-year sentence. The record in its entirety, including Appellant's own prior filings, suggests he knowingly and intelligently accepted the plea with a max sentence of 40 years.

#### Dangerous Weapon Element

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 *State v. Wilkins*, 393 Md. 269, 273 (2006)). As stated before, Appellant's Motion and brief raise many of the same issues he set forth in prior petitions for habeas relief and motions for

post-conviction relief. That includes his argument that the prosecutor improperly charged him with use of a deadly and dangerous weapon.

Appellant has consistently made allegations of prosecutorial misconduct as well as violations by the trial judge for sentencing him based on the deadly and dangerous weapon charge when he had a BB Gun. However, this argument is focused on whether the State met its burden in establishing the elements of this charge. As pointed out by the State, it is a sufficiency of the evidence claim. Appellant heard the State outline the charges and heard the facts it proffered it would have proven at trial. He accepted those facts and the State's narrative. To challenge it is to raise a procedural challenge that does not go to the illegality of the sentence. For these reasons, this argument is not cognizable under a Rule 4-345(a) motion and we shall not consider it.

#### CONCLUSION

Accordingly, we affirm the circuit court's denial of Appellant's Motion to Correct an Illegal Sentence.

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