Circuit Court for Baltimore County
Case No. 03-K-90-001823

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 830

September Term, 2023

WILLIAM ERIC SAVAGE

v.

STATE OF MARYLAND

Friedman,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 6, 2024

*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.

William Eric Savage, appellant, appeals from the denial, by the Circuit Court for Baltimore County, of a motion to correct illegal sentence. For the reasons that follow, we shall affirm the judgment of the circuit court.

Mr. Savage and his brother, Anthony Robert Savage (hereinafter "Anthony"), were charged in the circuit court, case numbers 90-CR-1823 and 1822 respectively, with robbery with a deadly weapon, kidnapping, use of a handgun in the commission of a crime of violence, first degree rape, and related offenses. On June 11, 1990, Mr. Savage and Anthony appeared before the court for a plea hearing. The plea agreement provided that Mr. Savage and Anthony would each plead guilty to robbery with a deadly weapon, kidnapping, use of a handgun in the commission of a crime of violence, and first degree rape. The State agreed to recommend for both Mr. Savage and Anthony a sentence of "life in prison," with the "defense . . . free to argue for less." The State also agreed that "at the time of sentencing," it would enter a nolle prosequi as to the remaining counts against Anthony, and as to Mr. Savage, enter a nolle prosequi to "other cases" against him, specifically case numbers 90-CR-1709 through 1712. The prosecutor further stated: "I did tell [defense counsel] that I would reserve the right to inform the [c]ourt of the facts of those cases."

During the plea colloquy, the "court noted that Mr. Savage was facing a total term of life plus 70 years imprisonment and agreed to order a Presentence Investigation." *Savage v. State*, No. 3445, September Term, 2018 (filed November 13, 2019), slip op. at 2. "The court, however, did not bind itself to any particular sentence and ensured that Mr. Savage understood that any sentence it imposed would be legal, unless it exceeded the

statutory maximums for the offenses." *Id.* The court also ensured that Mr. Savage understood that "for purposes of sentencing, [the prosecutor had] reserve[d] the right to bring to [the court's] attention the criminal conduct that [Mr. Savage was] charged with in those other cases."

During the statement of facts, the prosecutor stated, in pertinent part, that Mr. Savage and Anthony had forced one of the victims to engage in fellatio, vaginal intercourse, anal intercourse, and other sexual acts. The court subsequently accepted Mr. Savage and Anthony's pleas and convicted them of the offenses. "At a subsequent sentencing hearing, the court sentenced Mr. Savage to 20 years' imprisonment for robbery with a deadly weapon, a consecutive term of 30 years for kidnapping, a consecutive 20 years' for the handgun offense, and to a concurrent term of life imprisonment for the rape." *Id.* at 1.

> In 2018, Mr. Savage filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that the proffer of facts in support of the plea was insufficient to establish that he had committed first-degree rape, that the sentence imposed exceeded the sentencing cap provided for in the plea agreement, and that the trial court breached the plea agreement when he was not committed to the Patuxent Institution. The circuit court denied the motion.

Id. at 1. We affirmed the circuit court's judgment for three reasons. *Id.* at 2.

> First, [Mr. Savage's] claim that the factual basis was insufficient to support the plea to first-degree rape is not a cognizable issue in a Rule 4-345(a) motion. That allegation is an attack on the underlying conviction and only indirectly on the sentence and, as such, [was] not properly before us. Second, his claim that the sentence imposed exceeded the sentencing cap provided for in the plea agreement is not supported by the record, as the transcript from the plea hearing establishes that the court did not agree to impose a particular sentence or to cap the period of incarceration. And third, his allegation that the court breached the plea agreement because he was not sent to the Patuxent

> Institution is meritless as the docket entries reflect that the court did "recommend" placement at that facility and, moreover, nothing in the record of the plea proceeding suggests that Mr. Savage's placement at the Patuxent Institution was a term of the plea agreement.

Id. at 2-3.

On May 16, 2023, Mr. Savage filed the instant motion to correct illegal sentence, in which he contended that his sentence is illegal because the "plea agreement was breached." The motion is confusing, but Mr. Savage appeared to contend that when the prosecutor agreed to enter a nolle prosequi in a case in which Mr. Savage was charged with engaging in anal intercourse with the victim mentioned by the prosecutor at sentencing, the case "no longer existed." Mr. Savage appeared to further contend that when the prosecutor mentioned that act during the statement of facts, he "reinstated" the case and "used [it] for further prosecution," thus breaching the plea agreement. Mr. Savage further contended that the prosecutor could "not reserve the right to describe criminal conduct . . . that no longer existed." The court denied the motion.

Mr. Savage contends that, for numerous reasons, the court erred in denying the motion. The State counters that the "appeal is barred by the law of the case," because Mr. Savage's "issues . . . , [which] clearly involve the State's use of facts from charges that it nol[le] prossed and whether the use of those facts breached the plea agreement," were resolved by this Court in the previous appeal. Alternatively, the State contends that it "complied with the plea agreement."

We disagree with the State as to whether the appeal is barred by the law of the case. In Mr. Savage's previous appeal, he challenged the sufficiency of the factual basis to

support the conviction of first degree rape. In the instant appeal, Mr. Savage contends that the prosecutor's mention of the act of anal intercourse violated a term of the plea agreement, ultimately resulting in an illegal sentence. This Court has not previously addressed Mr. Savage's contention, and hence, the contention is not barred by the law of the case.

Nevertheless, we conclude that, for four reasons, the court did not err in denying the motion. First, the errors alleged by Mr. Savage in the motion do not inhere in the sentence itself. *See Carlini v. State*, 215 Md. App. 415, 426 (2013) (the scope of a motion to correct illegal sentence is "narrow" and "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 . . . is intrinsically and substantively unlawful" (internal citation and emphasis omitted)). Second, in describing the terms of the plea agreement to the court, the prosecutor explicitly "reserve[d] the right to inform the [c]ourt of the facts of those cases" in which the State would subsequently enter a nolle prosequi, and during the plea colloquy, the court ensured that Mr. Savage understood that the prosecutor had reserved that right. Third, at the time that the prosecutor submitted the statement of facts, the State had not yet entered a nolle prosequi in any of the cases against Mr. Savage. Finally, the court did not ultimately impose upon Mr. Savage a total term of imprisonment exceeding that allowed by the terms of the plea agreement. Hence, the court did not err in denying the motion.

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