Circuit Court for Prince George's County
Case No. CT190967X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1219

September Term, 2023

QUINTON PERRY, SR.

v.

STATE OF MARYLAND

Zic,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 3, 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.

Following a jury trial in the Circuit Court for Prince George's County, Quinton Perry, Sr., appellant, was convicted of sexual abuse of a minor, second-degree sex offense, third-degree sex offense, unnatural/perverted sex practice, second-degree assault, and fourth-degree sex offense. The court imposed a sentence of life imprisonment on the second-degree sex offense count, and a consecutive sentence of 25 years' imprisonment on the sexual abuse of a minor count. The remaining counts were merged for sentencing purposes. Appellant raises a single issue on appeal: whether the court imposed an illegal sentence when it sentenced him to life imprisonment on the second-degree sex offense count. The State agrees that appellant's life sentence for second-degree sex offense is illegal. For the reasons that follow, we shall vacate appellant's sentences and remand the case to the circuit court for resentencing.

The Supreme Court of Maryland has explained that there is no relief, pursuant to Maryland Rule 4-345(a), where "the sentences imposed were not inherently illegal, despite some form of error or alleged injustice." *Matthews v. State*, 424 Md. 503, 513 (2012). A sentence is "inherently illegal" for purposes of Rule 4-345(a) where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not a permitted one, *id.*; or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement, *Matthews*, 424 Md. at 514. A sentence may also be "inherently illegal" where the underlying conviction should have merged with the conviction for another offense for sentencing purposes, where merger was required. *Pair v. State*, 202 Md. App. 617, 624 (2011).

At the time appellant committed the charged offenses, Section 3-306(a) of the Criminal Law Article set forth three modalities for committing second-degree sexual offense: by force or threat of force under subsection (a)(1); with a mentally defective, mentally incapacitated, or physically helpless victim under subsection (a)(2); and with a victim under the age of 14 where the person is at least four years older under subsection (a)(3). Section 3-306(b) also outlined a fourth modality: violating subsection (a)(1) or (a)(2) when the victim was under the age of 13 and the person was over the age of 18. The penalty provisions for second-degree sexual offense provided that a person over the age of 18 who violated subsection (b) could be "subject to imprisonment for not less than 15 years and not exceeding life." Crim. Law Art. § 3-306(c)(2). A person convicted of any other modality of second-degree sex offense was "subject to imprisonment not exceeding 20 years." Crim. Law Art. § 3-306(c)(1).

Here, the trial court only instructed the jury with respect to the age-based modality of second-degree sex offense found in section 3-306(a)(3). The jury was not asked to make any findings with respect to the (a)(1) and (a)(2) modalities. And the State agreed at sentencing that the conviction for second-degree sex offense was based on the ages of the victim and appellant. Thus, we conclude that appellant was only convicted of the (a)(3) modality of second-degree sex offense. However, to qualify for a life sentence under subsection (b), a person must be found guilty of either the (a)(1) or (a)(2) modalities. Consequently, the court's imposition of a life sentence for second-degree sex offense in this case constituted an inherently illegal sentence, and that sentence must be vacated.

As the Supreme Court of Maryland stated in *Twigg v. State*, 447 Md. 1, 30 n.14 (2016), where an appellate court determines that at least one of a defendant's sentences must be vacated, the appellate court may vacate all of the defendant's sentences and remand for resentencing "to provide the [trial] court maximum flexibility on remand to fashion a proper sentence that takes into account all of the relevant facts and circumstances." Under the circumstances, we find it appropriate to exercise our discretion to vacate all of appellant's sentences and remand for resentencing so that the sentencing judge will have the opportunity to revise the initial sentencing package, while preserving the sentencing scheme originally intended. *See id*. at 28.

APPELLANT'S SENTENCES VACATED AND CASE REMANDED FOR A NEW SENTENCING HEARING. JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.