

Circuit Court for Baltimore County
Case No.: 03-K-14-003188

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1552

September Term, 2021

ANTHONY HARRIS

v.

STATE OF MARYLAND

Graeff,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 1, 2022

*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 2016, pursuant to a binding plea agreement with the State, Anthony Harris, appellant, entered a conditional plea of guilty to possession with intent to distribute heroin and possession of a firearm in relation to a drug trafficking crime. The court sentenced him to a total term of 15 years’ imprisonment, to be served without the possibility of parole. On November 3, 2021, Mr. Harris, representing himself, filed a pleading he captioned “Motion To Correct Illegal Sentence” in which he requested the court to vacate his conviction and sentence. In the motion, he clarified that his motion was based on Md. Rule 4-345(b) (fraud, mistake, or irregularity in the trial proceedings), not 4-345(a) (an inherently illegal sentence). By order docketed on November 24, 2021, the circuit court denied the motion. Mr. Harris filed a notice of appeal, which the circuit court docketed on December 1, 2021.¹ For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

We shall not belabor the facts in this case. It is sufficient to relate that Mr. Harris was charged in a 21-count indictment with various CDS and firearm offenses after a months-long investigation by Baltimore City police officers of suspected drug activity in the 1300 block of Cleveland Street in Baltimore. Mr. Harris’s charges arose after the execution of a search and seizure warrant at a residence in Baltimore County. Mr. Harris filed a request for a *Franks* hearing on the search warrant and a hearing was held on June

¹ Mr. Harris has filed numerous motions in the circuit court challenging his conviction and sentence. In its brief in this appeal, the State addresses the circuit court’s December 21, 2021 denial of Mr. Harris’s Motion to Correct Sentence Based on Fraud, Mistake, or Irregularity, which he had filed on December 7, 2021. The December 21st ruling, however, is not before us in this appeal.

3, 2015. After the State presented evidence suggesting that the grounds for Mr. Harris’s challenge to the officer’s application in support of the search warrant was based on documents that had been “doctored,” the motion was withdrawn. Mr. Harris then fired the attorney representing him at that time and hired new counsel. On February 1, 2016, Mr. Harris, through his new counsel, filed an “amended” motion for a *Franks* hearing. At a hearing held on February 16, 2016, the State argued that Mr. Harris had “waived his right to a *Franks v. Delaware* hearing when [at the previous hearing] he created false documents” which “then prevented him” from arguing his motion. Defense counsel acknowledged that Mr. Harris had withdrawn his request for a *Franks* hearing, asserting that Mr. Harris and his former attorney had a “difference of opinion” as to what should have been argued at the time. The court granted the State’s request to refuse Mr. Harris “a second bite of the apple,” noting that it viewed the issue as one best left for the post-conviction court. Subsequently, Mr. Harris sought a reconsideration of the court’s order and claimed that the right to litigate an ineffective assistance of counsel pretrial was appropriate. His request was denied. Mr. Harris’s motion to suppress was also denied.

Mr. Harris and the State then reached a plea agreement, which provided, among other things, that Mr. Harris would enter a conditional plea of guilty to two of the 21 charged offenses. A conditional plea of guilty “means a guilty plea with which the defendant preserves in writing any pretrial issues that the defendant intends to appeal.” Md. Code, Courts & Judicial Proceedings, §12-302(e). In this case, Mr. Harris “reserve[d] the right to appeal [the] ruling on February 16, 2016 denying the Defendant the opportunity to argue his *Franks* hearing based on pre-trial ineffective assistance of counsel.”

At sentencing, held a couple of months after he entered his plea, the court first addressed a letter Mr. Harris had written to Brian Frosh, the Attorney General of Maryland, after the plea was entered complaining about the trial and alleging unethical behavior by the presiding judge. Defense counsel explained that Mr. Harris’s discontent centered on the fact “that there has not been a hearing on ineffective assistance of counsel” related to the *Franks* hearing issue. In discussing the matter with defense counsel and Mr. Harris, the court noted that any motion to reconsider the court’s February 16th decision not to proceed with a *Franks* hearing should have been brought to the judge who made that ruling. The court then said: “[T]he fastest way at this point really, isn’t the fastest way for Mr. Harris to get his issue is to conclude the matter and *either appeal pursuant to the conditional guilty plea or file a Petition for Post-Conviction?*” (Emphasis added.) Defense counsel responded:

[T]hat’s the way I thought this was going to proceed. We have the sentencing today. We have, we reserve the right to appeal. The appeal goes to the fact that he did not have his Franks hearing. He believed was based on ineffective assistance of counsel. So, he’s got a, a route, a way to attack it from an appeal standpoint. And of course he could proceed with, with a Post Conviction Hearing[.]

The court noted that the appellate courts prefer ineffective assistance of counsel claims to be raised first in a petition for post-conviction relief, and stated that it felt “more comfortable” with Mr. Harris proceeding in that manner because he could present testimony and call witnesses. Defense counsel concurred and stated:

I agree Your Honor. I actually think he has got two clean options once we leave here today. I think he can argue to the Court of Special Appeals simply that Judge Norman should have . . . provided a hearing on ineffective assistance of counsel to make the determination on whether or not he would

allow a Franks hearing. I think that’s kind of route number one. Route number two I would think . . . [h]ave the post conviction hearing and make that determination on whether or not there was ineffective assistance of counsel. So, I think he’s, I do believe that he is covered today in terms of his rights after we leave here today.

The court then concluded the matter, stating that “to the extent that Mr. Harris’s letter of March 6th could possibly be construed as a Motion to Withdraw his Guilty Plea,” it was denied.

After Mr. Harris was sentenced, he filed a timely notice of appeal. (The Office of the Public Defender represented Mr. Harris on appeal.) On August 10, 2016, the circuit court transmitted the record to this Court. On November 18, 2016, prior to the filing of any briefs with this Court, Mr. Harris (through counsel) voluntarily dismissed his appeal. *See Harris v. State*, No. 782, September Term, 2016. The notice of dismissal did not state any reasons for the voluntary dismissal of the appeal.

Post-trial, Mr. Harris, representing himself, filed a petition for post-conviction relief raising a variety of issues. Following a hearing, the post-conviction court denied relief, finding that trial counsel “was thorough and advocated to the best of their abilities” and that Mr. Harris “was not credible in many aspects of his testimony” before the post-conviction court.

Mr. Harris has continued to challenge his conviction and sentence through various motions he has filed as a self-represented litigant. For instance, in 2019 he filed a motion for a new trial in which, among other things, he claimed that the officer who applied for the search warrant “falsified documents in relation to” the investigation. After the circuit

court denied relief, he appealed. This Court affirmed the judgment. *Harris v. State*, No. 2143, September Term, 2019 (filed February 23, 2021).

Before us in this appeal is the circuit court’s denial of the November 3, 2021 pleading Mr. Harris captioned “Motion To Correct Illegal Sentence.” As noted, in the motion he asserted that his motion was based on Md. Rule 4-345(b) (fraud, mistake, or irregularity in the trial proceedings), not 4-345(a) (an inherently illegal sentence). Specifically, he alleged that the State and the trial court had fraudulently led him to believe that “he would be allowed to file a direct appeal, as it relates to the Franks Hearing[.]” He further claimed that at sentencing the court “without [his] consent” “changed a condition of the plea agreement by informing Mr. Harris that he must challenge his Franks Motion denial on Post-Conviction.” In addition, he maintained that his “conviction is illegal for the fact that the Court failed to allow [him to] file a direct appeal as his [plea] agreement stated and the judge accepted when she took the guilty plea.” The circuit court summarily denied relief.

On appeal, Mr. Harris raises two issues: (1) whether the circuit court abused its discretion in failing to hold a hearing on his motion; and (2) whether the circuit court erred in “summarily denying” his motion. We answer both questions in the negative. First, it is clear from the record that Mr. Harris’s motion was meritless. The trial court did not change any conditions of the plea agreement or prohibit him from filing a direct appeal on the issue reserved. In fact, after sentencing Mr. Harris, through counsel, filed an appeal which he later voluntarily dismissed. Second, the circuit court was not required to hold a hearing before denying his motion.

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