

Circuit Court for Baltimore County
Case No. 03-K-07-002978

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1722

September Term, 2022

STEPHEN NIVENS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: July 27, 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.

Stephen Nivens, 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.

We summarize the pertinent facts. In 2008, Nivens was convicted of first degree sexual offense and first degree burglary for an offense that occurred in the Fall of 1987. The court thereafter sentenced Nivens to a term of life imprisonment for the first degree sexual offense and suspended all but 50 years. For the first degree burglary, the court sentenced Nivens to a term of 20 years' imprisonment, to be served consecutive to the first degree sexual offense sentence.

In 2010, we reversed Nivens's convictions and remanded the case for a new trial. *Nivens v. State*, No. 1389, September Term, 2008 (February 23, 2010).

In 2011, Nivens submitted an *Alford* plea to second degree sexual offense and first degree burglary. The court thereafter convicted Nivens of the offenses.

The court thereafter sentenced Nivens to a term of 20 years' imprisonment for the second degree sexual offense. For the first degree burglary, the court sentenced Nivens to a term of 20 years' imprisonment, to be served consecutive to the second degree sexual offense sentence.

Nivens v. State, No. 2008, September Term, 2012 (filed May 14, 2014), slip op. at 1-3 (footnotes omitted).

On October 15, 2012, Mr. Nivens filed a motion to correct illegal sentence, "which the court subsequently denied." *Id.* at 3. On appeal to this Court, Mr. Nivens contended "that the court was required to award him credit for 4500 days of good conduct that he expected to receive under the original sentence of life imprisonment, with all but 70 years suspended." *Id.* Rejecting the contention, we stated: "The authorities cited by Nivens require a court, under certain circumstances, to award a defendant credit for time *served* on

a previous sentence, not time *expected to be* served on the sentence. Nivens did not serve the 4500 days for which he seeks credit, and hence, the court did not err in denying the Motion on this ground.” *Id.* at 3-4 (footnote omitted) (emphasis in original).

On September 23, 2022, Mr. Nivens filed another motion to correct illegal sentence, in which he again contended that over 4000 good conduct credits “credited to his prior sentence” must “be credited toward his current sentence.” Mr. Nivens further contended that the Baltimore County Detention Center and its director “failed to provide and credit [Mr.] Nivens with” good conduct and other credits earned “while being housed overnight” at the Center. The court denied the motion.

Mr. Nivens contends that, for numerous reasons, the court erred in denying the motion. We disagree for two reasons. First, Mr. Nivens has previously contended in this Court that the circuit court “was required to award him credit for . . . days of good conduct that he expected to receive under the original sentence.” We rejected the contention, and hence, Mr. Nivens’s current challenge is barred by the doctrine of *res judicata*. See *Colandrea v. Wilde Lake*, 361 Md. 371, 391 (2000) (“the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised” (citation omitted)). Second, the errors alleged by Mr. Nivens 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)). 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.**