

Circuit Court for Baltimore County
Case Nos. 03-K-06-001847
03-K-06-001848

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

Nos. 2114 & 2115

September Term, 2022

KENNETH MAURICE KELLY

v.

STATE OF MARYLAND

Leahy,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 2023

*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.

*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.

In 2006, Kenneth Maurice Kelly, appellant, entered *Alford* pleas in the Circuit Court for Baltimore County, to one count of second-degree assault in Case No. 03-K-06-1847 and one count of second-degree assault in Case No. 03-K-06-1848. The court imposed ten-year sentences of imprisonment on each count, to run consecutive to each other. Those sentences were suspended but for time served. In 2010, appellant violated his probation, and the court imposed the remainder of his 20-year sentence.

In 2022, appellant filed a motion to correct illegal sentence. His sole claim was that his sentences were illegal because the court failed to explain the nature and elements of the crime of second-degree assault prior to accepting his *Alford* pleas. The court denied the motion without a hearing. Appellant raises two issues on appeal: (1) whether the court erred in denying his motion to correct illegal sentence, and (2) whether the motions judge should have recused himself from considering the motion to correct illegal sentence. For the reasons that follow, we shall affirm.

The Supreme Court of Maryland¹ 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

¹ At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland....”).

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). Notably, however, 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) (quotation marks and citation omitted).

Here, appellant pleaded guilty to two counts of second-degree assault and was sentenced to a term of ten years’ imprisonment on each count. He makes no contention that those sentences exceed the statutory maximum or that they exceed the terms of the plea agreement. Indeed, there is nothing intrinsically or substantively illegal in appellant’s sentence. Rather, appellant is disputing the acceptance of his guilty plea, not the sentence imposed as a result of it. This type of challenge to the proceedings prior to the imposition of his sentence is not cognizable on a motion to correct an illegal sentence.

Finally, appellant contends that the motions judge should have recused himself from considering the motion to correct illegal sentence because he was also the judge who sentenced appellant. However, this claim is not preserved as appellant did not raise the issue of recusal in the circuit court. *See* Maryland Rule 8-131(a) (providing that “[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court”). And in any event, the

fact that a judge considering a motion to correct illegal sentence was also the sentencing judge does not, without more, require recusal. Consequently, we hold that the court did not err in denying appellant’s motion to correct illegal sentence.

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