

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

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2143

September Term, 2019

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ANTHONY HARRIS

v.

STATE OF MARYLAND

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Fader, C.J.,  
Kehoe,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: February 23, 2021

\*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, Anthony Harris, appellant, appeared in the Circuit Court for Baltimore County and 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.<sup>1</sup> The court sentenced him to a total term of 15 years' imprisonment, without the possibility of parole. Mr. Harris filed a notice of appeal, which he later voluntarily dismissed.

In 2019, Mr. Harris, representing himself, filed a pleading he captioned “motion for new trial and request for hearing” pursuant to “Maryland Rule 4-331(c) and 4-345(b).” The court summarily denied the motion, without a hearing. Mr. Harris appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

### **BACKGROUND**

The charges in this case arose following a months-long investigation by Baltimore City police officers of suspected drug activity in the vicinity of the 1300 block of Cleveland Street in Baltimore City. Mr. Harris, however, was ultimately charged in Baltimore County after the execution of a search and seizure warrant at a residence in the county.

In the application for a search warrant, Baltimore City Police Officer Blake Joos related that on May 14, 2014, he and Officer Kolacz were “set up in a covert location” conducting surveillance in locations associated with Mr. Harris where suspected illicit drug activity was taking place. The application further related that, at approximately “1115 hours,” “Officer Kolacz advised that he observed Mr. Harris leave” a residence and enter

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<sup>1</sup> 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).

an Acura, a vehicle the police had previously determined to be registered to Mr. Harris. About ten minutes later, Officer Joos observed the vehicle pull up to the curb in the 1300 block of Ward Street and shortly thereafter Dominic Jeter, a suspected “hitter/look-out” whom Officer Joos had previously seen “participating in hand to hand transactions,” approached the vehicle “and without breaking stride received an object which clearly resembled a pack of narcotics.” Mr. Jeter “concealed the object” and continued walking up the street and the vehicle “quickly left the area.” Relevant here, the application then stated: “An arrest team was not available.” Based on his training and experience, Officer Joos stated in the application that he believed that Mr. Harris “came into the area in the Acura specifically for the purpose of delivering/supplying narcotics to the Cleveland/Bayard Crew, which is referred to on the street as a “re-up.” This particular application sought a search and seizure warrant for Mr. Harris’s Acura.<sup>2</sup> The application was granted.

In his motion for a new trial, Mr. Harris asserted that Officer Joos “demonstrated misconduct in investigating this case and falsifying documents.” Specifically, he claimed that “Officer Joos lied about making a call for an arrest team on May 14, 2014.” As support

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<sup>2</sup> Two warrants were issued in this case: one for the Acura and one for a residence associated with Mr. Harris. It appears that the search warrant for the residence – located in Baltimore County – was executed on May 20, 2014 and evidence was recovered which led to the charges in this case. The application for the search warrant for the house is not in the record before us. Mr. Harris, however, attached a transcript from a hearing which challenged the validity of the warrant. In that proceeding, defense counsel asserted that both warrant applications had “the same affidavit.” Defense counsel further stated that the defense was not concerned about the warrant issued for the Acura, because “nothing was taken from the Acura.” At the conclusion of the hearing, the court found that there was “a sufficient substantial basis for the warrant in this case” and denied the motion to suppress.

for this allegation, he attached the application for the search and seizure warrant for his vehicle, as well as a Baltimore Police Department “Calls for Service Report” that reflected that neither Officer Joos nor Officer Kolacz “had calls for services recorded” in the Baltimore Police Department’s data base on May 14, 2014. He also attached a letter from the Baltimore Police Department dated July 24, 2017 in response to Mr. Harris’s Maryland Public Information Act (MPIA) request for records related to his “2014 firearms CDS arrest.” The letter noted that Mr. Harris cited a Baltimore County case number and that Baltimore City “does not maintain records for Baltimore County incidents.” But if Mr. Harris believed the documents he was seeking were “Baltimore Police Department records,” he was directed to submit more information about what he was requesting. Based on this letter, and the Calls for Service Report, in his motion for a new trial Mr. Harris alleged that “Officer[s] Joos and Kolacz had no calls for that entire day [May 14, 2014], nor was any investigation in regards to [his Baltimore County criminal case] being conducted by Baltimore City Police Department on the day in question.”

In his motion, Mr. Harris also alleged that the “Baltimore County State’s Attorney demonstrated misconduct by covering up this Baltimore City Police investigation.” Specifically, he claimed that the prosecutor “misled the court with pictures from Maryland License Plate Reader that shows no one driving the petitioner’s vehicle, nor was the vehicle shown to be in the target area.” He attached copies of photos.

In his motion, Mr. Harris further asserted that at a June 3, 2015 hearing on the search warrant, “the State presented no witnesses and no evidence to support” the issuance of the

warrant. He implied that the application for the warrant contained hearsay and that hearsay evidence should be “rejected on the grounds that it is incompetent.”

Finally, in his motion Mr. Harris noted that he had had a post-conviction hearing, in which he had raised these and other issues, but his post-conviction counsel failed to subpoena Officers Joos and Kolacz. He complained that he had “the right to subpoena witnesses.” He attached a copy of the post-conviction court’s opinion and order addressing his post-conviction claims. Relevant here, the post-conviction court found that Mr. Harris had failed to support his allegation that “Baltimore City police demonstrated misconduct in investigating this case and falsifying documents.” The post-conviction court reached the same conclusion in regard to Mr. Harris’s “bald allegation” that the “Baltimore County State’s Attorney’s Office demonstrated misconduct by covering up Baltimore City’s investigation and violating *Brady*.” The post-conviction court also found no merit to the other allegations raised in the petition; found that trial counsel “was thorough and advocated to the best of their abilities”; and found that Mr. Harris “was not credible in many aspects of his testimony” before the post-conviction court.<sup>3</sup>

The same judge who presided over the post-conviction proceeding, ruled on Mr. Harris’s subsequently filed motion for a new trial. As noted, the court summarily denied the motion for a new trial.

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<sup>3</sup> Mr. Harris’s subsequent application for leave to appeal that decision was dismissed by this Court for untimeliness. *Harris v. State*, No. 2000, Sept. Term, 2017 (dismissed by order dated February 16, 2018).

## DISCUSSION

On appeal, Mr. Harris presents one question for our consideration: “Did the circuit court err in denying appellant’s motion for a new trial, and if so, is Mr. Harris’s sentence illegal?” He then asserts that his “conviction is illegal and consequently his sentence is illegal.” Specifically, he claims that his sentence is illegal because “his conviction was the result of misconduct by both the State’s Attorney Office for Baltimore City [sic] and the Baltimore City Police Department.” He reiterates the claims he made before the post-conviction court and in his motion for a new trial, that is, that Officer Joos “falsified documents in relation to this investigation” and lied about “making a call for an arrest team on May 14, 2014,” and that neither Officer Joos nor Kolacz had any “calls for that entire day.” And he repeats his claim that the “assistant State’s Attorney assigned to this case committed misconduct by covering up the Baltimore City Police investigation in this case,” and by misleading the court with photos “from Maryland License Plate Reader that shows no one driving the petitioner’s vehicle, nor was the vehicle shown to be in the target area.”

The State first moves to dismiss the appeal because Mr. Harris’s claim “is not cognizable on a motion to correct an illegal sentence.” We shall deny the motion to dismiss because, despite his assertions on appeal that his sentence is illegal because his conviction is illegal, Mr. Harris did not file a Rule 4-345(a) motion to correct an illegal sentence, but rather a motion for a new trial pursuant to Maryland Rules 4-331(c) and 4-345(b).

The State also maintains that Mr. Harris’s claims “should be rejected because he has not presented any evidence” in support thereof and these claims have been previously rejected. We agree.

Following a hearing, the post-conviction court concluded that the claims that Mr. Harris raised here were “bald allegations” which he had failed to support with any evidence. Moreover, the post-conviction court found that Mr. Harris “was not credible in many aspects of his testimony.” The same judge presiding over the post-conviction proceeding considered and rejected Mr. Harris’s motion for a new trial in which he raised several of the same issues.

Moreover, we note that Mr. Harris’s claim that Officer Joos “lied about calling an arrest team” is not supported by either document he relies upon. First, in the application for the search and seizure warrant, Officer Joos simply stated: “An arrest team was not available.” The officer did not claim to have *called* for an arrest team. And the letter in response to his MPIA request did not indicate that the Baltimore Police Department had not investigated drug activity on May 14, 2014; it merely stated that the court case number that Mr. Harris had provided was a Baltimore County case.

In short, we are unpersuaded that the circuit court erred in denying Mr. Harris’s motion for a new trial.

**APPELLEE’S MOTION TO DISMISS  
APPEAL DENIED. JUDGMENT OF THE  
CIRCUIT COURT FOR BALTIMORE  
COUNTY AFFIRMED. COSTS TO BE  
PAID BY APPELLANT.**