

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 203

September Term, 2015

DAVID SERRANO

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Kenney, James A. III
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 6, 2016

On November 19, 2010, in the Circuit Court for Wicomico County, David Serrano, the appellant, pleaded guilty to one count of first-degree sexual offense and one count of second-degree rape. The appellant perpetrated the first-degree sexual offense against B.B., his 9-year-old stepdaughter, between February 1 and August 2, 2010. He perpetrated the second-degree rape against E.N., his older stepdaughter, between October 1, 2008 and April 30, 2009. E.N. was 12 to 13 years old at the time. Before the court accepted the guilty pleas, the prosecutor advised that, as a result of his convictions, the appellant would “have to register as a tier three sex offender for life and be subject to lifetime supervision by the sex offender management team.” The court then sentenced the appellant to a twenty-five-year term for the first-degree sexual offense and a consecutive twenty-year term for the second-degree rape, and ordered “lifetime sexual offender registration and supervision,” stating that it was required to do so.

On May 31, 2013, the appellant filed a “Motion to Correct Mistakenly Imposed Sentence and/or Correct Illegal Sentence.” The court denied the motion after a hearing on April 17, 2015, and this timely appeal followed.

On appeal, the appellant asks whether the court’s imposition of lifetime sexual offender supervision, pursuant to Md. Code (2001, 2008 Repl. Vol., 2010 Cum. Supp.), section 11-723 of the Criminal Procedure Article (“CP”), is an illegal sentence.¹

We shall vacate that sentence and remand the case to the circuit court for re-sentencing.

¹The appellant does not challenge registration, only supervision.

DISCUSSION

The appellant contends the circuit court erred by imposing lifetime sexual offender supervision because CP section 11-723(c) only authorizes that level of supervision for crimes committed on or after October 1, 2010, and his crimes preceded that date.

The State agrees that the lifetime sexual offender supervision sentence imposed in this case pursuant to the 2010 amendments to CP section 11-723(c) was illegal.

A sentence is illegal when “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, for either reason, is intrinsically and substantively unlawful.” *Chaney v. State*, 397 Md. 460, 466 (2007) (citations omitted). We may correct an illegal sentence at any time. Md. Rule 4-345(a). Whether a sentence is illegal is a question of law that we consider *de novo*. *Bonilla v. State*, 443 Md. 1, 6 (2015); *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

Since 2006, CP section 11-723 has required the imposition of a term of “extended sexual offender parole supervision” for “extended parole supervision offenders,” a status that includes those convicted of second-degree rape or first-degree sexual offense. CP § 11-701(f).² Before October 1, 2010, the term of “extended parole supervision” was “a minimum of 3 years to a maximum term of life[.]” CP § 11-723(b)(1). Effective October 1, 2010, CP section 11-723 was amended, as relevant, to require lifetime sexual offender

²An exception applies when a term of natural life without the possibility of parole is imposed. CP § 11-723(a).

supervision for a person convicted of second-degree rape or first-degree sexual offense. The statute, as amended, specifies that it applies to any person convicted of a crime “committed on or after October 1, 2010.” CP § 11-723(c)(2).

In the case at bar, the court imposed lifetime sexual offender supervision pursuant to the amended version of CP section 11-723, stating that it was required to do so. By the express terms of the amended statute, however, the provisions requiring lifetime supervision as a sexual offender did not apply to the appellant because the crimes he pleaded guilty to were committed before October of 2010. Because the circuit court sentenced the appellant under the wrong law, the portion of the appellant’s sentence imposing lifetime sexual offender supervision must be vacated.

Upon remand, the circuit court shall revise the supervision portion of the appellant’s sentence in accordance with law.³

**ORDER OF THE CIRCUIT COURT FOR
WICOMICO COUNTY DENYING THE
APPELLANT’S MOTION TO CORRECT
AN ILLEGAL SENTENCE REVERSED;
PORTION OF SENTENCE OF THE
CIRCUIT COURT REQUIRING THE
APPELLANT TO BE SUBJECT TO
LIFETIME SUPERVISION VACATED;
CASE REMANDED TO THE CIRCUIT
COURT FOR RESENTENCING
CONSISTENT WITH THIS OPINION;
COSTS TO BE PAID BY WICOMICO
COUNTY.**

³The State maintains that the appellant is subject to sentencing as an extended parole supervision offender under CP section 11-723.