UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 467

September Term, 2016

WILLIAM RAYMOND HINTON, II

v.

STATE OF MARYLAND

Berger,
Nazarian,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 5, 2017

William R. Hinton, II, appellant, noted an appeal from the denial, by the Circuit Court for Baltimore County, of his motion to correct an illegal sentence. The State has moved to dismiss the appeal, on the ground that the purported trial court error alleged by Hinton is not cognizable on a motion to correct an illegal sentence. We agree and shall dismiss the appeal.

In 1991, following a plea of guilty, Hinton was convicted of first-degree felony murder, robbery with a dangerous and deadly weapon, and theft. At that time, the offense of first-degree murder was punishable by (1) death; (2) imprisonment for life; or (3) imprisonment for life without the possibility of parole.[1] In 1992, the court sentenced Hinton to life without parole for his murder conviction.[2] In 2015, Hinton filed a motion, pursuant to Md. Rule 4-345(a), challenging the legality of that sentence. It is from the court's order denying that motion that Hinton now appeals.

Rule 4-345 provides that "[t]he court can correct an illegal sentence at any time." But "the scope of this privilege, allowing collateral and belated attacks on the sentence and excluding waiver as a bar to relief, is narrow." *Colvin v. State*, 450 Md. 718, 725 (2016) (citation omitted). As the Court of Appeals has recently explained, "[t]he purpose of Rule 4-345(a) is to provide a vehicle to correct an illegal sentence where the illegality inheres in the sentence itself, not for re-examination of trial court errors during sentencing." *Meyer v. State*, 445 Md. 648, 682 (2015) (citations omitted). In other words, there is no relief under

[1] Maryland Code (1957, 1987 Repl. Vol., 1991 Supp.), Article 27, § 412(b).

[2] The court also imposed concurrent sentences for Hinton's other two convictions, but, as Hinton does not challenge the legality of those sentences, we need not recite them.

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) (citations omitted). A sentence is considered "illegal" for purposes of Rule 4-345(a) where "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." *Colvin*, 450 Md. at 725 (citations omitted).

Hinton asserts that his sentence is illegal because, in his view, the court did not comply with Article 41, § 4-609(d) of the Maryland Code (1957, 1990 Repl. Vol.), which was in effect at the time Hinton was sentenced, and provided that:

> In any case in which the death penalty or imprisonment for life without the possibility of parole is requested under Article 27, § 412, a presentence investigation, including a victim impact statement, shall be completed by the Division of Parole and Probation, and shall be considered by the court or jury before whom the sentencing proceeding is conducted[.][3]

(Emphasis added). Specifically, Hinton claims that, because the court sustained his objection to the admission of a written victim impact statement, the sentence imposed by the court was illegal.

In support of this claim, Hinton cites *Sucik v. State*, 344 Md. 611 (1997). In that case, the Court of Appeals held that the failure of the trial court to obtain and consider a presentence investigation report ("PSI report") before sentencing a defendant to prison for

[3] The current statutory equivalent to Art. 41, § 4-609(d) is Md. Code (2008, 2016 Supp.), Correctional Services Article, § 6-112(c).

life without the possibility of parole warranted vacation of the sentence, even though the defendant did not raise the issue at sentencing.[4] *Id.* at 617-18.

Sucik is readily distinguishable from the instant case as it is undisputed that, prior to sentencing Hinton, the court obtained and considered a PSI report. Moreover, even though the court sustained Hinton's objection to the admission of a written victim impact statement from Eileen Barshinger (the daughter of the murder victim), on grounds that it had been provided to the defense only minutes before the sentencing hearing began and contained allegedly "inflammatory and irrelevant material," the court permitted the State to call Ms. Barshinger as a witness during the hearing. Ms. Barshinger explained to the sentencing court how her mother's murder had affected her, and her family, and defense counsel was allowed to cross-examine her. Thus, although the victim impact statement was not included with the PSI report, the court considered evidence of victim impact.

Under these circumstances, Hinton's claim that his sentence was illegal because the PSI report did not include a written victim impact statement amounts, at most, to a procedural irregularity that does not render his sentence "inherently illegal." Accordingly, the appeal is dismissed.

APPELLEE'S MOTION TO DISMISS APPEAL GRANTED. COSTS TO BE PAID BY APPELLANT.

[4] We note that *Sucik* was a direct appeal following a conviction, and not, as in this case, an appeal from the denial of a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a).