

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1143

September Term, 2016

KENNETH LAWRENCE HIGGINS

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 1, 2017a

*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.

Kenneth Lawrence Higgins, appellant, appeals from the denial, by the Circuit Court for Montgomery County, of a motion to correct illegal sentence. For the reasons that follow, we shall dismiss the appeal.

In 1987, Higgins was charged by indictment with first degree rape, second degree rape, assault with intent to rape, and battery. The indictment was signed by the foreperson of the grand jury. Higgins was subsequently convicted of the offenses, and sentenced to twenty-five years' incarceration, to be served consecutive to a previous sentence.

In 2016, Higgins filed the motion to correct illegal sentence, in which he contended that the court did not “have the legal [or] subject matter jurisdiction to try and sentence” him, because the indictment was “not factually proven on the record to be from a duly impaneled grand jury or grand jury foreman, nor . . . signed by the State’s Attorney.” The court subsequently denied the motion.

On appeal, Higgins contends that the court erred in denying the motion. He claims that the “illegible signature [of the foreperson] without the aid of a typed name, and the absence of the State’s Attorney’s signature and the [g]rand [j]ury testimony/minutes[,] makes the record fatally defective, which inhibits [his] procedural due process rights and the court’s legal jurisdiction to convict and impose . . . sentence.”

We conclude that Higgins’s claim is not cognizable under Rule 4-345(a). The Rule states that a “court may 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. . . .

An illegal sentence, for purposes of Rule 4-345(a), is one 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, for either reason, is intrinsically and substantively unlawful. A sentence does not become an illegal sentence because of some arguable procedural flaw in the sentencing procedure. A motion to correct 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) (internal citations, quotations, and brackets omitted).

Here, Higgins does not dispute that he received convictions warranting a sentence for the offenses with which he was charged, that the sentence is a permitted one for the convictions, or that the sentence is intrinsically and substantially lawful. Instead, Higgins contends that there is a flaw in the procedure by which the indictment was issued. This alleged flaw does not render Higgins’s sentence illegal, and he cannot obtain belated appellate review of the grand jury proceeding through a motion to correct illegal sentence. The sentence is not inherently illegal, and hence, the court did not err in denying the motion to correct illegal sentence.

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**