

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2338

September Term, 2015

MONTRAY WILLIAMS

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 5, 2017

*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 2012, Montray Williams, appellant, was convicted by a jury, in the Circuit Court for Baltimore County, of two counts of robbery stemming from a bank robbery involving two bank tellers. Because this was his fourth conviction for a crime of violence, the State sought an enhanced sentence of life imprisonment, without the possibility of parole, pursuant to Section 14-101 of the Criminal Law Article of the Maryland Code. The court sentenced Williams to the enhanced sentence of life imprisonment without the possibility of parole for each robbery conviction, with the sentences to run concurrent with each other. Upon appeal, this Court held that the statute only permitted the imposition of one mandatory sentence and, accordingly, vacated the life sentence imposed for the second count of robbery and remanded for re-sentencing on that count. *Williams v. State*, 220 Md. App. 27, 45 (2014), *cert. denied*, 441 Md. 219 (2015).

In 2015, Williams filed a motion to correct an illegal sentence in which he asserted that his sentence as a fourth-time offender for a crime of violence was illegal because, among other reasons, he had never been sentenced as a third-time offender. The circuit court denied the motion, prompting this appeal.

The State moves to dismiss the appeal as untimely based on the circuit court's docket entry reflecting that the notice of appeal was filed on December 1, 2015, one day beyond the time period in which the appeal had to be filed. We shall deny that motion because, although the docket entry does indicate that the notice of appeal was filed on December 1, 2015, a clerk's office memorandum in the record before us clearly states that the appeal was filed on "11/30/2015." The notice of appeal also bears a date-stamp of

“Nov 30 2015.” We direct, therefore, that the circuit court correct the docket entry to reflect that the notice of appeal was filed on November 30, 2015.

Turning to the merits, Williams first asserts that the circuit court erred by failing to support its order of denial with a statement of reasons addressing each issue he raised in his motion. Williams relies on Rule 4-407(a) to support that claim, but that rule is not applicable here because it applies to a petition for post-conviction relief, not a ruling on a motion to correct an illegal sentence. The applicable rule, Rule 4-345(f), does not require the court to prepare a statement of reasons for *denying* a motion to correct an illegal sentence.

Williams next claims that his sentence to life without the possibility of parole for his fourth conviction of a crime of violence “violated due process procedures” because he did not receive an enhanced sentence for his third conviction for a crime of violence and “it would be consistent with the Legislative intent for graduated punishment, prior to the imposition of life without parole.”¹ Williams cites no authority in support of that claim. Although Williams did not make this precise argument on direct appeal, this Court noted,

¹ Crim. Law, § 14-101(c)(1) provides:

Except as provided in subsection (f) of this section [relating to parole], on conviction for a fourth time of a crime of violence, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence shall be sentenced to life imprisonment without the possibility of parole.

Robbery is a “crime of violence.” Crim. Law., § 14-101(a)(9). Williams does not dispute that, when he was convicted of robbery in 2012, he had three prior convictions for crimes of violence (in 1991, 1995, and 2001) for which he served separate terms of confinement in a correctional facility.

in that case, that “the sentence to life without the possibility of parole imposed by the court for [the first robbery count] was in accordance with the enhanced penalty statute.” 220 Md. App. at 45. In other words, the predicate for the enhanced sentence was met, that is, three prior convictions for a crime of violence for which Williams had served three separate terms of confinement.

Moreover, in *Nelson v. State*, 187 Md. App. 1 (2009), this Court addressed a very similar claim in the context of the enhanced sentencing statute for repeat drug offenders. In *Nelson*, the defendant was sentenced as a third-time drug offender to a term of twenty-five years without parole pursuant to Art. 27, § 286(d) of the Md. Code (1996 Repl. Vol., 2001 Supp.) (later codified as Crim. Law, § 5-608). In a motion to correct an illegal sentence he argued that the sentence was illegal because, although he met the criteria for the sentence enhancement as a third-time offender, he had never been sentenced as a second-time offender. *Id.* at 3. In other words, Nelson claimed that he had to be sentenced as a second-time offender before he could ever be sentenced as a third-time offender. *Id.* at 10. The circuit court denied the motion and, upon appeal, this Court affirmed. We noted that a plain reading of the enhanced penalty statute did not support Nelson’s position and we refused to “read into the statute a sequential requirement when applying the sentencing enhancement penalties, by which a mandatory [second-time offender enhancement] must be imposed for a second offender before a [third-time offender enhancement] may be imposed upon a third offender, and so on.” *Id.* at 22.

Similarly, there is no sequential requirement in the enhanced sentencing statute at issue here, and no indication that the legislature intended one. Accordingly, we hold that

Crim. Law, § 14-101 does not require that an individual must be sentenced as a third-time violent crime offender before he can be sentenced as a fourth-time violent crime offender when he has met the criteria for the enhanced sentence for a fourth conviction of a crime of violence.

Finally, Williams appears to assert that his sentence is illegal because of alleged infirmities with respect to his indictment. Williams maintains that “the charging document that [he] was tried on was fabricated and not a proper basis to proceed to trial on or to base sentences on.” That is an issue Williams should have raised in a timely-filed motion prior to trial, and he waived it by failing to do so. *See* Rule 4-252(a)&(b). Moreover, the indictment reflects that Williams was charged with eleven counts, including the two counts of robbery upon which he was convicted. Accordingly, his sentences for robbery are not inherently illegal and thus not subject to review under Rule 4-345(a). *See Bryant v. State*, 436 Md. 653, 662 (2014) (only sentences that are “inherently illegal” are subject to review and correction under Rule 4-345(a)). “Inherently illegal” sentences are those where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not a permitted one, *id.*; where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement, *Matthews v. State*,

424 Md. 503, 514 (2012); or where the defendant was convicted and sentenced for an offense for which he was never charged. *Johnson v. State*, 427 Md. 356, 375-378 (2012).

**APPELLEE’S MOTION TO DISMISS
APPEAL DENIED. JUDGMENT OF THE
CIRCUIT COURT FOR BALTIMORE
COUNTY AFFIRMED.**

**CLERK OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY IS DIRECTED TO
CORRECT THE DOCKET ENTRY TO
REFLECT THAT THE NOTICE OF
APPEAL WAS FILED ON NOVEMBER 30,
2015.**

COSTS TO BE PAID BY APPELLANT.