

Circuit Court for Wicomico County  
Case No. 22-K-07-000327

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 67

September Term, 2018

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ORLANDO GRANT DENNIS

v.

STATE OF MARYLAND

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Graeff,  
Arthur,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: March 5, 2019

\*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.

Orlando Grant Dennis, appellant, appeals from the denial of his motion to correct an illegal sentence. Because Mr. Dennis’s sentences are legal, we affirm.

Following a 2007 jury trial in the Circuit Court for Wicomico County, Mr. Dennis was convicted of possession of heroin, possession of heroin with intent to distribute, possession of cocaine, and possession of cocaine with intent to distribute. This Court affirmed the judgments on direct appeal. *Dennis v. State*, No. 1976, Sept. Term 2007 (filed August 12, 2009). In 2018, Mr. Dennis filed a motion to correct illegal sentence, asserting that (1) the trial court had erroneously instructed the jury regarding the concept of reasonable doubt; (2) in announcing its verdict, the jury did not expressly state that it had found him guilty of each offense “beyond a reasonable doubt;”<sup>1</sup> and (3) his convictions were obtained in violation of the Double Jeopardy Clause’s prohibition from successive prosecution because, after the jury was empaneled, the State nol prossed four conspiracy counts which, he claimed, were lesser included offenses of the offenses for which he was ultimately convicted. Mr. Dennis further alleged that he was “subjected to prosecutorial misconduct;” received ineffective assistance of counsel; and was “subjected to injustice” by the court, because neither the prosecutor, his defense counsel nor the trial judge, attempted to correct those errors during his trial. The circuit court denied appellant’s motion to correct illegal sentence without a hearing finding that it “contain[ed] no allegations upon which relief could be granted[.]” We agree and affirm.

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<sup>1</sup> In support of this claim, Mr. Dennis noted that when the Clerk asked the jury foreperson whether the jury had found him guilty or not guilty of each offense, the foreperson responded “guilty” instead of “guilty beyond a reasonable doubt.”

The Court of Appeals has explained that there is no relief, pursuant to 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). A sentence is “inherently illegal” for purposes of Rule 4-345(a) 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.*; or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews*, 424 Md. At 514. A sentence may also be “inherently illegal” where the underlying conviction should have merged with the conviction for another offense for sentencing purposes, where merger was required. *Pair v. State*, 202 Md. App. 617, 624 (2012). Notably, however, a “motion to correct an 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) (citation omitted).

With those principles in mind, we conclude that, even if true, none of the claims raised by Mr. Dennis in his motion to correct illegal sentence would render his sentence inherently illegal. Consequently, the circuit court did not err in denying his motion for that reason alone. But in any event, none of Mr. Dennis’s contentions have merit. First, when instructing the jury on the presumption of innocence and reasonable doubt, the trial court used former Maryland Criminal Pattern Jury Instruction 2:02, which the Court of Appeals has held is constitutional because it “adequately impart[s] to the jury the mandate that the State must prove each element beyond a reasonable doubt.” *Carroll v. State*, 428 Md. 679, 690 (2012). Second, when announcing its verdict, there is no requirement that the jury

expressly state that it found the defendant “guilty beyond a reasonable doubt,” as opposed to stating that it has found the defendant “guilty.” Rather, the jury, having been properly instructed on the State’s burden of proof, is presumed to have followed the trial court’s instructions in reaching its verdict. Finally, even if Mr. Dennis’s conspiracy charges were lesser included offenses of the possession charges for which he was convicted, the dismissal of those charges after jeopardy attached would not have precluded the State from prosecuting him for the possession offenses in the same trial. *See Bynum v. State*, 277 Md. 703, 705-06, 708 (1976) (holding that the nolle prosequi of the lesser included offense of robbery after jeopardy had attached barred re-prosecution for that offense but did not preclude the State from prosecuting the defendant for the greater offense of armed robbery in the same trial).

**JUDGMENT OF THE CIRCUIT  
COURT FOR WICOMICO COUNTY  
AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**