

Circuit Court for Baltimore County
Case No.: 03-K-86-002054

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 75

September Term, 2020

VINCENT COLE

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 9, 2021

*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.

Following a 1986 trial in the Circuit Court for Baltimore County, a jury found Vincent Cole, appellant, guilty of first-degree felony murder, burglary, daytime housebreaking, and robbery. The court sentenced appellant to life imprisonment for first-degree felony murder and merged the remaining convictions for sentencing.

From the available record,¹ it appears that appellant and two co-felons broke into the 79-year old victim's home, locked her in a closet, ransacked her home, stole various items of hers, and left. After about a week, the victim died of starvation.

In January of 2020, appellant filed a paper titled “Motion to Correct an Illegal Sentence or in the alternative Motion for Appropriate Relief” contending that his sentences for burglary and first-degree felony murder are illegal because the evidence was not legally sufficient to support those convictions.² On February 20, 2020, the circuit court summarily denied appellant's motion. Thereafter, appellant noted an appeal from that denial. For the reasons that follow, we shall affirm.

Maryland Rule 4-345(a) permits the court to “correct an illegal sentence at any time.” A sentence that is illegal is one that is not permitted by law. *See Greco v. State*, 427 Md. 477, 508 (2012). Whether such an illegality exists is a question of law reviewed *de novo*. *Carlini v. State*, 215 Md. App. 415, 443 (2013).

¹ Notwithstanding that it is evident from his briefs before this Court that appellant has a copy of his trial transcript, he did not produce any of it for this appeal.

² Although appellant contends that he is not arguing the sufficiency of the evidence, that is precisely what he is arguing.

At the time of appellant’s trial, the crime of burglary, then found in Article 27 § 30(a) of the Code, contained an element requiring that the offense be committed in the nighttime. With respect to his conviction for burglary, appellant claims that, because there was no evidence concerning the time of the break-in of the victim’s home, Art. 27 § 30(a) “is entirely inapplicable” and therefore his sentence for burglary is illegal, and he is entitled to have his conviction and sentence vacated.³

With respect to his conviction for first-degree felony murder, appellant claims that the “felony murder statute is inapplicable to [his] conduct where the harmful result is more directly traceable to a non-felon, non-accomplice, non-co-defendant at trial, who was not acting in concert with appellant to any of the offenses.”⁴ He claims that the homicide “was without any contemporaneous intent to commit a felony.” According to appellant “because the fatal act was committed without any contemporaneous intent to commit the burglary, the *mens rea* for felony murder is absent and thus, the theoretical foundation for the application of the felony murder statute is absent.” He continues: “Moreover, the burglary committed by appellant was complete when the fatal act of the non-codefendant at trial

³ As noted earlier, appellant received no sentence for burglary, as that conviction was merged into first-degree felony murder for sentencing.

⁴ As far as can be discerned, this “non-felon, non-accomplice, non-co-defendant” is appellant’s brother, Jeffrey Cole, who was tried in a joint trial with appellant for the same offenses as appellant. As to Jeffrey Cole, the joint trial ended in mistrial due to a deadlocked jury. It appears that he was later convicted of those offenses upon retrial. *See* <http://casesearch.courts.state.md.us/casesearch/inquiryDetail.jis?caseId=03K86002055&loc=55&detailLoc=ODYCRIM> (last accessed June 7, 2021); <https://apnews.com/article/7498088409c4759742230947017034d8> (last accessed June 7, 2021).

occurred.”

Appellant’s attempt to disguise his arguments to fit within the framework of Maryland Rule 4-345 does not change the fact that, at bottom, both of his arguments deal with the sufficiency of the evidence, and therefore, neither of them are the proper subject of a motion to correct an illegal sentence.

A Maryland Rule 4-345 motion to correct an illegal sentence may not be used to challenge the sufficiency of the evidence and, therefore, whether the evidence was sufficient to support the convictions for burglary or first-degree murder is not properly before us. *Colvin v. State*, 450 Md. 718, 725 (2016) (“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.” (quotation omitted)).

Consequently, we affirm.

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