

Circuit Court for Howard County
Case No. K-97-35879

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 306

September Term, 2018

LYE HUAT ONG

v.

STATE OF MARYLAND

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 2, 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.

Lye Huat Ong appeals the denial, by the Circuit Court for Howard County, of his motion to correct an illegal sentence. He maintains that the court erred in denying his motion because he claims he was improperly sentenced for two “identical counts” of child sexual abuse and erroneously ordered to register as a sex offender as a condition of probation. Because his sentence is legal, we affirm the judgment.

BACKGROUND

Plea & Sentencing

Pursuant to a 12-count indictment filed in 1997, Mr. Ong was charged with various offenses based on allegations that he abused his girlfriend’s young niece “on or about July 1, 1990 to July 31, 1992.” On April 6, 1998, Mr. Ong appeared in court for a plea hearing. The court stated on the record its understanding of the plea:

This case involves an Indictment over a period of time, from July 1, 1990, to July 31, 1992. The victim alleged is [name omitted] who at the time was nine through eleven years old and currently is sixteen years of age.

The State and the Defense wish the Court to bind to the following plea. Defendant is expected to plead guilty to Count 1, child abuse by fondling, Count 3 second degree sexual offense, Count 8 child abuse involving nude videotaping. The State anticipates nolle processing the balance of any charges.^[1]

¹ Count 1 charged Mr. Ong with child abuse (Article 27, § 35C), alleging that he “did unlawfully as a person who had temporary care and custody and responsibility for the supervision of [the victim] (DOB: []/81), a child under 18 years of age did cause sexual abuse, to wit: would have the victim fondle the Defendant’s penis[.]”

Count 3 charged Mr. Ong with second-degree sexual offense (Article 27, § 464), alleging that Mr. Ong “did engage in a sexual act, to wit: the Defendant would perform cunnilingus on [the victim] (DOB: []/81), a person under 14 years of age and Lye Huat Ong the person performing the sexual act is four or more years older than [the victim].”

(continued)

The Defendant agrees that he would register as a sexual offender.

The State further agrees that in as much as Howard County alone is concerned, no new charges against the Defendant would be filed involving this complaining witness and this same period of time There is acknowledgment by State and Defense that there are charges pending in Anne Arundel County that are similar to the ones alleged here today regarding the same Defendant and the same victim over the same time period. These charges are not in any way part of the plea agreement.

[T]he State is asking that all but fifteen years be suspended. The Defense is asking for therefore a cap or maximum of fifteen years active time that the Court could impose. The State, however, recognizes that the Defense may ask for less than fifteen years active incarceration. The State is also asking for five years of supervised probation.

When asked whether he had heard the judge “state [the court’s] understanding of the plea,” Mr. Ong replied, “Yes, I did.” When asked if the judge’s iteration of the plea terms was “consistent with [his] understanding of the plea agreement,” Mr. Ong replied, “Yes.” Defense counsel then addressed Mr. Ong:

[DEFENSE COUNSEL]: All right, then am I correct in believing that you wish to plead guilty to one Count of child abuse in that it’s alleged that you caused sexual abuse to [the victim] by having her fondle your penis, one Count of second-degree sexual offense in that you performed a sexual act, specifically oral sex or cunnilingus upon [the victim] who was at that time under fourteen years of age, and child abuse in that you did videotape [the victim] while she was nude. It’s my

Count 8 charged Mr. Ong with child abuse (Article 27, § 35C), alleging that he “did unlawfully as a person who had temporary care and custody and responsibility for the supervision of [the victim] (DOB: []/81), a child under 18 years of age did cause sexual abuse, to wit: the Defendant would videotape the victim while nude and exposing her breasts and vagina[.]”

understanding that you wish to enter a plea of guilty to those three allegations?

MR. ONG: Yes.

After ensuring that Mr. Ong understood what the State would have to prove to obtain convictions for the counts to which he was pleading guilty, and after reviewing the maximum penalties he was facing, defense counsel again inquired if Mr. Ong understood the plea agreement and, in particular, the sentencing terms. Mr. Ong replied in the affirmative. Defense counsel then asked if he had heard and understood “all those other conditions [the judge] outlined at the beginning [that] are part of the plea agreement,” to which Mr. Ong replied, “Yes.”

On December 11, 1998, Mr. Ong returned to court for sentencing. The prosecutor reminded the court of the plea terms, and stated: “As Your Honor is aware, a part of this plea agreement, even though it occurred before the mandatory registration as a child sex offender, the Defendant did agree as part of the plea that he would register upon being released from prison as a child sexual offender.” The defense did not object nor dispute that statement.

In discussing the sentencing guidelines, the prosecutor noted that:

the fondling happened on one instance, the cunnilingus happened totally different instance, and we have videotapings not only of the fondling and the cunnilingus but other videotapes of just him videotaping portions of her body that did not occur at the same time. They are different years, different ages, she’s in different clothing Three separate sex offenses occurring on three separate days, just the same victim.”

The defense did not dispute that assertion. The court then sentenced Mr. Ong to 15 years’ imprisonment, all but ten years suspended, for child abuse (count 1); 20 years’ imprisonment, all but 15 years suspended, for second-degree sexual offense (count 3); and to 15 years’ imprisonment, all but 10 years suspended, for child abuse (count 8). The sentences were ordered to run concurrently with each other. The court also ordered a five-year term of supervised probation upon release, with the condition, among others, that Mr. Ong “register upon release from incarceration as a sexual offender.”

Mr. Ong’s various requests for relief, post-conviction, have been unsuccessful.

Motion to Correct an Illegal Sentence

In February 2018, Mr. Ong, representing himself, filed a motion to correct an illegal sentence in he which he asserted that (1) he was wrongly convicted of two counts of child abuse “as both counts in the indictment are the same identical child abuse that had the element of custodian,” and (2) the sentencing court committed “reversible error” in ordering him to register as a sex offender because the crimes were committed between 1990 and 1992, but the sex offender registration laws were not enacted until 1995. The State opposed the motion on grounds that the child abuse counts were based on separate incidents and Mr. Ong had agreed to register as a sex offender as part of the plea agreement. The circuit court denied the motion.

DISCUSSION

On appeal, Mr. Ong makes the same arguments that he made in his motion filed in the circuit court. Specifically, he maintains that, because he “was sentenced to two counts of child abuse . . . he was punished twice for the same offense of having same temporary

custody of the victim, a violation of the double jeopardy clause of the Fifth Amendment of the United States Constitution.” He also insists that “the requirement to register [as a sex offender] is a reversible error since registration had not started.” In addition, he asserts that his convictions and sentences are invalid because his trial counsel “coerced him to accept the plea deal” even though he was “against any deal.”

The State responds that the claims Mr. Ong is raising are not cognizable in a Rule 4-345(a) motion to correct an illegal sentence. The State points out that, in *Rainey v. State*, 236 Md. App. 368, 382, we held that “[a] claim that a sentence is illegal because the underlying conviction violated double jeopardy protection from successive prosecution is not cognizable under Rule 4-345(a),” *cert. denied*, 460 Md. 23 (2018).²

We agree with the State that Mr. Ong’s sentence is not illegal. The record before us establishes that he pleaded guilty to two counts of child abuse based on abusive acts inflicted on different occasions. The plea hearing transcript also reflects that Mr. Ong agreed, as part of the plea bargain, to register as a sex offender upon his release from prison. As for his allegation that his plea was coerced, the trial court found (after an examination of Mr. Ong on the record) that Mr. Ong knowingly and voluntarily entered the pleas and the transcript of the plea hearing supports the court’s conclusion. Finally, any complaint Mr. Ong may have about the actions of his attorney must be raised by another means. *See Brightwell v. State*, 223 Md. App. 481, 488 n. 3 (observing that a “motion to correct illegal

² In its brief, the State also moves to dismiss the appeal based on the failure of Mr. Ong to ensure that the transcript of the guilty plea was included in the record transmitted to this Court. This Court, however, has already granted Mr. Ong’s motion to supplement the record to include the transcript.

sentence is not the appropriate mechanism through which to claim ineffective assistance of counsel”), *cert. denied*, 445 Md. 5 (2015).

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