

Circuit Court for Anne Arundel County
Case No. 02-K-96-001537

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 340

September Term, 2019

COREY M. GREEN

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: May 6, 2020

*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 1997, Corey M. Green, appellant, pleaded guilty, in the Circuit Court for Anne Arundel County, to one count of first-degree murder and one count of use of a handgun in the commission of a felony or crime of violence. The court sentenced him to life imprisonment for first-degree murder and a term of 15 years' imprisonment for the handgun offense, to be served consecutively to the life sentence.

In 2019, Mr. Green filed a “Motion for Revisory of Court and/or Other Appropriate Relief,” asking the court to revise his sentence pursuant to Rule 4-345(b) because, he claimed, “two irregularities took place” during his sentencing hearing. Specifically, he asserted that (1) his “life sentence was not properly diminished because of credit for time spent in custody according to Art. 27 § 638C(a) (now Criminal Procedure § 6-218(b)),” and (2) “there was no announcement in open court of the minimum time [he] must serve before becoming eligible for parole as required by C.P. § 6-217(a).” The circuit court denied the motion without a hearing. On appeal, Mr. Green raises the same contentions that he raised in his Rule 4-345(b) motion. For the reasons that follow, we shall affirm.

Mr. Green first contends that the sentencing court did not follow the proper procedure because it failed to diminish the term of his life sentence by the number of days that he spent in pre-trial incarceration. In 2015, Mr. Green filed a motion to correct illegal sentence, wherein he similarly claimed that the court had failed to comply with § 638C of Article 27 of the Maryland Code. The circuit court denied that motion and Mr. Green appealed. We affirmed, holding that Mr. Green’s claim that he was not given credit for time served was “factually erroneous”; that there was “no legal support” for his contention that his “life sentence should have been reduced by the number of days between

incarceration and sentencing, *i.e.*, converted to something other than a life sentence”; and that “the sentencing court did not err in its application of Md. Code Art. 27 § 683C[.]” Consequently, this claim is barred by the law of the case doctrine and we will not consider it again on appeal. *See Holloway v. State*, 232 Md. App. 272, 282 (2017) (noting that the law of the case doctrine bars both claims that were actually decided in a prior appeal, as well as claims “that could have been raised and decided”).

Mr. Green also asserts that the sentencing court failed to comply with § 6-217 of the Criminal Procedure Article because it did not state on the record the minimum time that he was required to serve before becoming parole eligible. He claims that this was an irregularity in his sentence which entitles him to a new sentencing hearing. However, the term “irregularity” as it is used in Rule 4-345(b), has been defined as an “irregularity of process or procedure . . . and not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged.” *Hoile v. State*, 404 Md. 591, 624 (2008). Absent such a narrow interpretation, “almost no criminal conviction would be safe from belated attack.” *Minger v. State*, 157 Md. App. 157, 172 (2004). Here, Mr. Green was on notice of this issue at the time he was sentenced and could have raised it in an application for leave to appeal, which he failed to do. Therefore, the court’s noncompliance with § 6-217(a) does not constitute an irregularity within the meaning of Rule 4-345(b).

In any event, a defendant seeking to set aside a judgment due to “fraud, mistake, or irregularity” must also “demonstrate that he acted with ordinary diligence” when filing a revisory motion “outside the ninety-day limit.” *Minger*, 157 Md. App. at 175. Mr. Green

failed to do so. In fact, his motion is silent as to why he waited over 20 years to file it. Consequently, even if Mr. Green had established an irregularity in his sentence, the court did not err in denying his Rule 4-345(b) motion.¹

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

¹We note that even if we construed Mr. Green’s motion as a motion to correct illegal sentence, he would not be entitled to relief as noncompliance with § 6-217(a) “does not affect the legality or efficacy of the sentence.” Md. Code Ann., Crim. Pro. § 6-217(c).