

Circuit Court for Washington County  
Case No: 21-K-14-050551

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 460

September Term, 2018

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RYHEEME ROBERT WOOD

v.

STATE OF MARYLAND

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Fader, C.J.  
Berger,  
Arthur,

JJ.

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PER CURIAM

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Filed: June 10, 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.

In 2015, a jury sitting in the Circuit Court for Washington County convicted appellant, Ryheeme Robert Wood, of illegal possession of a regulated firearm, illegal possession of ammunition, and wearing, carrying, and transporting a handgun in a vehicle on a public highway. The court sentenced Mr. Wood to 15 years' imprisonment, all but 12 years suspended, with the first five years without the possibility of parole, for the illegal possession of a firearm offense and to lesser concurrent terms for the other two convictions. This Court affirmed the judgments. *Wood v. State*, No. 2254, September Term, 2015 (filed February 22, 2017).

In 2018, Mr. Wood filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a) in which he asserted that the court erred in ordering that the first five years of his sentence be served without the possibility of parole because the State had not provided advance notice of its intent to seek the mandatory minimum sentence. The circuit court denied the motion. We shall affirm because Mr. Wood's sentence is legal and his claim of a procedural error in the sentencing proceeding is not cognizable in a motion to correct an illegal sentence.

Mr. Wood was convicted of illegal possession of a regulated firearm pursuant to § 5-133(c) of the Public Safety Article, which provides:

(c)(1) A person may not possess a regulated firearm if the person was previously convicted of:

(i) a crime of violence;

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(2)(i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.

(ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(iii) Except as otherwise provided in §4-350 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(3) At the time of the commission of the offense, if a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment, mandatory supervision, probation, and parole:

(i) the mandatory minimum sentence is within the discretion of the court; and

(ii) the mandatory minimum sentence may not be imposed unless the State’s Attorney notifies the person in writing at least 30 days before trial of the State’s intention to seek the mandatory minimum sentence.

At sentencing, the prosecutor informed the court that Mr. Wood’s “prior record consists of a number of handgun violations” and that “there is a five-year mandatory minimum involved in this case.” The prosecutor also noted that Mr. Wood’s “prior conviction [for] a crime of violence was a first-degree assault and use of a handgun in the commission of a crime of violence” for which he was sentenced to 12 years’ imprisonment. After accessing his record on-line, the prosecutor informed the court that Mr. Wood had incurred that conviction in 2000 and his “parole expired in 2013.” The defense did not dispute that assertion, but argued that, pursuant to § 5-133(c)(3), “imposition of the mandatory minimum sentence is within the discretion of the court” and “may not be imposed” unless the requisite notice is provided and no notice was given in this case.

A discussion then ensued as to when Mr. Wood had completed his sentence in the 2000 assault and handgun case, and Mr. Wood informed the court that his parole had

ended in 2011. The prosecutor noted that, even if that were true, § 5-133(c)(3) did not apply because the offense in this case was committed in 2014, which was “within the five years” of Mr. Wood’s completion of his sentence. Mr. Wood did not dispute that assertion. Nor did he accept the court’s offer to postpone sentencing so that a pre-sentencing investigation could be completed. The court then sentenced Mr. Wood as noted above. He did not challenge his sentence on direct appeal.

In this appeal, Mr. Wood does not dispute that his 2000 assault and handgun convictions were proper predicates for the sentence imposed in this case. Instead, he maintains that the State’s failure to notify him of its intent to seek the mandatory minimum sentence of five years’ imprisonment, without parole, rendered his sentence illegal. His reliance on § 5-133(c)(3) is misplaced, as we agree with the State that that provision was not applicable. Mr. Wood also points to Md. Rule 4-245(c) which provides, “[w]hen the law prescribes a mandatory sentence because of a specified previous conviction, the State’s Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court” and, if the State fails to do so, “the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement.”

We agree with Mr. Wood that the State should have provided him notice pursuant to Rule 4-245(c). Its failure to do so, however, did not render the sentence inherently illegal as it was a procedural error and, therefore, not a proper subject of a Rule 4-345(a) motion. *Tshiwala v. State*, 424 Md. 612, 619 (2012) (“where the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint

does not concern an illegal sentence for purposes of Rule 4-345(a).”). In short, a sentence “proper on its face” does not become “an illegal sentence’ because of some arguable procedural flaw in the sentencing procedure.” *State v. Wilkins*, 393 Md. 269, 273 (2006) (quotation omitted).

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