Circuit Court for Baltimore City
Case No.: 195039013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 485

September Term, 2021

CHARLES CHASE, III

v.

STATE OF MARYLAND

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 25, 2022

In 1995, Charles Chase, III, appellant, appeared with counsel in the Circuit Court for Baltimore City and pleaded guilty to second-degree murder and use of a handgun in the commission of a crime of violence. In accordance with the plea agreement, the court sentenced him to a total term of 50 years' imprisonment, suspending all but 25 years, and a five-year term of supervised probation upon release. In 2021, the self-represented Mr. Chase filed a motion to correct an illegal sentence claiming that the court had sentenced him to a total term of 50 years, with all but five years suspended.[1] Following a hearing on the motion, the court denied relief. Mr. Chase appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

At the July 26, 1995 plea hearing, the State offered to recommend a total sentence of 50 years—30 years for second-degree murder and 20 years for the handgun offense—with all but 25 years suspended. The court agreed to bind itself to that recommendation. A discussion then ensued as to how the sentence would be structured given that the first five years of the 20-year sentence for the use of a handgun in the commission of a crime of violence was to be served without the possibility of parole. Ultimately, the court agreed to impose sentence for the handgun offense first, and then run the sentence on second-degree murder consecutive thereto and suspend all but five years of the latter sentence to reach a total of 25 years executed incarceration.

[1] It appears that Mr. Chase was released at some point, but in 2018, after the court found he had violated conditions of his probation, he was ordered to serve 12 years of previously suspended time.

After accepting the plea, the court pronounced sentence as follows:

> First, Mr. Chase, for Count 2 of 195039013, the use of a handgun charge, I'm sentencing you to 20 years, the first five without parole.
>
> ***
>
> Sentence to begin February 2nd, 1995. For count 1 of 195039013, thirty years, that sentence is consecutive to that in count 2, all but five years shall be suspended.
>
> Upon your release, you are to be placed on five years supervised probation.

The hand-written docket entry for July 26, 1995 reflects the plea and sentence for each count. Count 2 is set forth first and reflects a plea of guilty to use of a handgun and a sentence of 20 years, beginning on February 3, 1995, with the first five years without parole. Count 1 is set forth next and reflects a plea of guilty to second-degree murder and a sentence of 30 years, with 25 years suspended, to run consecutive to count 2, and a five-year term of supervised probation.

There are two commitment records in the record before us. The first, dated July 26, 1995, indicates that Mr. Chase was sentenced to 20 years for the handgun offense and to a consecutively run term of 30 years for second-degree murder. The commitment record further indicates that all but 25 years was suspended and the total time to be served is 25 years. Mr. Chase, however, had attached to his motion what appears to be a copy of the same commitment record which is seemingly identical to the commitment record in the record before us, except that it reflects that all but "5 [years]" was suspended. (It appears that the record copy was corrected to reflect that all but 25 years was suspended.) But in

any event, the copy in Mr. Chase's possession did state that the "total time to be served is 25 [years]."

The record also includes what appears to be a corrected commitment record, issued on August 1, 1995—six days after sentencing. An x appears in the □ next to the line, "Sentencing modification. This commitment supersedes commitment issued on July 26, 1995." This commitment record reflects the same sentence as noted above, and that all but 25 years was suspended and total time to be served is 25 years.

As noted, in 2021, Mr. Chase filed a motion to correct an illegal sentence. He seized on the July 26th commitment record in his possession which reflected that all but five years was suspended. He further maintained that his sentence was improperly increased, outside his presence, as reflected by the August 1st commitment record, to reflect that all but 25 years was suspended. In short, he asserted that he was sentenced to a total term of 50 years, and all but five years of that 50-year term was suspended, which is also how he interpreted the court's pronouncement of sentence at the sentencing hearing.

Following a hearing on the motion, the circuit court denied relief. The court found that the sentencing court had suspended all but five years of the 30-year sentence for second-degree murder. The court also found that Mr. Chase's sentence was not subsequently modified, but merely that a "clerical error" on the original commitment record was corrected.

DISCUSSION

On appeal, Mr. Chase reiterates the arguments he made in the circuit court. Like the circuit court, we find no merit to his contentions. The sentencing court sentenced him

to 20 years, the first five years without parole, for the handgun offense. The court then sentenced him to 30 years for second-degree murder to run consecutive to the handgun sentence, with all but five years suspended. The contemporaneous docket entry reflects the same. The suspended time was attached only to the second-degree murder sentence in order to structure the sentence bargained for by the plea agreement: a total term of 50 years, with all but 25 years suspended, with the handgun sentence run first to account for the mandatory five years without parole to be served on that offense.

Although the July 26th commitment record in Mr. Chase's possession states that "[a]ll but 5 [years]" of his sentence was suspended, it also noted that the "total time to be served is 25 [years]." Obviously, the line stating that all but five years of the sentence was suspended was a clerical error that was later corrected. That correction was not a modification of Mr. Chase's sentence, as he contends, but simply a correction to the commitment record to conform with the court's oral pronouncement of sentence. *See* Md. Rule 4-351(b) ("An omission or error in the commitment record . . . does not invalidate imprisonment after conviction."). Moreover, where there is a conflict between a sentencing transcript and a commitment record, the transcript controls unless it is shown to be in error. *Dutton v. State*, 160 Md. App. 180, 191-92 (2004).

In short, the circuit court did not err in denying Mr. Chase's motion to correct an illegal sentence because his sentence is legal.

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