

Circuit Court for Baltimore City
Case Nos: 190302005, 09, 13,17,21,25

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 724

September Term, 2019

DEWAYNE BROWN

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 16, 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.

Dewayne Brown appeals the decision of the Circuit Court for Baltimore City denying his motion to correct an illegal sentence. Because his sentence is legal, we shall affirm the judgment.

Mr. Brown was charged, under six indictments, with first-degree murder and related offenses following a dispute among gang members on September 11, 1990 over the theft of money, which ended with the murder of Daniel Carter. A jury found Mr. Brown guilty of the following offenses:

Case No. 190302005: Count 1 - first-degree murder of Daniel Carter
Count 2 – use of a handgun in the commission of crime of violence

Case No. 190302025: Count 1 – conspiracy to murder Daniel Carter

Case No. 190302009: Count 2 – assault of Antonio Robertson

Case No. 190302013: Count 1 – kidnapping of Daniel Carter

Case No. 190302017: Count 4 – wearing & carrying a dangerous weapon (a 2x4) openly with intent to injure Antonio Robertson

Case No. 190302021: Count 4 - wearing & carrying a dangerous weapon (a golf club) openly with intent to injure Antonio Robertson

At a sentencing hearing held on August 5, 1991, the court pronounced sentence as follows:

For Count 1 of 190302005, that is murder in the first degree of Daniel Carter, I am sentencing you to life[.]

For Count 2, use of a handgun in a crime of violence, that crime of 190302005, I'm sentencing you to twenty years consecutive to the life sentence. Five of those, I believe, are without parole.

For Count 2, the assault of Antonio Robertson, I am sentencing you to twenty years to run concurrent with the life sentence, the first count of 190302005.

For Count 1, 190302005, I am sentencing you to life consecutive to the term of sentences I have already imposed.

For Count 1, the kidnapping, 190302013, I am sentencing you to thirty years **consecutive to the life sentence under 190302025.**

For Count 4 of the wearing and carrying of a weapon under 190302017 and 190302021, I sentence you for both of those crimes to five years **concurrent, with the conspiracy to commit murder under Count 1 of 190302025.**

(Emphasis added.)

Immediately following the pronouncement of those sentences, defense counsel suggested that the “sentencing of life consecutive on a conspiracy charge” might not be appropriate given that “there’s only one homicide” and “the conspiracy culminated in the homicide[.]” Rather, defense counsel asserted that “the original life sentence [imposed by the court] for the homicide should cover” the conspiracy. The court declined to alter its sentence. Three months later, however, the court modified the sentencing package and ordered that the life sentences for first-degree murder and conspiracy to commit murder run concurrently with each other and reduced the kidnapping term to 20 years’ imprisonment, to run consecutive to the life sentences. Upon this modification, the total sentencing term is life plus 20 years.

Upon direct appeal, this Court affirmed the convictions. We also rejected Mr. Brown’s contention that his sentence was improper because the person who shot the victim

pled guilty and received a lesser sentence than himself. *Brown v. State*, No. 1192, September Term, 1991 (filed May 15, 1992).

In 2016, Mr. Brown filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that the life sentence for conspiracy to commit murder was illegal and should be vacated because at the original sentencing hearing, the court imposed two life sentences for first-degree murder (Count 1 in case no. 190302005) and no sentence for conspiracy to commit murder (Count 1 in case no. 190302025) and, hence, had no authority to impose the life sentence for the conspiracy when the sentencing package was modified three months later. He also maintained that his sentence for murder in the first-degree was illegal because he did not commit the act, but merely aided and abetted its commission. The circuit court rejected the first contention and ruled that the second was beyond the scope of a Rule 4-345(a) motion.

On appeal, Mr. Brown makes the same arguments he did in the circuit court. He also asserts that the circuit court abused its discretion by ruling on his motion without “clearly examining the motion” and without an evidentiary hearing.

“Whether a sentence is an illegal sentence under Maryland Rule 4-345(a) is a question of law[.]” *State v. Crawley*, 445 Md. 648, 663 (2015). Appellate courts review “purely legal questions *de novo* – without deference to the decisions of the courts below.” *Bratt v. State*, ___Md.___, No. 39, Sept. Term, 2019 (filed April 28, 2020), slip op. at 10.

We begin with Mr. Brown’s contention that the circuit court erred by failing to hold an evidentiary hearing on his Rule 4-345(a) motion. Because a hearing was not required, *Scott v. State*, 379 Md. 170, 190-91 (2004), we hold that the court did not err by ruling on

the motion without a hearing. We also reject Mr. Brown’s assertion that the circuit court did not “clearly examine” his motion, a notion belied by the fact that the circuit court explained its ruling in a three and a half page order.

As to the merits, Mr. Brown’s first contention is premised on his assertion that the sentencing court originally imposed two life sentences for the first-degree murder (Count 1, case no. 190302005) and failed to impose any sentence for the conspiracy to commit murder (Count 1, case no. 190302025). He relies on the sentencing transcript, which reflects that the judge imposed a life sentence for first-degree murder; a 20-year term for use of a handgun, to run consecutive to the life sentence; a 20-year term for the assault of Antonio Robertson, to run concurrent with the life sentence for first-degree murder; and then imposed “[f]or Count 1, 19030**2005**” a “life sentence consecutive to the term of sentences I have already imposed.” (Emphasis added.) We are persuaded, however, that the court’s reference to Count 1, 19030**2005** rather than Count 1, 19030**2025** was either a “slip of the tongue” or an error in the transcription given that the very next sentence the court imposed was for “Count 1, the kidnapping, 190302013,” a term of 30 years “consecutive to the life sentence under 19030**2025**.” Then for “Count 4 of the wearing and carrying of a weapon under 190302017 and 190302021,” the court sentenced him “for both of those crimes to five years concurrent, with the conspiracy to commit murder under Count 1 of 190302025.” And immediately after the court concluded its pronouncement of the sentences, defense counsel urged the court to merge the life sentence for first-degree murder with the life sentence for conspiracy to commit murder, which the court declined to do. Notably, the commitment record reflected separate life sentences for the first-degree

murder and the conspiracy to commit murder. Accordingly, the sentencing court did not improperly impose a sentence for conspiracy to commit murder when it modified the sentencing package several months later and, therefore, we hold that Mr. Brown’s sentences to life imprisonment are legal.

Finally, we agree with the circuit court that Mr. Brown’s claim that his sentence for first-degree murder was illegal, because he was not the principal in the first-degree, is not cognizable in a motion to correct an illegal sentence. As the Court of Appeals recently reiterated, the scope of Rule 4-345(a) is very narrow and “applies in ‘those situations in which the illegality [of the sentence] inheres in the sentence itself, *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively illegal.’” *Bratt*, slip. op at 14 (quoting *Chaney v. State*, 397 Md. 460, 466 (2007) (brackets supplied in *Bratt*). Mr. Brown is challenging the conviction for first-degree murder and only indirectly the legality of the sentence. As the Court of Appeals has emphasized, “‘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.’” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Wilkins v. State*, 393 Md. 269, 273 (2006)).

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