

Circuit Court for Baltimore City
Case No. 193253004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 887

September Term, 2020

TRACEY HAWES

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 7, 2021

*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.

Following a 1994 jury trial in the Circuit Court for Baltimore City, Tracey Hawes, appellant, was convicted of first-degree murder and use of handgun in the commission of a felony. The court imposed a life sentence on the first-degree murder count and a consecutive twenty-year sentence on the firearm count. We affirmed his convictions on direct appeal. *See Hawes v. State*, No. 675, Sept. Term 1994 (filed Jan. 27, 1995).

In September 2020, Mr. Hawes filed a motion to correct illegal sentence, claiming that his sentence was illegal because the trial court did not instruct the jury that it had to find the killing to be “willful” before it could convict him of first-degree murder. He further contended that this error violated his due process rights by shifting the burden of proof from the State to the defendant. The court denied the motion without a hearing. This appeal followed.

Mr. Hawes contends that the court erred in denying his motion to correct illegal sentence. However, the Court of Appeals has explained that there is no relief, pursuant to Rule 4-345(a), where “the sentences imposed were not inherently illegal, despite some form of error or alleged injustice.” *Matthews v. State*, 424 Md. 503, 513 (2012). A sentence is “inherently illegal” for purposes of Rule 4-345(a) where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not a permitted one, *id.*; or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews*, 424 Md. at 514. A sentence may also be “inherently illegal” where the underlying conviction should have merged with the conviction for another offense for sentencing purposes, where merger was required. *Pair v. State*, 202 Md. App. 617, 624 (2011). Notably, however, 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) (citation omitted).

With those principles in mind, we conclude that, even if true, Mr. Hawes’s claim would not render his sentence inherently illegal. Consequently, the circuit court did not err in denying his motion to correct illegal sentence.

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