

Circuit Court for Baltimore County
Case No.: 03-K-04-1775

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 937

September Term, 2022

GREGORY WILSON

v.

STATE OF MARYLAND

Wells, C.J.,
Shaw,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 28, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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.

Gregory Wilson, appellant, filed a motion to correct an illegal sentence in the Circuit Court for Baltimore County claiming, in essence, that his 2009 conviction for attempted first-degree murder was invalid because he was not properly charged with that offense and, therefore, his sentence is illegal. The circuit court denied relief. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

On March 31, 2004, a detective with the Baltimore County Police Department filed an application for statement of charges in the District Court of Maryland for Baltimore County following an investigation of a shooting that had occurred three days earlier. The narrative in support of the charges related that the victim of the shooting was transported to the hospital “where is he [sic] currently in critical condition.” The narrative continued: “Doctors advise that the victim is paralyzed from the waist down and is currently on a ventilator. It is uncertain at this time whether he will survive his wounds.” An arrest warrant was issued on March 31st for Mr. Wilson, with a Statement of Charges that read:

STATEMENT OF CHARGES

UPON THE FACTS CONTAINED IN THE APPLICATION OF CHILDS, G DET
IT IS FORMALLY CHARGED THAT WILSON, GREGORY DESHAUN at
the dates, times and locations specified below:

NUM	CHG/CIT	STATUTE	PENALTY	DESCRIPTION OF THE CHARGE
001	2A0900	CR 2-201	DEATH	ATT-MURDER-FIRST DEGREE On or About 03/28/2004 F/O 1423 HADWICK DRIVE BALTIMORE CO, MD 21221 ...did feloniously, willfully and of deliberately premeditated malice aforethought kill and murder JARELL TYVUN RICHEY. Against the Peace, Government, and Dignity of the State.

On April 2, 2004, Mr. Wilson appeared before a Commissioner for his initial appearance and was advised, among other things, of his right to a preliminary hearing. He

was further advised that he must request a preliminary hearing within 10 days and that the failure to make a timely request would result in the waiver of the hearing. Pursuant to a Notice to State's Attorney dated April 14, 2004, the District Court informed the State's Attorney for Baltimore County that Mr. Wilson had failed to request a preliminary hearing within 10 days after his initial appearance, that is by April 12th, and had thereby waived his right to a preliminary hearing.

On May 14, 2004, prior to any trial in the District Court and 32 days after Mr. Wilson had waived his right to a preliminary hearing by his failure to request one, the State's Attorney for Baltimore County filed a Criminal Information in the circuit court. The Criminal Information charged Mr. Wilson with 10 counts, including attempted first-degree murder and handgun offenses based on the March 28th incident. The first count read:

The above entitled case having been referred to Sandra A. O'Connor, State's Attorney for Baltimore County, and the said State's Attorney for Baltimore County having fully investigated said case after it had been referred to her as aforesaid, now comes into said Court and for and on behalf of the State of Maryland gives the Court here to understand and be informed that GREGORY DESHAUN WILSON, on or about March 28, 2004 at 1839 hours, in Baltimore County, did feloniously, willfully and of deliberately premediated malice aforethought, attempt to kill and murder Jarell Tyvun Richey; contrary to the form of the Act of Assembly, in such case made and provided, and against the peace, government and dignity of the State.
(Attempted 1st Degree Murder – Criminal Law Article – CR 2-205) 2 0910

The District Court docket entries reflect that on May 18, 2004 its "case status" was changed to "closed." The "case disposition" read: "forwarded to circuit court."

Following a jury trial in the circuit court in 2005, Mr. Wilson was convicted of attempted first-degree murder and use of a handgun in the commission of a crime of

violence. On appeal, this Court held that the trial court had failed to comply with the requirements of Md. Rule 4-215 when Mr. Wilson expressed a desire to discharge his counsel. Accordingly, we reversed the judgments and remanded for a new trial. *Wilson v. State*, No. 1411, September Term, 2005 (filed June 27, 2007).

Following a retrial in 2009, a jury convicted Mr. Wilson of attempted first-degree murder, handgun violations, and related offenses. The circuit court sentenced him to life imprisonment for attempted first-degree murder and to a concurrent term of 20 years, all but five suspended, for use of a handgun in the commission of a crime of violence. The remaining convictions merged for sentencing purposes. Upon direct appeal, Mr. Wilson argued that the trial judge erred in denying his motion for recusal and erred in not precluding two State witnesses from testifying. This Court rejected the first argument and held that the other was not preserved for appellate review, and affirmed the judgments. *Wilson v. State*, No. 2788, September Term 2008 (filed December 7, 2010).

In a petition for writ of habeas corpus filed in 2017, Mr. Wilson asserted—seemingly for the first time—that he was erroneously charged in the District Court case with first-degree murder because the victim did not die. He further alleged that “[n]o probable cause finding was ever made by the commissioner” and that he “was not advised of his right to prompt presentment before the commissioner or his right to a preliminary hearing.” He claimed that the Criminal Information filed in the circuit court included the same District Court case number “as when he was erroneously charged with first degree murder” in that court. He maintained that Rule 4-204 does not “permit adding a new charge to an existing indictment (or, in this case, information)” and an “amendment may not

change the character of the offense charged.” In short, he asserted that he was “never properly charged with attempted murder” and, therefore, “jurisdiction was never conferred upon the Circuit Court and his convictions are a nullity” and, consequently, his confinement is unlawful. The State countered that Mr. Wilson was “advised about both his right to prompt presentment and a preliminary hearing” and provided documentation to support that claim. The State further noted that, after Mr. Wilson “failed to request a [preliminary] hearing,” the State filed the Criminal Information in circuit court charging him with attempted first-degree murder and related offenses. The habeas court denied relief.

In a subsequently filed petition for post-conviction relief, Mr. Wilson, among other things, again alleged that his conviction for attempted first-degree murder was a nullity because he was not charged with that offense. In rejecting his claim, the post-conviction court, in an Order of the Circuit Court for Baltimore County entered on April 10, 2020, stated:

While the original District Court statement of charges incorrectly stated, under the heading “ATT-MURDER-FIRST-DEGREE” that [Wilson] “did feloniously, willfully and of deliberately premeditated malice aforethought kill and murder JARELL TYVUN RICHEY” (Exhibit 74), this was either of a typographical error, or its equiavlent.

The Criminal Information filed in the Circuit Court correctly charged [Wilson] with an “attempt to kill and murder Jarell Tyvun Richey” in the first and second counts; [Wilson] was arraigned on June 3, 2004 and again on October 2, 2007 (before the second trial); and analyzing the entirety of the record in this case, it is clear that [Wilson] was fully on notice of the nature and elements of the charges lodged against him. There is no colorable merit to this claim.

Then in 2022, Mr. Wilson filed, as a self-represented litigant, a pleading he captioned “Motion To Correct An Illegal Sentence” in which he essentially raised the same claim as in the habeas and post-conviction petitions. He relied on Rule 4-345(a) and Rule 4-252(d) as authority for his motion.¹ Specifically, he claimed that he was convicted and sentenced for crimes he was never charged with; the court erred in allowing the State “to appeal the dismissal of charges from the District Court”; and the court erred “in allowing the State to add new charges to an existing charging document.” The circuit court denied relief with a notation that read: “Not timely filed.” Mr. Wilson’s appeal of that ruling is the matter presently before us.

DISCUSSION

Rule 4-345(a) provides that a court “may correct an illegal sentence at any time[.]” but the Rule is very narrow in scope and is “limited to those situations in which the illegality inheres in the sentence itself[.]” *Chaney v. State*, 397 Md. 460, 466 (2007). An inherently illegal sentence is one in which there “has been no conviction warranting any sentence for the particular offense[.]” *id.*, where “the sentence is not a permitted one for

¹ Rule 4-345 addresses a circuit court’s revisory power over a sentence. Rule 4-345(a) provides that a motion to correct an illegal sentence may be filed at any time. Rule 4-252 addresses pre-trial motions filed in the circuit court in criminal cases. Rule 4-252(d) provides that a motion “asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.” Rule 4-252(g) provides, generally, that motions filed pursuant to Rule 4-252 “shall be determined before trial and, to the extent practicable, before the day of trial[.]” Mr. Wilson appears not to have challenged the charging document before or during trial. He did not raise the issue on direct appeal.

the conviction upon which it was imposed[,]” *id.*, where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012), or where the court “lacked the power or authority” to impose the sentence. *Johnson v. State*, 427 Md. 356, 370 (2012). 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) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)). In other words, “only claims sounding in substantive law, not procedural law, may be raised through a Rule 4-345(a) motion.” *Id.* at 728. Appellate court review of the circuit court’s ruling on a motion to correct an illegal sentence is *de novo*. *Bratt v. State*, 468 Md. 481, 494 (2020).

On appeal, Mr. Wilson first asserts that the circuit court erred in denying his motion as not timely filed. Given that we review the matter *de novo*, we need not dwell on this argument. A Rule 4-345(a) motion challenging the legality of a sentence may be filed at any time. We are not persuaded, however, that a Rule 4-252(d) motion “asserting failure of the charging document to show jurisdiction in the court or to charge an offense” may be filed years after trial and years after the conclusion of a direct appeal.

But in any event, the argument that a conviction is invalid because the offense was not charged and hence the sentence for that offense is illegal may, at least in some circumstances, be raised in a Rule 4-345(a) motion. *See e.g., Johnson*, 427 Md. 356. That, however, is not the situation here as, unlike in *Johnson*, the Criminal Information filed in the circuit court undisputedly charged Mr. Wilson with attempted first-degree murder and

handgun offenses. Mr. Wilson’s argument, in essence, is that the Criminal Information charging him with those offenses was defective.

In his brief, Mr. Wilson asserts that the Statement of Charges filed in the District Court “was dismissed for the State’s failure to comply with the requirements of Md. Rule 4-221” and on May 14, 2004, the State “filed an Appeal in the Circuit Court of the District Court[’s] disposition” of the case. That, however, is inaccurate. Rather, the docket entries reflect that the District Court closed its case upon the filing of the Criminal Information in the circuit court. There was no trial in the District Court and certainly no appeal by the State of any action taken by District Court. Consequently, Mr. Wilson’s position before this Court that, “[b]ecause the law requires Appeals to the Circuit Court to be heard on the record of the District Court, no other charging document could or should have been used in this case because it would be void, depriving the [Circuit] Court of jurisdiction over the offense not charged in the original charging document,” is meritless.

Based on our review of the record, the only apparent irregularity with the Criminal Information is that it was filed 32 days after Mr. Wilson was deemed to have waived his right to a preliminary hearing in the District Court—two days later than that provided for in Rule 4-221. That Rule provides, in relevant part:

(f) *Action Required by State’s Attorney.* Within 30 days after a finding by the court of probable cause or within 30 days after the defendant waives a preliminary hearing, the State’s Attorney shall:

- (1) File a charging document in circuit court;
- (2) Amend the pending charging document or file a new charging document charging the defendant with an offense within the jurisdiction of the District Court; or

(3) Enter a nolle prosequi or have the charge marked stet on the docket as provided in Rules 4-247 and 4-248.

After hearing on the record in the presence of the defendant and for good cause shown, the court may extend the time within which the State's Attorney shall take such action.

(g) *Dismissal for Lack of Prosecution*. If the State's Attorney fails to comply with section (f) of this Rule, the court shall enter an order of dismissal for lack of prosecution. A dismissal pursuant to this section is without prejudice.

(h) *State's Attorney's Notification – Transfer of Papers*. Upon the filing of a charging document in the circuit court pursuant to section (c) or (f) of this Rule, the State's Attorney shall promptly give notice of the filing to the clerk of the District Court, the defendant, and all witnesses subpoenaed for a preliminary hearing. When so notified, the clerk shall immediately forward all papers to the clerk of the circuit court in which the charging document is filed.

Here, the State's Attorney filed a new charging document in the circuit court. The Criminal Information charging Mr. Wilson with attempted first-degree murder and other offenses supplanted the Statement of Charges filed in the District Court. Thus, the District Court, as reflected in its docket entries, closed its case and forwarded its papers to the circuit court. The fact that the Criminal Information was filed two days beyond the timeline set forth in Rule 4-221(f) did not invalidate the Criminal Information. The State's failure to comply with the 30-day timeline, if error or irregularity, was procedural in nature and it did not deprive the circuit court of its fundamental jurisdiction. *See Powell v. State*, 324 Md. 441, 446 (1991) (noting that the Rules addressing preliminary hearings govern "the regulation of the movement of cases from the District Court, in which the preliminary hearing process is lodged, to the circuit court," but "they do not control the fundamental

jurisdiction of the circuit court courts” and, therefore, the failure to hold or waive a preliminary hearing did not deprive the circuit court of its jurisdiction over the matter).

In *Lurz v. State*, 135 Md. App. 66 (2000), *cert. denied*, 364 Md. 141 (2001), this Court addressed an issue on direct appeal similar to the issue Mr. Wilson is raising here. In that case, like here, the defendant was initially charged in the District Court and he failed to request a preliminary hearing. *Id.* at 71-72. More than 30 days beyond the timeline set forth in Rule 4-201(f), the State’s Attorney filed a Criminal Information in the circuit court. *Id.* at 72. The defendant then moved to dismiss the circuit court charges on the ground that the Criminal Information was not filed within the time prescribed by Rule 4-221(f). *Id.* at 74-75. The trial court denied the motion. *Id.* at 75. On appeal, this Court affirmed the judgment. In discussing the issue, we noted that the appellant “makes much ado about,” among other things, “whether the criminal information was filed within the time permitted by Rule 4-221(f)” and concluded that “it is much ado about nothing.” *Id.* In doing so, we relied upon this Court’s decision in *State v. Graziano*, 71 Md. App. 652, *cert. denied*, 311 Md. 324 (1987).

In *Graziano*, a Statement of Charges was filed in the District Court against defendants in four different cases charging them with CDS offenses which were beyond the jurisdiction of the District Court. *Id.* at 653. In each case, the District Court held a preliminary hearing and determined that there was sufficient probable cause to support the charges. *Id.* at 653-54. The State’s Attorney, however, filed a Criminal Information in each case more than 30 days after the probable cause finding, contrary to the timeline in Rule 4-221(f). *Id.* at 654. The circuit court, relying on Rule 4-221(g), then dismissed the

Criminal Information for untimeliness. *Id.* The State appealed and this Court reversed in an opinion authored by Judge Alan Wilner. In holding that the circuit court erred in dismissing the charges, the Court stated:

Rule 4-221 was derived from former Md. District Rule 727; indeed, sections (e), (f), and (g) are taken nearly verbatim from sections h., i., and j. of M.D.R. 727. Notwithstanding the unfortunate and possibly confusing use of the word “court” rather than “District Court” in section (g) of the current version of the Rule, it was, and is, a rule that applies to proceedings in the District Court and has nothing to do with the validity of an indictment or information subsequently filed in the Circuit Court. The obvious and necessary purpose of section (g) is to clear the District Court docket of a case over which that court has no further authority to act and, at the same time, to release the defendant from the charge and from any harmful consequences of it. That limited function is clear not only from the general language and context of the Rule but also from the fact that the dismissal is “without prejudice.” It would be anomalous—indeed absurd—for the Rule to require the Circuit Court to dismiss an information or indictment because it was not filed within 30 days after the preliminary hearing but then to permit the State, five minutes after the order of dismissal, to file a new, identical indictment or information.

Id. at 655-56.

In short, we are not persuaded that Mr. Wilson was convicted pursuant to an invalid Criminal Information. And because his sentence is legal, the circuit court did not err in denying his motion to correct it.

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

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0937s22cn.pdf>