Circuit Court for Baltimore City
Case No. 18335414

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 994

September Term, 2017

ALFRED A. CHESTNUT

v.

STATE OF MARYLAND

Woodward C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 2018

On July 10, 1984, appellant, was sentenced by the Circuit Court for Baltimore City in case number 18335414 to life imprisonment for one count of felony murder, and to a consecutive twenty years of imprisonment for use of a handgun in a crime of violence. On that same date he was sentenced in circuit court case number 18335415 to a twenty-year term of imprisonment for an additional count of use of a handgun in the commission of a crime of violence. The court ordered the sentence in 18335415 to run "concurrent with the 18335414."[1] On May 1, 2008, appellant filed a *pro se* motion to correct an illegal sentence. After a number of postponements, appellant retained counsel who filed a supplemental motion to correct an illegal sentence on May 12, 2017, and argued that the "two case numbers reflect one single event and one victim, thus creating an illegal sentence[.]" After holding a hearing, the court found that the twenty-year concurrent sentence in case 18335415 was illegal, vacated it, and left intact the life plus twenty years sentence in 18335414.

Appellant argues on appeal that the court erred by failing to vacate all the sentences and resentence him on all counts in each case number. The State, in its brief, has moved to dismiss on the grounds that appellant's appeal "is based on an alleged procedural flaw" in the circuit court's ruling on a motion to correct illegal sentence. It contends that "the proper procedure is for [appellant] to file a motion for modification of his sentence, which he has done." We shall dismiss the appeal because appellant's sentence in 18335415 had

[1] The commitment record also reflects that the sentence in case number 18335415 was to run "concurrent with 18335414." Accordingly the sentence in 18335414 began when appellant was sentenced on July 10, 1984.

already been served at the time he filed his initial motion to correct an illegal sentence. Consequently, his illegal sentence claim is moot.

Pursuant to Maryland Rule 4-345(a), "court may correct an illegal sentence at any time." An illegal sentence "is one in which the illegality '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 unlawful.'" *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). "When a sentencing judge fails to merge multiple convictions for the 'same offense' pursuant to the required evidence test of *Blockburger v. United States*, the unmerged sentence is unconstitutional, as a matter of law." *Pair v. State*, 202 Md. App. 617, 624 (2011). Such a sentence is "also an 'illegal sentence' within the contemplation of Rule 4–345(a)." *Id.*

A plurality of the Court of Appeals, however, has stated the following with regards to the application of Rule 4-345(a) where a sentence has already been served:

> As Rule 4-345(a) simply permits a court to revise an illegal sentence, rather than to modify or overturn the underlying conviction, it follows that a court can no longer provide relief under that rule once a defendant has completed his or her sentence. In that instance, there is no longer a sentence to correct, and a court should dismiss the motion as moot unless special circumstances demand its attention.

Barnes v. State, 423 Md. 75, 86 (2011).

Appellant filed his motion to correct an illegal sentence in 2008, twenty-four years after his initial sentencing. As a result, he had already finished serving his twenty-year sentence in case number 18335315, as the court had ordered it to run concurrent with the

sentence he received in case number 18335314. Therefore, there was no longer a sentence for the circuit court to correct at the time it vacated his sentence in case number 18335315.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.