

Circuit Court for Baltimore County
Case No.: 03-K-86-002054

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1256

September Term, 2021

VINCENT COLE

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 29, 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.

In 1986, a jury sitting in the Circuit Court for Baltimore County found Vincent Cole, appellant, guilty of first-degree felony murder, burglary, daytime housebreaking, and robbery. The court sentenced him to life imprisonment for felony murder and merged the remaining convictions for sentencing purposes. On direct appeal Mr. Cole argued, among other things, that the evidence did not support the conviction for felony murder. This Court disagreed and noted that “the evidence was sufficient for the jury to find that one, two, or all three of the perpetrators [one of which was Mr. Cole], in the course of the underlying felonies, locked the [79-year-old] victim in the closet [of her home] without food and water and left her in there.” We concluded that as a “direct result” of those actions, “after five to seven agonizing days” the victim “died because of the deprivation of food and water.” Consequently, we held that there was “sufficient causation to support a conviction of felony murder” and affirmed the judgment. *Cole v. State*, No. 504, September Term, 1987 (filed November 30, 1987), slip op. at 11.

In 2020, Mr. Cole, representing himself, filed a motion to correct an illegal sentence in which he, in essence, argued that the evidence at trial was insufficient to support the convictions for burglary and felony murder and, therefore, his sentence was illegal. The circuit court denied relief and on appeal this Court affirmed the judgment. *Cole v. State*, No. 75, September Term, 2020 (filed July 9, 2021).¹ We concluded that Mr. Cole, regardless of how he attempted to “disguise his arguments,” was challenging the

¹ As noted in our opinion, Mr. Cole claimed that “the felony murder statute is inapplicable to [his] conduct where the harmful result is more directly traceable to a non-felon, non-accomplice, non-co-defendant at trial, who was not acting in concert with appellant to any of the offenses.” *Cole*, No. 75, Sept. Term, 2020, slip op. at 2.

sufficiency of the evidence in support of his convictions. Consequently, because a sufficiency challenge to a conviction is not a proper subject of a motion to correct a sentence, we affirmed the judgment. *Id.*, slip op. at 3.

In 2021, just weeks after this Court’s opinion was filed in Case No. 75, Sept. Term, 2020, Mr. Cole filed another motion to correct an illegal sentence. Mr. Cole asserted that the “felony murder statute is entirely inapplicable” where he “was not a participant in the killing of the victim which was committed by a non-felon.” He thus maintained that the “trial court was without authority to apply the felony murder statute to [his] situation” and, therefore, his sentence “is statutorily and constitutionally invalid.” The circuit court denied relief. Mr. Cole appeals that ruling.

Mr. Cole reiterates the same or similar arguments he made in his motion and in his previous appeal. The State responds that Mr. Cole’s appeal “is barred by the law of the case doctrine” because, although his arguments in this appeal are “superficially” different than his 2020 arguments, he is raising “precisely the same issue” that he raised in the most recent appeal, that is, “whether he can be convicted of felony-murder when (in his mind) he was not responsible for the commission of the felony.”

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 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, 368 (2012). Notably 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)).

Here, Mr. Cole continues to challenge his felony murder *conviction*. That issue is not the proper subject of a motion to correct an illegal sentence. And in any event, that issue was addressed and rejected by this Court in Mr. Cole’s direct appeal.

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