UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1393

September Term, 2014

VERNON EVANS

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: October 23, 2015

*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.

Appellant, Vernon Evans, appeals from the denial by the Circuit Court for Baltimore County of a motion to correct an illegal sentence. Finding no error, we affirm.

Background

In *Evans v. State*, 396 Md. 256 (2006), the Court of Appeals

> describe[d], as succinctly as possible, the long, tortured history of [Evans's] case . . . .
>
> Two separate juries – one in Worcester County and one more than a hundred miles away in Baltimore County – unanimously determined, eight years apart, that Evans should be put to death for the brutal murders he committed. . . . Evans has had eleven appeals to th[e] Court [of Appeals] and has presented seven petitions to the United States Supreme Court. Depending on how one isolates or clusters his arguments, he has presented approximately one hundred complaints to the Circuit Courts in three counties and to [the Court of Appeals], many of them several times. He has had more than two dozen complaints considered and rejected by the U.S. District Court and the U.S. Court of Appeals for the Fourth Circuit[.] Throughout, he has been represented by able, experienced, competent counsel.
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> These appeals and . . . various proceedings . . . all arose from a double murder committed by Evans on April 28, 1983[.] Evans was paid $9,000 by or on behalf of Anthony Grandison, who was then in jail awaiting trial on Federal narcotics charges, to kill David Piechowicz and his wife, Cheryl. Mr. and Ms. Piechowicz were slated to testify against Grandison in Federal court a week later. Evans went to the Warren House Motel in Baltimore County and, in cold blood, murdered Mr. Piechowicz and the woman he thought was Cheryl but who, in fact, was Cheryl's sister, Susan Kennedy.
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> Two prosecutions ensued – one Federal and one State. The Federal prosecution came first in time.
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> * * *
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> On June 30, 1983, the State prosecution commenced in Baltimore County with an indictment charging Evans and Grandison with two counts of first degree murder, one count of conspiracy to commit murder, and one count of using a handgun in the commission of a felony. Prior to trial, the cases

against Evans and Grandison were severed. On September 7, 1983, Evans was served with a notice of the State's intention to seek the death penalty[.]

At Evans's request, his case was removed from Baltimore County to Worcester County . . . .

. . . [T]he case proceeded before a jury, which convicted Evans of the two murders and related offenses and sentenced him to death. He appealed, raising 17 issues.

* * *

In a 42-page opinion examining each of those issues, th[e] Court [of Appeals] found no merit to them and affirmed. *Evans v. State*, 304 Md. 487, 499 A.2d 1261 (1985). . . .

In March, 1990, Evans filed his first petition under the Post Conviction Act in the Circuit Court for Worcester County. He raised 22 issues in the petition and added six more on the day of the hearing.

* * *

[One of the issues was that t]he trial court's instructions at sentencing and the sentencing form given to the jury unconstitutionally suggested that unanimity was required in order to find a mitigating factor, in contravention of *Mills v. Maryland*, 486 U.S. 367, 108 S.Ct. 1860, 100 L.Ed.2d 384 (1988)[.]

* * *

On March 28, 1991, the post conviction court (Judge Eschenburg), in a 38-page memorandum opinion, addressed each of those issues and found merit in only one[.] The court held that the sentencing form did, indeed, violate *Mills* and that the error was not ameliorated by the court's instructions to the jury. As that error affected only the sentencing, the court ordered a new sentencing hearing but denied the request for a new trial as to guilt or innocence.

Evans, 396 Md. at 351-58 (internal abbreviations omitted).

Evans subsequently filed a "Suggestion of Removal/Motion for Appropriate Relief," in which he requested that the case be "transferred to the Circuit Court for Baltimore County for . . . resentencing." In October 1992, the circuit court granted that request. A month later, in November 1992, a jury in the Circuit Court for Baltimore County sentenced Evans to death on each count of first degree murder.

In February 2014, Evans filed a motion to correct an illegal sentence, in which he contended that the "sentences of death . . . are illegal . . . since the Circuit Court for Worchester [sic] County . . . lack[ed] jurisdiction . . . to grant a[] suggestion of removal . . . to transfer venue of Evans'[s] case . . . back to the Circuit Court for Baltimore County once removed." (Boldface and capitalization omitted.) After the court denied the motion, Evans noted the instant appeal. In January 2015, the Governor of Maryland commuted his death sentences to life imprisonment without the possibility of parole.

Discussion

Evans contends that the court erred in denying his motion to correct an illegal sentence because, when the case was removed from Baltimore County to Worcester County, the Circuit Court for Baltimore County "was forever divested of jurisdiction," and the Circuit Court for Worcester County "lacked . . . authority . . . to . . . order[] that venue . . . be transferred back to the Circuit Court for Baltimore County for resentencing." The State responds that Evans's contention "is not . . . cognizable in a motion to correct an illegal

sentence," and, furthermore, Evans "cannot and should not be permitted to assert error in an action he caused."

We shall not reach Evans's contention because it was not preserved for our review. The Court of Appeals has stated that a "party fails to preserve for appellate review any issue as to a trial court's ruling by inviting the trial court's ruling." *Fuster v. State*, 437 Md. 653, 673 (2014) (citation omitted). Here, Evans invited the trial court to transfer the case to the Circuit Court for Baltimore County for resentencing. Hence, Evans failed to preserve for our review any issue as to the trial court's ruling.

Even if Evans's contention was preserved for our review, he would not prevail. In *Bryant v. State*, 436 Md. 653 (2014), the Court of Appeals discussed the grounds on which a sentence may be properly reviewed by an appellate court:

> There are limited grounds on which a sentence may be properly reviewed by this Court despite the failure to object at the time of the proceedings. One such avenue for review . . . is Md. Rule 4-345(a), which provides that a "court may correct an illegal sentence at any time." This exception is a limited one, and only applies to sentences that are "inherently" illegal. We have consistently defined this category of "illegal sentence" as limited to those situations 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.
>
> The distinction between those sentences that are "illegal" in the commonly understood sense, subject to ordinary review and procedural limitations, and those that are "inherently" illegal, subject to correction "at any time" under Rule 4-345(a), has been described as the difference between a substantive error in the sentence itself, and a procedural error in the sentencing

> proceedings. . . . Accordingly, our inquiry . . . is whether [a] sentence itself is inherently illegal.

Id. at 662-64 (internal citations, quotations, and footnote omitted). Moreover, where "the challenge . . . is to an alleged procedural flaw, there is no inherent illegality within the meaning of Rule 4-345(a)." *Id.* at 665-66 (quotations omitted).

Here, Evans challenges an alleged procedural flaw in the sentencing proceedings. He does not allege any substantive error in the sentences themselves. Hence, at the time that Evans filed the motion, the sentences were not inherently illegal,[1] and the court did not err in denying the motion.

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

[1]At the time that Evans filed the motion, Md. Code Art. 27, § 412(b) (1957, 1992 Repl. Vol.), allowed for "a person found guilty of murder in the first degree [to] be sentenced to death[.]" In 2002, the Legislature recodified this portion of Art. 27, § 412(b) as Md. Code (2002), § 2-202(a) of the Criminal Law Article ("CL"). *See* 2002 Md. Laws, Chap. 26, § 2. In 2013, the Legislature repealed CL § 2-202. *See* 2013 Md. Laws, Chap. 156, § 3.