Circuit Court for Baltimore City
Case Nos.: 57902206 & 57902208

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 928 & 1432

September Term, 2019

GERALD D. FULLER

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: July 28, 2020

*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.

On October 24, 1979, Gerald D. Fuller, appellant, pleaded guilty to first-degree rape, and robbery with a deadly weapon, in the Circuit Court for Baltimore City. That same day, the court sentenced appellant, in accordance with the guilty plea agreement,[1] to life imprisonment for first-degree rape, and to twenty years' imprisonment for robbery to be served concurrently. The court also recommended that appellant be evaluated at the Patuxent Institution.

Over the course of the ensuing decades, appellant has mounted numerous unsuccessful attacks on his conviction and sentences.[2] We need not recount them here.[3] On October 12, 2018, appellant began his latest volley of litigation by filing, *pro se*, a pleading captioned "Motion to Enforce Plea Agreement Pursuant to Rule 4-243/733 or Alternatively, Motion to Correct Illegal Sentence." Over the course of the months that followed, appellant filed various *pro se* motions which were all related in substance to the October 12 motion. The denial of some or all of those motions spawned two appeals raising essentially the same claims. We therefore consolidated those appeals. As far as we can discern, appellant raises two claims.

[1] Under the guilty plea agreement reached between the State and appellant, in exchange for appellant's guilty plea to first-degree rape and robbery with a deadly weapon, the State agreed to enter a nolle prosequi to other charges arising out of the same incident and to recommend concurrent sentences of life and twenty years. The State also agreed to recommend that those sentences run concurrent to a life sentence imposed on appellant a few months earlier as a result of being found guilty of the first-degree murder of his wife.

[2] Based on the Court of Appeals decision in *Unger v. State*, 487 Md. 383 (2012), Appellant successfully attacked his conviction for the first-degree murder of his wife. After his conviction was vacated, he pleaded guilty and was sentenced to time served.

[3] We set forth a detailed procedural history of appellant's attacks in *Fuller v. State*, No. 1956, Sept. Term (2010) (filed unreported September 22, 2011).

He first claims that, for various reasons, he is entitled to withdraw his 1979 guilty plea and/or enforce its provisions. The gist of that claim appears to be that he pleaded guilty on the reliance that the court was going to issue an order requiring that he be confined at the Patuxent Institution. As an initial matter, we are aware of no provision of law which would permit appellant to file such a motion to withdraw or enforce a guilty plea agreement, or a circuit court to grant such a motion, nearly thirty-nine years after the guilty plea and sentencing took place. Secondarily, the transcript of the guilty plea hearing does not reflect that the plea agreement contained any term related to the Patuxent Institution even though the court, upon request of appellant's counsel, ordered that appellant be evaluated at the Patuxent Institution. As a result, we discern no error or abuse of discretion on the part of the circuit court for denying appellant's motion.

Appellant's motion to correct an illegal sentence is rooted in his claim that he was not given credit for all of the time he spent incarcerated awaiting trial. Such a claim is foreclosed by the recent decision of the Court of Appeals which held that a claim that a trial court failed to award credit for time served awaiting trial is not the proper subject of a motion to correct an illegal sentence. *Bratt v. State*, __ Md. __ (2020) (No. 39, Sept. Term 2019 *8-9 (filed April 28, 2020). Rather, such a claim is properly addressed by filing a "motion to amend the commitment record to reflect credit for time served." *Id.* at *11. We make no comment on the merits of appellant's claim, and therefore this opinion should not be read as prejudicial to any future motion to amend the commitment record that appellant may file.

Accordingly, we affirm the judgments of the circuit court.

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