

Circuit Court for Frederick County
Case No.: 10-K-92-015576

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1789

September Term, 2017

WILLIAM ROBERT FAGAN

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: November 13, 2018

*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 January 22, 1997, William Fagan, appellant, pleaded guilty to conspiracy to commit first-degree murder in the Circuit Court for Frederick County. He was sentenced to life imprisonment, all suspended except ten years, with five years of probation. Appellant was released from prison in 2000 and began serving his five years of probation. In 2003, appellant pleaded guilty to driving while impaired. On September 12, 2003, at a violation of probation hearing, the circuit court revoked his probation in this case and imposed the balance of appellant’s sentence of life imprisonment.

In 2016, appellant filed a motion to correct an illegal sentence pursuant to Maryland Rule 4-345 contending that the sentence was illegal because “the trial judge imposed a sentence in excess of that contemplated by a binding plea agreement.” Specifically, he argued that the “[c]ourt’s sentence did not set forth whether it was consecutive or concurrent to any other sentences.” The circuit court disagreed, finding that “[t]he transcript of the Plea Hearing on January 22, 1997 clearly shows that the [appellant] acknowledged the plea agreement to be a sentence of LIFE imprisonment, with execution of all but ten (10) years to be suspended, and five (5) year term of probation to be served upon release.” Accordingly, the court denied the motion to correct the sentence.

On appeal, appellant claims that his sentence is illegal because, when he entered the guilty plea in 1997, (1) “probation was not discussed or explained” and (2) the trial judge “did not explain to the Appellant the nature and elements of Conspiracy to Commit First Degree Murder and the consequences of the Plea.”

We first note that appellant’s contentions were not raised below and under Maryland Rule 8-131(a), an appellate court will ordinarily not decide an issue unless it plainly

appears to have been raised in or decided by the trial court. In any event, as to appellant’s contentions that the court did not discuss probation, we quote the voir dire from the January 22, 1997 plea hearing:

THE COURT: You understand that upon your release you’ll be placed on probation for a period of five years?

FAGAN: Yes sir.

THE COURT: And you understand the terms and conditions of that probation as they’ve been set up here this morning?

FAGAN: I do.

The court also ensured that appellant understood the rights he was waiving by entering the plea. As to appellant’s contention, that the nature and elements of conspiracy to commit murder was not explained to him, this issue was raised in a post-conviction proceeding on July 11, 2012. At that hearing, his attorney, who represented him at his plea hearing (and a previous trial that ended in a mistrial), was asked whether he had discussed the nature and elements of appellant’s conspiracy charge with appellant. Counsel stated that he had done so and that he was “satisfied that [appellant] knew.”

Furthermore, Maryland Rule 4-345(a) grants courts the power to revise an illegal sentence at any time. However, the illegality must “inhere in the sentence itself and must not be a procedural illegality or trial error antecedent to the imposition of sentence.” *Carlini v. State*, 215 Md. App. 415, 426 (2013). A sentence is “inherently illegal” where (1) there was no conviction warranting any sentence, (2) the sentence imposed was not a permitted one, or (3) the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Chaney v. State*, 397 Md. 460, 466 (2007); *Matthews v. State*, 424 Md.

503, 514 (2012). None of the “inherently illegal” situations are present here. Rather appellant is alleging an injustice in the proceeding that led to the imposition of the sentence. However, a “motion to correct an illegal sentence is not an alternative method to 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 *Wilkins v. State*, 393 Md. 269, 273 (2006)). Accordingly, we affirm.

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