Circuit Court for Baltimore City
Case Nos: 194277006, 07

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1806

September Term, 2019

ANDRE HOLDCLAW

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 16, 2020

The appellant, Andre Holdclaw, filed a motion to correct an illegal sentence in the Circuit Court for Baltimore City related to the award of credit for pretrial detention. In response, the circuit court amended his commitment record to reflect an earlier start date to his life sentence. Still dissatisfied, Mr. Holdclaw appealed. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Following a jury trial, Mr. Holdclaw was found guilty of felony murder, use of a handgun in the commission of a felony or crime of violence, assault, robbery with a dangerous and deadly weapon, and several other handgun offenses. On March 18, 1996, the court sentenced Mr. Holdclaw to life imprisonment for felony murder, a consecutively run term of 20 years (the first five without the possibility of parole) for the use of a handgun offense, and 20 years for the armed robbery offense, to run consecutively to the aforementioned sentences. After merging the remaining convictions for sentencing purposes, the total term was life plus 40 years - with a start date of September 9, 1994. Upon appeal, this Court vacated the sentence for robbery with a dangerous and deadly weapon because it should have merged with felony murder, and otherwise affirmed the judgment. *Holdclaw v. State,* No. 1018, September Term, 1996 (filed March 21, 1997). The commitment record was later amended to reflect a total sentence of life, plus 20 years, again with a start date of September 9, 1994.[1]

[1] For a reason not clear from the record before us, it appears that the commitment record was not amended until December 2010. The amended document includes the notation: "This amended commitment record is filed pursuant to the decision of the Court of Special Appeals, No. 1018, September Term, 1996 (filed March 21, 1997)."

In 2019, Mr. Holdclaw, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that his constitutional rights were violated because he was "not credited by the sentencing court with a reduction in the term of his life sentence for time served in pretrial detention." He stated that he was "taken into custody by Baltimore City on August 8, 1994" and when he was sentenced in this case on March 18, 1996, he was not "awarded 32 days, pretrial detention credits." (As noted above, both the original commitment record and the amended commitment record reflect a start date of September 9, 1994.) In a subsequent pleading, Mr. Holdclaw clarified that, "at the time of his sentencing on March 18, 1996, he [had] spent 588 days in pretrial detention," but nothing was said at sentencing regarding the amount of credit he was owed. He further asserted that the "court clerk entered an inaccurate start date of 9-9-94" and "failed to indicate how many actual days he was being awarded." And, according to Mr. Holdclaw, the sentencing court violated Article 27 § 638C(d) by failing to "state on the record" the amount of credit he was due. He also maintained that pretrial credit must "diminish" his life sentence and, therefore, the 588 days should have been "deducted" from his term of confinement.[2] Finally, he requested a hearing on his motion.

[2] When Mr. Holdclaw was sentenced in 1996, Article 27 § 638C(a), in relevant part, provided:

> Any person who is convicted and sentenced shall receive credit against the term of a definite or life sentence . . . for all time spent in the custody of any state, county or city jail, correctional institution . . . as a result of the charge for which sentence is imposed or as a result of the conduct on which the charge is based, and the term of a definite or life sentence . . . shall be diminished thereby.

(continued)

The circuit court did not convene a hearing on Mr. Holdclaw's motion to correct his sentence. By order docketed on October 9, 2019, the circuit court ruled as follows:

> Defendant Holdclaw was convicted of First Degree Murder, *inter alia*, in [this] matter. His amended Commitment Record (dated December 8, 2010) indicates that he received a life sentence for that crime. Missing from that Commitment Record is a computation of the award of the number of days credit he should receive for that time he was incarcerated prior to the date of the imposition of the original sentence, as required by Section 6-218 of Maryland's Criminal Procedure Article. The date his sentence was originally imposed in this matter was March 18, 1996. Defendant Holdclaw has supplied the Court with documentation showing that he was originally arrested and detained on the instant matter on August 8, 1994, and he remained detained thereafter. By [the court's] calculation that span of time equals 588 days. There being no contrary evidence offered by the State, [the court] will enter an amended Commitment Record reflecting that credit of time.

Two weeks later, Mr. Holdclaw filed a notice of appeal from that ruling. Then, on November 4, 2019, an amended commitment record was filed which simply changed the start date of the sentence from September 9, 1994 to August 8, 1994.

DISCUSSION

On appeal, Mr. Holdclaw asserts that (1) the circuit court erred by ruling on his motion to correct an illegal sentence and amending the commitment record without holding

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In 2001, Article 27 § 638C(a) was re-codified as § 6-218(b) of the Criminal Procedure Article.

Although Mr. Holdclaw also maintained in the circuit court that the sentencing court violated the statute (Article 27 § 638C(d) / Crim. Proc. § 6-218(e)) by failing to "state on the record" the amount of time he was credited, he did not pursue that argument on appeal. But in any event, that error would not render his sentence "inherently illegal" for Rule 4-345(a) purposes, as it was an error in the sentencing procedure. *See Wilkins v. State*, 393 Md. 269, 273 (2006) ("a sentence, proper on its face," does not become an "'illegal sentence' because of some arguable procedural flaw in the sentencing procedure") (quotation omitted)).

a hearing; (2) the sentencing court erred in 1996 by failing "to award him mandatory days credit for time he spent in pre-trial custody"; and "those credits failed to properly 'diminish' or 'reduce' his life sentence"; and (3) the court erred in 1997 by failing to hold a re-sentencing hearing after this Court vacated his sentence for robbery with a dangerous weapon.

Relying on *Bratt v. State*, 468 Md. 481 (2020), the State moves to dismiss the appeal because Mr. Holdclaw's "request for time-served credits is not cognizable on a Rule 4-345 motion." Although we agree with the State that, in *Bratt*, the Court of Appeals held that a Rule 4-345(a) motion to correct an illegal sentence is not the appropriate vehicle for challenging a credit issue, here it appears to us that the circuit court treated Mr. Holdclaw's motion as a motion to correct the commitment record. Accordingly, we shall deny the State's motion and consider Mr. Holdclaw's contentions.

First, the circuit court was not required to convene a hearing before ruling on Mr. Holdclaw's motion because the court did not change his sentence. *Scott v. State*, 379 Md. 170, 190 (2004) ("[T]he open hearing requirement found in Rule 4-345 ordinarily applies only when the court intends to modify, reduce, correct, or vacate a *sentence*.") (quotation omitted) (emphasis in the original). And because the circuit court did not alter the sentence, but merely amended the start date of the sentencing term, the court did not err in correcting the commitment record without holding a hearing. *Id.* at 191 (The correction of a commitment record pursuant to rule 4-351(a) "does not require a hearing in open court.").

Second, Mr. Holdclaw's assertion that the sentencing court erred by failing "to award him mandatory days credit for time he spent in pre-trial custody" was a minor error

in calculation that the circuit court corrected by amending the commitment record to reflect that the sentence began on August 8, 1994, not a month later. And Mr. Holdclaw's complaint that "those credits failed to properly 'diminish' or 'reduce' his life sentence" has no merit. Simply put, there is no maximum expiration date of a life sentence from which to subtract any credit. *See Witherspoon v. Maryland Parole Commission*, 149 Md. App. 101, 106 (2002) ("An inmate serving a parolable life sentence cannot obtain early release based on diminution of confinement credits[,]" but those credits are taken into account when determining when the inmate is eligible for parole.) Moreover, "back dating" the start of Mr. Holdclaw's sentence to August 8, 1994 to account for the 588 days of pretrial credit is the "reduction" in sentence contemplated by the Criminal Procedure Article § 6-218(b) (previously codified as Article 27 § 638C(a)).

Third, contrary to his assertion, after this Court vacated Mr. Holdclaw's sentence for robbery with a dangerous weapon because it should have merged with felony murder for sentencing purposes, the trial court was not required to hold a re-sentencing hearing. Nor was such a hearing ordered in our opinion. The vacated sentence merely fell off the end of the sentencing line up, that is, life (for felony murder) + 20 years (for use of a handgun in the commission of a felony or crime of violence) ~~+ 20 years (for robbery with a dangerous or deadly weapon)~~. Although an amendment to the commitment record was necessary, a re-sentencing hearing was not.

APPELLEE'S MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.