

Circuit Court for Baltimore County
Case No. 03-K-97-002964

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1895

September Term, 2019

ARCHIE COOPER

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 2021

*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 1998, Archie Cooper, appellant, was convicted by a jury in the Circuit Court for Baltimore City of attempted first-degree murder, attempted second-degree murder, two counts of first-degree assault, and burglary. The court merged the first-degree assault convictions into his attempted first and second-degree murder convictions. It then imposed a life sentence on the attempted first-degree murder count, a consecutive sentence of 30 years' imprisonment on the attempted second-degree murder count, and a consecutive sentence of twenty years' imprisonment on the first-degree burglary count. Those sentences were ordered to run consecutively to a sentence of forty years' imprisonment that he was already serving for other offenses. This Court affirmed his convictions on direct appeal. *Cooper v. State*, No. 795, Sept. Term 1998 (filed May 10, 1999).

In 2019, appellant, representing himself, filed a motion to correct illegal sentence, claiming that the sentencing court had failed to award him credit for time served against his life sentence. Specifically, he contended that the “lower court illegally increased [his] sentence by applying [his] credits incorrectly to his life sentence” when it did not reduce that sentence by 349 days. The court denied the motion without a hearing. On appeal, appellant raises the same claim as he did in his motion to correct illegal sentence. For the reasons that follow, we shall affirm.

The Court of Appeals has explained that there is no relief, pursuant to Rule 4-345(a), where “the sentences imposed were not inherently illegal, despite some form of error or alleged injustice.” *Matthews v. State*, 424 Md. 503, 513 (2012). A sentence is “inherently illegal” for purposes of Rule 4–345(a) where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not

a permitted one, *id.*; or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews*, 424 Md. at 514. In *Bratt v. State*, 468 Md. 481 (2020) the Court of Appeals held that the failure to “award appropriate credit for time served” is an alleged “defect in sentencing *procedure* that does not render the sentence itself inherently illegal.” *Id.* at 499. Therefore, any issues relating to the calculation of time are not subject to attack as an illegal sentence. *Id.* Instead a motion to correct the commitment record pursuant to Rule 4-351 is the “appropriate vehicle” for addressing a credit issue. *Id.* at 506-07 (“[P]rocedural errors” on the commitment record, such as failure to include a sentencing start date and the appropriate credit for time served, may be remedied by filing a motion pursuant to Rule 4-351, not Rule 4-345.).

Finally, we note that appellant appears to be under the impression that, if the court had awarded him the credit in the manner he requested, it would have somehow diminished or reduced his life sentence. This is incorrect. 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[.]”). Rather, any credits to which appellant is entitled are taken into account when determining when he is eligible for parole. *Id.* Consequently, appellant’s sentence is legal, and the court did not err in denying his motion to correct illegal sentence.

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