

Circuit Court for Baltimore City  
Case No.: 113225046

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1959

September Term, 2021

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ANTONIO GORHAM

v.

STATE OF MARYLAND

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Arthur,  
Tang,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: August 3, 2022

\*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.

A jury in the Circuit Court for Baltimore City convicted Antonio Gorham, appellant, of robbery and first-degree assault. At a sentencing hearing held on August 26, 2014, the court sentenced him to 25 years' imprisonment, without the possibility of parole, for each offense, with the sentences to run concurrently. Gorham was subject to an enhanced punishment for these offenses pursuant to § 14-101 of the Criminal Law Article of the Maryland Code because of previous convictions for crimes of violence and the court imposed the enhancement on both sentences. On direct appeal, Gorham argued, among other things, that the court erred in enhancing both sentences. In addressing the issue, we noted that “no party disputes the fact that Gorham’s prior two convictions for violent crimes exposes him to an enhanced sentence pursuant to Crim. Law §14-101,” but “both parties likewise concur that Gorham should not have been sentenced to two, separate, enhanced terms under that provision for multiple convictions for crimes of violence arising from a single incident.” *Gorham v. State*, No. 1720, Sept. Term, 2014 (filed October 5, 2015), *slip op.* at 16. We agreed that Gorham was subject to enhancement on one, but not both, sentences. We affirmed the judgments of conviction, but we vacated the sentences and remanded the case to the circuit court “for imposition of a single enhanced sentence . . . for one of the two convictions.” *Id.* at 16-17. The Court of Appeals denied Gorham’s petition for writ of certiorari. *Gorham v. State*, 446 Md. 219 (2016).

Gorham was resentenced on April 25, 2016. At the outset of that hearing, Gorham requested a copy of the notice that the State had filed advising him that it was seeking a mandatory penalty, as required by Md. Rule 4-245(c). The court could not locate the notice in its file, stating that much of the circuit court record was with the appellate courts. The

court, however, found a docket entry dated August 26, 2014 which stated: “Mandatories filed by ASA.” After the parties agreed to search their files for the notice, the court sentenced Gorham to 25 years, without the possibility of parole, for first-degree assault and to a concurrent term of 15 years for robbery. Gorham did not appeal.

In January 2022, Gorham, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he claimed that his enhanced sentence for first-degree assault was illegal. As grounds, he claimed that the State had failed to comply with Rule 4-245(c). The Rule states:

When the law prescribes a mandatory sentence because of a specified previous conviction, the State’s Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State’s Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement.

The court found that, based on representations made by the Assistant State’s Attorney at the original sentencing, the requisite notice had in fact been served on Gorham and/or his attorney of record.<sup>1</sup> The court also noted that, on direct appeal, Gorham did not allege that the notice had not been given. Finally, the court found that, based on the August 26, 2014 docket entry stating that “[m]andatories filed by ASA,” “it is fair to infer that a

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<sup>1</sup> The transcript from the August 26, 2014 sentencing hearing is not in the record before us. In its brief, the State quotes from that transcript to support its position that it had served Gorham and/or his counsel with notice of its intent to seek an enhanced sentence. The State asserts that the transcript also reflects that the prosecutor told the court that the State had provided the notice and that the State introduced true test copies of two previous qualifying convictions. The State further notes that the transcript reflects that neither Gorham nor his defense counsel claimed the notice was not received and defense counsel advised the court that there was no dispute that Gorham was subject to an enhanced sentence. Gorham has not disputed the State’s assertions.

notice of seeking an enhanced mandatory sentence was filed with the Clerk, but has just gone missing from the file.” The court denied relief, stating that the “cumulative evidence leaves this Court to conclude that the State had in fact complied with Md. Rule 4-245(c) [and] that the sentence imposed was entirely lawful[.]” Gorham appeals that ruling. We shall affirm the judgment.

Rule 4-345(a) provides that a court may correct an illegal sentence at any time. The Rule, however, is narrow in scope and applies only to sentences that are “inherently illegal, not just merely the product of procedural error.” *Bailey v. State*, 464 Md. 685, 696 (2019) (quotation marks and citation omitted). In other words, the “illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding.” *Matthews v. State*, 424 Md. 503, 512 (2012). We review *de novo* a circuit court’s ruling on a motion to correct an illegal sentence. *Bratt v. State*, 468 Md. 481, 494 (2020).

In *Bailey*, the Court of Appeals addressed whether the court’s imposition of an enhanced sentence after the State filed a belated notice under Rule 4-245(c) rendered a sentence illegal under Rule 4-345(a). 464 Md. at 696. The Court concluded that the sentence could not be challenged under Rule 4-345(a), stating that “[t]he State’s imperfect compliance created a procedural deficiency in the sentence but not a sentence in which the circuit court did not have statutory power to impose.” *Id.* at 697.

In *Mack v. State*, 244 Md. App. 549 (2020), this Court considered whether the State’s failure to give notice of its intention to seek an enhanced sentence rendered the sentence inherently illegal under Rule 4-345(a). Relying on *Bailey* and other decisions, we

concluded that the sentence was not inherently illegal, noting that “[t]he lack of timely notice, or of any notice at all, [ ] is a procedural flaw in the sentencing process.” *Id.* at 584.

In short, even if we were to assume that Gorham was not served with notice of the State’s intention to seek an enhanced sentence in this case, that failure would not render the sentence inherently illegal and, therefore, the circuit court properly denied his Rule 4-345(a) motion to correct it.

Finally, for the first time on appeal, Gorham also claims that his enhanced sentence is illegal because one of the two predicate convictions—a 1996 conviction for robbery with a dangerous weapon—was based on an offense he committed when he was 17 years old. He maintains, without reliance on any authority, that because he was a juvenile when he committed that crime, the State “was barred from using this conviction as a qualifying conviction to enhance” the sentence in this case. The State rejects Gorham’s contention, noting that he was charged and convicted as an adult in that case. We agree with the State.

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