Circuit Court for Charles County
Case No. 08-K-07-000703

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1984

September Term, 2021

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CHARLES EDWIN PROCTOR, JR.

v.

STATE OF MARYLAND

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Leahy,
Beachley,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Leahy, J.

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Filed: January 17, 2023



At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In 2008, after pleading guilty to first-and-second-degree assault in the Circuit Court for Charles County, Maryland, Charles Edwin Proctor, Jr., appellant, was sentenced to 11½ years of active incarceration and to five years' probation with the understanding that the State would submit a proposed order for restitution as a condition of Mr. Proctor's probation. The State, however, failed to submit the order for restitution until seven-and-a-half months *after* Mr. Proctor's probation expired. The court, nevertheless, ordered Mr. Proctor to pay restitution. Mr. Proctor filed a motion to correct an illegal sentence, arguing that the imposition of restitution in 2021—after his criminal sentence had fully expired—constituted an illegal sentence under Maryland Rule 4-345(a). Mr. Proctor appealed from the denial of the motion and presents one question for our review: "Did the circuit court err in denying appellant's motion to correct an illegal sentence?" For the reasons set forth below, we hold that, under the circumstances in this case, it was improper for the court to order restitution after the expiration of Mr. Proctor's probation in June 2020. Accordingly, we reverse the court's decision ordering restitution.

## BACKGROUND

In 2007, Mr. Proctor was indicted on the following counts: first-and-second degree assault of Mitchell Beard (Counts I & II); first-and-second degree assault of Jamie Beard (Counts III & IV); openly wearing and carrying a deadly weapon (a baseball bat) with intent to injure (Count V); malicious damage and destruction of a motor vehicle in an amount under $500.00 belonging to Dawn Hardesty (Count VI); and malicious damage

and destruction of a motor vehicle in an amount over $500.00 belonging to Brenda Eckenrode (Count VII).

**The Plea Agreement Hearing**

On March 3, 2008, Mr. Proctor, pursuant to a plea agreement, pleaded guilty in the Circuit Court for Charles County to first-degree assault (Count I), and to second-degree assault (Count IV). The plea agreement provided that in exchange for his guilty plea, the court would sentence Mr. Proctor to an executed sentence of 11½ years with the suspended time and terms and conditions of probation "up to the Court." In addition, the agreement stated that "Defendant will pay rest[itution] as part of probation."

At the plea hearing, the State proffered that the evidence at trial would reflect that, on August 17, 2007, Mr. Proctor approached the home where Jamie Beard and her husband, Mitchell Beard, resided, "walked up to the driveway, struck the windshield of Dawn Hardesty's vehicle causing damage" and proceeded to "strike another vehicle belonging to Brenda Eckenrode" which "broke out the windshield and all four side windows." Mitchell Beard attempted to stop Mr. Proctor but was "hit [] in the back of the head" and "fell to the ground" whereupon Mr. Proctor "continued to strike him two or three times" resulting in "permanent injuries." At that point, Jamie Beard stood in front of Mr. Proctor "to stop him from striking her husband" and Mr. Proctor "struck her on the left side of her body approximately three times with the baseball bat" breaking her hand. Mr. Proctor then fled the scene.

Following the State's proffer, the court reviewed the plea agreement with Mr. Proctor as follows:

> THE COURT: I'm told if the pleas are accepted at the time of disposition the other counts will be dismissed. Additionally, you, the attorneys, and the Court have agreed that the active portion of the sentence, that's the portion not suspended, would be 11 and a half years, and any suspended time and terms and conditions of probation will be up to the Court, that the sentences would be concurrent, and that **you would pay restitution as part of the terms and conditions of probation**. Is that correct?
>
> [MR. PROCTOR]: Yes, sir.

(Emphasis added). After reciting each of the rights that he was waiving by accepting the plea agreement, the court found that Mr. Proctor "voluntarily and understandingly" agreed to the pleas and that "there's a factual basis for the pleas." Accordingly, the court ordered a Pre-Sentence Investigation ("PSI") and set the case for sentencing.

**The Sentencing Hearing**

At the sentencing hearing on May 6, 2008, Mr. Proctor's counsel confirmed that "the only [remaining] issue would be for the State to give us an amount of restitution." Following a dispute over whether insurance companies were entitled to restitution for medical bills under Maryland Code (2001, 2018 Repl. Vol), Criminal Procedure Article ("CR"), section 11-606(a)(3), the court concluded that "insurers are included" under the statute and asked the State to submit a separate order for restitution and to "put the amounts [of restitution] on the record" as reflected in the following excerpt from the proceedings:

> THE COURT: Why don't we do this? **Why don't you do a separate order for restitution.**
>
> STATE'S ATTORNEY: Okay, that's fine.

THE COURT: **And we – you can put the amounts on the record now if you'd like.**

STATE'S ATTORNEY: Sure. For Jamie Beard it would be $1,100…

[DEFENSE COUNSEL]: How much?

THE COURT: $1,011.18.[1]

STATE'S ATTORNEY: $1,011.18. And then for Mr. Beard, his total was $5,005.91. **And we'll be happy to submit an order, that's fine**.

THE COURT: And then you have $100 for…

STATE'S ATTORNEY: $100 for Eckenro[de], . . . her insurance company and then the couple hundred bucks for Ms. Hardesty.[2]

THE COURT: Okay.

STATE'S ATTORNEY: And that's because, and as the Court recalls, the allegations here are that [Mr. Proctor] shows up at his ex-girlfriend's place angry with a bat and proceeds to smash out windows. I think Ms. Eckenro[de] lost all -- the windshield and all four side windows. Ms. Hardesty . . . had damage to her windshield. And then [Mr. Proctor] goes after Mr. and Mrs. Beard with the bat. And Mr. . . . Beard is suffering with a broken elbow and he still has pins in there and can't perform his working job any more as he . . . says in the PSI. So the, you know, the sums agreed upon is a fair one as far as what is spent. Again, the primary concern here is going to be hi[s] probability to pay the $7,800 restitution that's going to be the ballpark total there. And with that we'll submit.

THE COURT: Okay.

[DEFENSE COUNSEL]: You know, **it is a fair agreement. He did agree to pay restitution. The question, of course, is always how much is the restitution**. But I think that everybody should realize that he's not going

[1] The State clarified earlier in the proceeding that the "Beards just asked for one of their hospital bills and Jamie Beard said she had to pay . . . $1,011.18. . . . it looks like she had insurance because I see references to [Aetna] in here. But [] I don't think we received a request for the insurance company."

[2] The Assistant State's Attorney mentioned earlier in the proceeding that "Ms. Hardesty reported $225 for her, a windshield I believe. . . . [S]he attached a copy of the bill it looks like – bill or an estimate. So $225 for Ms. Hardesty. And then Ms. Eckenrode, it looks like she had to pay a deductible of $100 and her insurance company, Erie Insurance, paid [$]2,852.93."

> to be paying that for eleven and [a] half years or some part thereof. He's entitled to, as of today, 259 days.

(Emphasis added).

Following the terms of the plea agreement, the court sentenced Mr. Proctor as follows:

> Okay, we'll follow the agreement on first degree assault. He's committed to the Division of Corrections for a period of 10 years, given credit for time served before sentence of 259 days. Count 4, second degree assault, he's committed to the Division of Corrections for a period of 10 years, all but 18 months will be suspended. Upon his release he will be placed on supervised probation for a period of five years under the supervision of Maryland Division of Parole and Probation. That sentence will run consecutive to the sentence on count I.[3] Probation will be under the standard conditions. Waive the court costs and supervision fee. He'll submit to evaluation and attend and successfully complete mental health treatment as directed by the agent. And I've written in anger management. And have no contact with the four victims.

Although the Probation/Supervision Order dated May 6, 2008, does not include restitution as a condition of probation, the criminal hearing docket sheet filed after the sentencing hearing reflected that "Order for Restitution to be submitted by State." The State, however, never submitted the requested order for restitution until February 2021—seven and a half months *after* Mr. Proctor's probation had expired.

[3] We note that Mr. Proctor's plea agreement provided that the court would impose concurrent sentences that would not exceed 11½ years active incarceration; however, the court ultimately imposed consecutive sentences that, when combined, did not exceed 11½ years active incarceration. The parties do not address this discrepancy in their briefing. To the extent that the sentence imposed did not fully comply with the plea agreement, however, that the sentence—including the probationary period—was fully executed and "there is no longer a sentence to correct[.]" *Barnes v. State*, 423 Md. 75, 88 (2011).

**Petition for Violation of Probation**

Mr. Proctor was released from active incarceration on or about June 19, 2015, whereupon his five-year probationary period commenced. On June 19, 2020, Mr. Proctor's probation expired. Approximately three months before Mr. Proctor's probation expired, on March 26, 2020, the Maryland Division of Parole and Probation filed a violation of probation petition alleging that Mr. Proctor failed to complete anger management counseling. An initial appearance on the petition was scheduled for June 26, 2020, but was postponed twice more until December 3, 2020. During this time, Kimberly A. Dent, writing on behalf of her son, Mitchell Beard, one of the victims in the case, mailed two letters to the court requesting restitution that was awarded to Mitchell Beard pursuant to the plea agreement. In the first letter dated May 27, 2020, Ms. Dent explained that Mitchell Beard was currently incarcerated in Arizona and unable to contact the court himself and requested that the outstanding restitution be addressed at the violation of probation hearing scheduled for June 26, 2020.

During the December 3, 2020, hearing on the petition for violation of probation, there was no mention of restitution; the only issue discussed was Mr. Proctor's failure to complete anger management counseling. The court agreed to postpone ruling on the probation violation until January 19, 2021, in order to give Mr. Proctor an "opportunity" to speak with his attorney and "advise him of the importance of complying" with anger management counseling. Upon motion by Mr. Proctor, the January 19 hearing on the

violation of probation for failure to complete anger management was postponed again until February 8, 2021.

Meanwhile, when she did not receive a response to her first letter, Ms. Dent wrote a second letter to the court dated January 6, 2021, in which she reiterated Mitchell Beard's request for restitution, noting that "[i]t has been thirteen and a half years since Mitchell was assaulted and he has received no restitution or updates."

**Supplemental Petition for Violation of Probation**

Not long after Ms. Dent's second letter to the court requesting restitution, on February 5, 2021, the State filed a supplemental petition for violation of probation wherein the State requested that the circuit court "amend the petition for violation of probation filed on March 27, 2020" and alleged for the first time that Mr. Proctor failed to pay restitution as requested at sentencing. In the supplemental petition, the Assistant State's Attorney indicated that "[i]t is unclear to the undersigned whether a separate written Order was ever filed in this case" and attached a copy of an unsigned proposed order, allegedly from 2008. Another hearing was held on June 1, 2021, to address both the initial petition for violation of probation and the supplemental petition for violation of probation.[4]

[4] The circuit court reset the February 8, 2021, violation of probation hearing for failure to complete anger management for March 16, and notified the parties that the State's supplemental petition for violation of probation for failure to pay restitution would be addressed at the March 16 hearing. The hearing, however, was postponed twice more until June 1, 2021.

During the hearing, counsel for Mr. Proctor[5] confirmed that his client was "in some anger management classes that he needs to finish up" and requested a postponement to address the outstanding matter of restitution. Counsel for two of the victims, Mitchell and Jamie Beard, appeared for the first time at this hearing and argued that the "amounts [of restitution] were put on the record during sentencing back in 2008. It's just that order was never signed." The hearing was continued to July 27, 2021.

At the beginning of the proceeding on July 27, both the State and counsel for Mr. Proctor agreed that the petition for violation of probation based on his failure to complete anger management counseling had been resolved.[6] With respect to the restitution, both counsel for Mr. Proctor and the State directed the court's attention to the audio recording of Mr. Proctor's sentencing in May 2008, offering conflicting interpretations of what occurred.

Counsel for Mr. Proctor argued that there was "no disagreement about the fact that [restitution] was a condition" of Mr. Proctor's plea agreement, but emphasized that, although the State put "some amounts on the record," the State "never g[ave] [the court] the exact amount." Counsel also argued that "there was certainly an understanding that there was going to be a restitution hearing. . . . [a]nd then nothing for about 13 years."

[5] The attorney who represented Mr. Proctor during these violation of probation hearings was not the same attorney who represented Mr. Proctor during his plea and sentencing hearings.

[6] Mr. Proctor successfully completed anger management counseling as required by his probation on May 26, 2021. A certificate verifying the same was filed with the court on June 7, 2021.

Counsel insisted that the issue of restitution was not waived by Mr. Proctor's counsel during the 2008 sentencing because

> there was an understanding that restitution wasn't being decided at this hearing. . . . I think Mr. Proctor at the very least was entitled to a restitution hearing then and probably still is entitled to a restitution hearing now. . . . Mr. Proctor had the right to contest those amounts through [prior counsel]. He was never given the opportunity to do [so] because there was no restitution hearing, there was no order submitted. And we're now 12 years into the future and at this point I don't believe that the power of a court to revise a mistake as encompassed in Rule [4-]345 is meant to . . . handle these sorts of situations where there's a real substantive disagreement or at least potentially a substantial disagreement. I think that's more after situations where the court says one thing but [writes] down another. Or where the parties sort of all agree on what the intent of the court was but the actual outcome was different because of a typo. This is not a typo, Your Honor.

Mr. Proctor's position was that the State's supplemental petition was untimely because it was filed seven months after Mr. Proctor's probation expired. The State disagreed, and argued that:

> The Judge did ask for a restitution order and the State did not submit it. And so Your Honor, I think it's a mistake and I think Your Honor can correct it in the form of . . . a civil judgment. Because certainly I appreciate and understand that his probation is over at this point. . . . I think the Court can correct that mistake. . . . There's a rule that allows Your Honor to correct mistakes and irregularities in sentencing. And I will say too that attached to the PSI there's all the documentation. It's with the PSI Judge. So, it's not like these numbers were just . . . spouted off. They are supported in the PSI that all of the parties had, including [Mr. Proctor] at the time of sentencing. . . . 100 percent that the State did not submit the order and it was a mistake and so I think Your Honor can fix it in that fashion. I'm not asking that he go to jail because he didn't pay it, because there was never an order to do so.

The court determined that Mr. Proctor "was on notice all along that he owed this restitution. . . . They're requesting a civil judgment[;] the issue is how much." The court made clear that it was "not going to order restitution that somebody's been reimbursed for

by an entity that is not here to standup for" their rights to restitution such as the insurance companies. Victim's counsel, however, indicated that his clients "no longer have additional documentation" for the amounts they paid out of pocket. After it became evident that neither the court nor Mr. Proctor's counsel had the documentation required to conduct a restitution hearing that day, the court requested the parties "subpoena any documents from the hospital or the insurance company" and scheduled the hearing for October 20, 2021.

**October 20, 2021, Hearing**

When the parties re-convened for the October 20 proceeding, the court reiterated that it was going to order restitution in the form of a civil judgment; the only issue to be resolved was the amount of restitution.[7] Counsel for Mr. Proctor noted that "there still does need to be some documentation of the restitution, not just an estimate of amounts that the insurance may have paid but what did they actually pay out-of-pocket." The court agreed, stating that "as far as proof of the amount [counsel for Mr. Proctor] is correct. So the purpose of today was a restitution hearing." When the court asked the parties whether they discussed resolving this without a hearing, counsel for the Beards replied:

[7] Present at the hearing were Mr. Proctor (via Zoom) and his counsel; the State; an agent from the Department of Probation and Parole; and counsel for the Beards, Jaime Beard, and Ms. Eckenrode. Counsel for the Beards indicated that Mitchell Beard was present via Zoom earlier but was having some issues getting back to the courtroom as he was currently incarcerated in Arizona. Mr. Proctor later waived his presence at the hearing, allowing his attorney to speak on his behalf. Notably, the agent from the Department of Probation and Parole was at court asking for the judge to close out the case because Mr. Proctor "had completed anger management, and restitution was going to be dealt with separately."

> No, Your Honor. There still seems to be some confusion on [Mr. Proctor's counsel's] part. There [are] no new records that I was able to find. I mean, it's been 13 years. None of the facilities had additional records. So we are still working on the records that were provided to the . . . Division of Parole and Probation in preparation for the sentencing back in May of 2008.
>
> What I'm asking the Court to do is to sign the restitution order that was agreed upon at the hearing in May of [2008].

The State confirmed that they "did not specifically ask for anything for [Erie Insurance]" and the court agreed "that's not on the table." In addition, the State clarified that Ms. Hardesty had communicated that "she was not coming today" and "withdrew her $250" from consideration at the hearing, leaving only the $100 deductible for Ms. Eckenrode and Jamie and Mitchell Beards' $1,011.18 and $5,005.91, respectively, to be considered for restitution.

The parties again disputed whether Mr. Proctor had waived his right to a restitution hearing during the sentencing hearing in 2008. Counsel for Mr. Proctor argued that his client's prior counsel "affirmatively ke[pt] open Mr. Proctor's right to challenge th[e] amount[s]" put on the record in 2008 such as the sums paid by the Beards' insurance because the "documentation . . . aren't bills" and "they don't actually show what was paid out-of-pocket." The State, however, contended that "I don't think there is anything on the record that . . . there was go[ing to] be a hearing. It sounds like the Judge said, all right, give me an order and I'll sign it" and "by that point the restitution would have already [been] determined." After listening to the entire audio-recording of the 2008 sentencing hearing in open court, the court stated:

> Well, the way I hear it is that when discussing the restitution -- [counsel for Mr. Proctor] originally said -- and again, Ms. Hardesty is off the

> table, but at that time it was on the table, he said $225. But then it was referenced a couple hundred for Ms. Hardesty. Then [there] was [a] discussion of [Erie]. [Ms. Eckenrode's] insurance company and [] that. So when [counsel for Mr. Proctor] said he questioned how much [the State] had [for] the specifics[,] [it was] $100 for Ms. Eckenrode, Jamie Beard $1,011.18, and Mitchell Beard $5,005.91. So to the extent that it sounds like there was an agreement on those three figures . . . Ms. Hardesty said she's not interested. And then [Erie], we never got anything from [Erie] -- or -- there was also discussion [of] Jamie Beard's insurance company, but there was no request from them. So, I think with respect to . . . those three items I think that's the order that should be submitted.

When counsel for Mr. Proctor reiterated that "Mr. Proctor had, at the time, and still has now, the right to a restitution hearing before any order is -- put in[,]" the court responded: "[w]ell, we've got the hearing today." Finally, the court concluded that the

> $100 deductible is . . . undisputed. It also sounds like documentation was presented at the time that was not disputed of $1,011.18 to Jamie Beard, and $5,005.91 to Mitchell Beard . . . and what is unclear would be the other items from the insurance company, and then Ms. Hardesty. Insurance companies. There were two. And Ms. Hardesty who is withdrawing her request. So, I think those three were undisputed. And the Court will sign an order for those three items only. Because those were determined, they were not objected to. I listened to the hearing. . . . [T]he only issue is how much. And that was with respect to those items that we are not even going to order today. Which would be the insurance companies and Ms. Hardesty, that has withdrawn.

Thereafter, on October 20, 2021, the court entered an "Order Regarding Restitution," ordering Mr. Proctor to pay $100.00 to Brenda Eckenrode, $1,011.18 to Jamie Beard, and $5,005.91 to Mitchell Beard, for a total amount of $6,116.37 in restitution.[8]

[8] On November 9, 2021, an amended order of restitution was entered by the circuit court directing that "restitution be paid through the Charles County State's Attorney's office" instead of through the Division of Parole and Probation.

**Motion to Correct an Illegal Sentence**

On December 8, 2021, Mr. Proctor filed a motion to correct an illegal sentence, arguing that his sentence was illegal under Maryland Rule 4-345(a) for "four independent reasons." First, the State's failure to submit a restitution order during Mr. Proctor's 11½ year sentence plus five years' probation was not a "mistake" as defined under Rule 4-345(b). Second, even if the State's failure was a "mistake," the order of restitution was an improper increase in his sentence under Rule 4-345(b) because Rule 4-345(b) may only be used to make technical amendments to a sentence. Third, the restitution order was untimely as it was an alteration of Mr. Proctor's probation after it had expired. Fourth, Mr. Proctor did not waive his right to a restitution hearing and the restitution was imposed without an opportunity for Mr. Proctor to contest the amounts sought by the victims. Accordingly, Mr. Proctor requested that the restitution order be vacated.

The Beards filed a response in opposition to Mr. Proctor's motion to correct an illegal sentence, arguing, *inter alia*, that the court "has now, *nunc pro tunc*, performed a ministerial task by signing the conforming restitution order that was prepared by the State's Attorney's Office in 2008." In addition, the Beards asserted that Rule 4-345 does not apply to this case because "conforming the written record to the oral pronouncement at sentencing is a ministerial act and not a correction of a sentencing mistake" and that Mr. Proctor is bound by his plea agreement with the State, which included restitution.

On February 15, 2022, a hearing was held on the motion to correct an illegal sentence, during which the State, Mr. Proctor, and the Beards' counsel reiterated many of

the same arguments previously stated at the October 21 proceeding. The court denied the motion, however, reasoning that Mr. Proctor "was on notice about this" as it "was part of the agreement." The court noted it "was performing an administerial task, and it was not an illegal sentence" adding that it "took out two of the unclear amounts" but it "had amounts certain on the other three." On February 17, 2022, Mr. Proctor noted a timely appeal from the denial of his motion to correct an illegal sentence.[9]

## DISCUSSION

## I.

## MOTION TO CORRECT AN ILLEGAL SENTENCE

### Parties' Contentions

Mr. Proctor makes three arguments[10] on appeal as to why his sentence is illegal and subject to correction under Maryland Rule 4-345(a). First, Mr. Proctor addresses the trial court's reliance, if any, on subsection (c) of Rule 4-345, which provides that the "court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding." Md. Rule 4-345(c). Mr. Proctor asserts that when the court imposed its sentence, "it did not order, or even mention, restitution" in the announcement of his

[9] We note that Mr. Proctor did not appeal from the order of judgment of restitution entered on October 20, 2021, or the notice of recorded judgments entered on November 12, 2021.

[10] During oral arguments, Mr. Proctor conceded his fourth argument—that the restitution order is an "illegal sentence" because it lacked evidentiary foundation and that he was denied a hearing to contest the amounts—was not properly preserved.

sentence. Accordingly, Mr. Proctor avers that once he left the courtroom on May 6, 2008, the court was prohibited from increasing or significantly altering his sentence by ordering restitution pursuant to Rule 4-345(c).

Second, Mr. Proctor argues that "the court had no authority to order restitution pursuant to Maryland Rule 4-346(b)" as an *additional* condition of his probation. Rule 4-346(b) permits the court, "after giving the defendant an opportunity to be heard," to "modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions" but only "[d]uring the period of probation[.]" Md. Rule 4-346(b). Mr. Proctor concedes that the court could have imposed restitution as an additional condition of his probation during his five-year probationary period, which began in June 2015 and ended in June 2020. When this was not done, however, according to Mr. Proctor, the court lost any jurisdiction it had to extend the conditions of his probation either under Rule 4-346(b) or under Maryland Code (2001, 2018 Repl. Vol.), Criminal Procedure Article ("CP"), section 6-222, which permits a court to "extend the period of probation" if "the extension is only for making restitution" and "the defendant consents in writing." CP §§ 6-222(b), (c).

Third, Mr. Proctor argues "[a]n illegal sentence cannot be made legal by the invocation of Maryland Rule 4-345(b)." Rule 4-345(b) provides that "[t]he court has revisory power of a sentence in a case of fraud, mistake, or irregularity." Md. Rule 4-345(b). Relying on *Minger v. State*, 157 Md. App. 157 (2004), Mr. Proctor contends that the failure of the State to submit a proposed order of restitution for nearly 13 years "does

not constitute a 'mistake'" as has been defined by our jurisprudence interpreting Rule 4-345(b).

The State agrees with Mr. Proctor that subsections (b) and (c) of Rule 4-345 are inapplicable to this case. Instead, the State relies on subsection (a) of the Rule and contends that Mr. Proctor's "original sentence was illegal—and the issuance of the restitution order corrected it." Quoting *Hoile v. State*, 404 Md. 591, 620 (2008), the State argues that, unlike a merely mistaken sentence under Rule 4-345(c), "the correction of an illegal sentence may result in an increase over the erroneous sentence previously imposed over the defendant." The State points to three cases—*Cuffley v. State*, 416 Md. 568 (2010), *Bonilla v. State*, 443 Md. 1 (2015), and *Smith v. State*, 453 Md. 561 (2017)—for the proposition that the court may correct an illegal sentence at any time to conform to the binding plea agreement, regardless of whether it increases or decreases a defendant's sentence.

In his reply brief, Mr. Proctor contends that the State "now argues for the first time that the . . . sentence[] imposed on May 6, 2008, was illegal [pursuant to Rule 4-345(a)] because it did not incorporate the term of the plea agreement that required appellant pay restitution." Mr. Proctor asserts that the State "has never filed a motion to correct an illegal sentence" nor did it "advance that theory in the circuit court when it sought restitution in 2021."[11] Citing to *Barnes v. State*, 423 Md. 75 (2011), Mr. Proctor argues that a motion to

[11] At oral argument, counsel for Mr. Proctor accused the State of being "disingenuous" in making the argument that the court erred at the sentencing hearing by failing to incorporate the terms of the plea agreement requiring restitution. This rang as an unnecessary *ad hominen* attack, especially considering that Mr. Proctor relies on the very (Continued)

correct an illegal sentence "can become moot" when there is no "active sentence to correct" and the time for filing a motion to correct an illegal sentence ended with the expiration of Mr. Proctor's probation on June 19, 2020.

**Standard of Review**

We review the legal issue of sentencing pursuant to a binding plea agreement without deference to the trial court. *Bonilla v. State*, 443, Md. 1, 6 (2015); *see also Cuffley v. State*, 416 Md. 568, 581 (2010) ("Whether a trial court has violated the terms of a plea agreement is a question of law, which we review de novo."). Likewise, the denial of a motion to correct an illegal sentence pursuant to Maryland Rule 4-345(a) is a question of law that we review *de novo*. *State v. Crawley*, 455 Md. 52, 66 (2017).

**Maryland Rule 4-345(a)**

During oral arguments, the parties narrowed the issues before us by conceding that subsections (b) and (c) of Rule 4-345 are inapplicable to this case. Therefore, we address only subsection (a) of Rule 4-345, which, as noted, provides that "[t]he court may correct an illegal sentence at any time." Md. Rule 4-345(a).

Judge Wilner, writing for the Supreme Court of Maryland[12] in *Chaney v. State*, explained that an "illegal" sentence in this context is

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same principle as the State; namely, that the court may correct an illegal sentence at any time.

[12] In the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* (Continued)

> limited to those situations in which the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is instinctually and substantively unlawful.

397 Md. 460, 466 (2007) (footnote and citations omitted). "A sentence that is not permitted by statute" for example, is an illegal sentence. *State v. Wilkins*, 393 Md. 269, 273 (2006); *see, e.g.*, *Holmes v. State*, 362 Md. 190, 195-96 (2000) (holding that a sentence of probation with home detention as a condition of probation was illegal because the trial court lacked statutory authority to impose such a condition); *Walczak v. State*, 302 Md. 422, 433 (1985) (concluding that the restitution order as a condition of probation was not authorized by statute because Walczak had not been convicted of the crime). Another "common example of an inherently illegal sentence is the very pronouncement of a sentence itself in circumstances where no sentence should have been imposed." *Ray v. State*, 230 Md. App. 157, 167 (2016); *see, e.g.*, *Alston v. State*, 425 Md. 326, 342 (2012) (concluding that a re-sentencing of a defendant should never have occurred after a post-conviction hearing had vacated his original convictions); *Johnson v. State*, 427 Md. 356, 377-78 (2012) (holding that a sentence for assault with intent to murder should never had been imposed where the defendant had never been charged with assault with intent to murder); *State v. Garnett*, 172 Md. App. 558, 559 (2007) ("A sentence of restitution cannot be imposed on a defendant

*also*, Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland. . ..").

who has been found not criminally responsible by reason of insanity.") (internal quotation marks omitted).

The Supreme Court of Maryland has also held that when a trial court, after accepting a defendant's plea agreement pursuant to Rule 4-243(c) and binding itself to it, fails to adhere to its terms at sentencing, such action constitutes an inherently illegal sentence. *See Cuffley*, 416 Md. at 585-86. This is true regardless of whether the correction of the illegal sentence results in an increase or decrease in the defendant's sentence. *See Bonilla*, 443 Md. at 10, 12; *Smith*, 453 Md. at 577.

Finally, the Supreme Court of Maryland has instructed that "there must be a sentence to revise" in order to provide relief under Rule 4-345(a). *Barnes v. State*, 423 Md. 75, 88 (2011). Once a defendant has completed his or her sentence, however, "there is no longer a sentence to correct, and a court should dismiss the motion as moot unless special circumstances demand its attention." *Barnes*, 423 Md. at 86; *see also Walczak*, 302 Md. at 429 ("Restitution depends on the existence of [the] crime, and the statute authorizes the court to order restitution only where the court is otherwise authorized to impose punishment."); *Cottman v. State*, 395 Md. 729, 744 (2006) ("We consider a case moot when there is no longer any existing controversy between the parties at the time the case is before the court, or when the court can no longer fashion an effective remedy.") (cleaned up).

Before we apply the holdings and lessons in the foregoing cases to the issues raised before us now, we must first review those cases that address illegal sentences in the context

of binding plea agreements, balancing the "due process concerns for fairness and the adequacy of procedural safeguards" with "strict compliance [of the plea agreement's] provisions." *Cuffley*, 416 Md. at 580, 582.

***Binding Plea Agreements***

Maryland Rule 4-243 governs plea agreements. *See generally* Md. Rule 4-243. A plea agreement that is accepted and approved in accordance with Rule 4-243(c)(3)[13] becomes binding on the defendant and the court with "the force of law." *Dotson v. State*,

[13] Maryland Rule 4-243(c) reads, in pertinent part, as follows:

> **(c) Agreements of Sentence, Disposition, or Other Judicial Action.**
>
> (1) *Presentation to the Court.* If a plea agreement has been reached pursuant to subsection (a)(1)(F) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.
>
> (2) *Not Binding on the Court.* The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.
>
> (3) *Approval of Plea Agreement.* If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.

Md. Rule 4-243.

321 Md. 515, 523 (1991) (citing *Hauver v. Dorsey*, 228 Md. 499, 502 (1962)); *see also State v. Chertkov*, 95 Md. App. 104, 113 (1993) ("The legal effect of Rule 4-243 is that the acceptance of a binding plea agreement creates new legal limits within which the defendant's sentence must fall."). Rule 4-243 "requires strict compliance with its provisions" such that "any question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort[ing] *solely* to the record established at the Rule 4-243 plea proceeding." *Cuffley* 416 Md. at 582 (emphasis in original); *see also State v. Brown*, 464 Md. 237, 269 (2019) (holding that for the purposes of sentencing, "[w]hen there is a conflict between the transcript and the commitment record, unless it is shown that the transcript is in error, the transcript prevails.") (quoting *Lawson v. State*, 187 Md. App. 101, 108 (2009)).

Indeed, the "record of that proceeding must be examined to ascertain precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement, to determine what the defendant reasonably understood to be the sentence the parties negotiated and the court agreed to impose." *Cuffley*, 416 Md. at 582. "The test for determining what the defendant reasonably understood at the time of the plea is an objective one." *Id.* at 582. The defendant's actual or subjective understanding of the plea agreement is irrelevant; rather, it is "on what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, **based on the record developed at the plea proceeding**." *Id.* (footnote omitted) (emphasis added).

We have consistently observed "the indispensable role now being played by the institution of plea bargaining in the administration of criminal justice[.]" *Sweetwine v. State*, 42 Md. App. 1, 12, *aff'd*, 288 Md. 199, *cert. denied*, 449 U.S. 1017 (1980)). As we explained:

> One of the reasons the process works effectively is the element of certainty it lends to the criminal justice system. From the public perspective, it may well be advantageous for the prosecutor to exchange the uncertainty of a conviction following trial for the certainty of conviction produced by a guilty plea, even when a plea agreement includes some provision in mitigation of potential sentence. From the defense viewpoint, it may equally be advantageous to give up the possibility of acquittal following trial for the certainty of a relatively lenient disposition included as part of a plea agreement. We recognized the importance of this "certainty" aspect of plea bargaining, and the adverse effect its loss would have on the process . . "[i]f a prosecutor cannot rely upon the plea bargain, the potential 'chilling effect' upon the very institution of plea bargaining could be devastating." Similar results could ensue if the defendant were unable to rely upon the bargain.

*Banks v. State*, 56 Md. App. 38, 52 (1983) (cleaned up). Plea agreements "benefit[] the courts, the prosecution, the defendant, the victim, and the general public." *Chertkov*, 95 Md. App. at 113.

We have also stated that, "because plea agreements are similar to contracts, 'contract principles should generally guide the determination of the proper remedy of a broken plea agreement.'" *Lafontant v. State*, 197 Md. App. 217, 228 (2011) (quoting *Solorzano v. State*, 397 Md. 661, 668 (2007)). "'[F]airness and equity' govern the enforcement of plea agreements so that when a plea agreement rests on a promise as to a disposition, the promise must be fulfilled." *Lafontant*, 197 Md. App. at 229 (citing *Cuffley*, 416 Md. at 580). The standard we apply to plea negotiations, however, "is one of fair play

and equity under the facts and circumstances of the case, which, although entailing certain contract concepts, is to be distinguished from . . . the strict application of the common law principles of contracts." *State v. Brockman*, 277 Md. 687, 697 (1976). Rather, "due process concerns for fairness and the adequacy of procedural safeguards guide any interpretation of a court approved plea agreement." *Cuffley*, 416 Md. at 580 (citing *Solorzano*, 397 Md. at 668).

The State cites to *Bonilla v. State* and *Smith v. State* for the proposition that when the court sentenced Mr. Proctor in 2008—without the order of restitution pursuant to the binding plea agreement—it was an illegal sentence. The State argues that the court "cured" Mr. Proctor's sentence in 2021 by the imposition of the restitution order.[14]

In *Bonilla v, State*, the defendant was charged with, among other things, two counts of first-degree murder. 443 Md. 1, 3-4 (2015). Pursuant to a plea agreement, Bonilla pleaded guilty to the two counts of first-degree murder in addition to promising, if called by the State, to testify against one of his co-defendants. *Id.* at 4. In exchange, the State agreed that, among other things, Bonilla "would receive a sentence of life imprisonment on Count III with a consecutive sentence of life imprisonment, with all but 20 years suspended, on Count I." *Id.* at 4. This plea was accepted by the court and became binding under Rule 4-243. *Id.* When defense counsel recounted the terms of the plea agreement at Bonilla's sentencing, however, he incorrectly reversed the terms, stating that the parties

[14] We note that Mr. Proctor failed to address *Bonilla v. State* and *Smith v. State* in his reply brief.

agreed to a sentence of life imprisonment on Count I and a consecutive sentence of life imprisonment, with all but 20 years suspended, on Count III. *Id.* at 5. The court sentenced Bonilla according to the incorrect representations at the sentencing hearing. *Id.* Twenty years later—while serving his sentence—Bonilla filed a motion to correct an illegal sentence, arguing that his sentence on Count I was illegal because it exceeded the terms agreed upon by the plea agreement. *Id.* at 5. The State responded by filing a motion to correct the *entire* sentence, arguing the sentences on Count I *and* III were illegal because they violated the terms of the binding plea agreement. *Id.* The circuit court agreed with the State and re-sentenced Bonilla to the terms according to the original plea agreement, which resulted in an increase in Bonilla's sentence, and Bonilla appealed. *Id.* The Supreme Court of Maryland held that

> the sentences this Court declared inherently illegal in *Dotson* and *Cuffley* exceeded the plea agreements. Neither our reasoning nor our holdings in those cases, however, suggest that striking a sentence as illegal can only occur when a sentence exceeds the terms of a binding plea agreement. In both cases, we determined that the sentences were illegal because the sentencing courts violated Rule 4–243(c)(3) by deviating from the binding plea agreements. *See Dotson* [*v. State*, 321 Md. 515, 523 (1991)] ("[T]he judge was required under the dictate of Rule 4-243(c)(3) to embody in the judgment the agreed sentence."); *Cuffley*, 416 Md. at 581-82, 7 A.3d at 565 (Rule 4–243(c)(3) mandates that after accepting a plea agreement, the court '*shall* embody in the judgment the agreed sentence' and 'Rule 4–243 requires strict compliance' (emphasis in original)).
>
> ***
>
> [W]e conclude that when a sentencing court violates Rule 4–243(c)(3) by imposing, without consent, a sentence that falls below a binding plea agreement, the resulting sentence is inherently illegal under Rule 4–345(a).

*Bonilla*, 443 Md. at 10, 12. In reaching its conclusion, the *Bonilla* Court reiterated that "fairness and equity govern the enforcement of plea agreements." *Id.* at 12 (citing *Cuffley*, 416 Md. at 580).

The Court in *Smith v. State*, much like in *Bonilla v. State*, concluded that "deviating from the terms of the binding plea agreement, as approved by the court, results in an illegal sentence, regardless of whether the deviation is upwards or downwards." 453 Md. 561, 577 (2017). The defendant in *Smith* agreed to plead guilty to the primary theft charge in exchange for a guarantee by the State, among other things, that Smith would not be sentenced to more than five years of incarceration. *Id.* at 566. In addition, the five-year sentence would be suspended for all but 30 to 90 days, followed by five years of supervised probation, a requirement that there would be a conviction on Smith's record, and that Smith was to pay $47,460.02 in restitution to the victims. *Id.* At sentencing, however, the judge imposed a "more lenient sentence" of probation before judgment and home detention in lieu of a conviction, and 60 days of active incarceration "which modified the terms of the plea agreement, without notifying the prosecutor or defense in advance of the proposed change." *Id.* at 569-70. The Court reversed and held that "[t]he terms of the agreement unambiguously included a finding of guilt, not probation before judgment. The terms were clear and no reasonable lay person in the defendant's position could have interpreted otherwise. Moreover, the State did not receive the benefit of its bargain." *Id.* at 585.

**Analysis**

Here, Mr. Proctor concedes that his plea agreement required that he would pay restitution. Mr. Proctor argues, however, that while his initial sentence imposed in 2008 pursuant to a plea agreement was not "inherently illegal" under Rule 4-345(a), it became "illegal" in 2021 when the court ordered him, *after* his probation expired, to pay restitution as a condition of his probation. The State replies that Mr. Proctor's original sentence in 2008—imposed without an order of restitution—was inherently illegal, which was then "cured" in 2021 when the court issued the order of restitution. We agree with Mr. Proctor that, notwithstanding the binding plea agreement, his sentence executed in 2008—imposed without the restitution order—was *not* inherently illegal under Rule 4-345(a) for three reasons.

*First*, when the court sentenced Mr. Proctor in 2008, it was understood at Mr. Proctor's sentencing that an "Order for Restitution [was] to be submitted by [the] State," which was reflected both by the transcript of the sentencing hearing and the criminal hearing docket sheet filed after sentencing. As noted, we first look to the transcript of the plea hearing to determine "the meaning of the sentencing term of a binding plea agreement" which "must be resolved by resort[ing] *solely* to the record established at the Rule 4-243 plea proceeding." *Cuffley*, 416 Md. at 582 (2010) (emphasis in original). The record of the plea hearing reveals that Mr. Proctor agreed to plead guilty to both first and second-degree assault, resulting in a maximum of 11½ of active incarceration with "**any suspended time and terms and conditions of probation . . . up to the Court**." (Emphasis added).

Critically, the plea agreement contemplated that Mr. Proctor agreed to "pay restitution as **part of the terms and conditions of probation**." (Emphasis added). In exchange, the State agreed to dismiss the remaining counts of the indictment and not pursue the maximum amount of time permitted under the sentencing guidelines.

Thus, when the court sentenced Mr. Proctor according to the terms of the plea agreement, the imposition of Mr. Proctor's sentence was not inherently illegal under these facts. It was understood by all parties—the State, Mr. Proctor, and the court—that restitution was a part of Mr. Proctor's sentence *as a condition of probation*, and therefore the State could, at any time during Mr. Proctor's probation, collect restitution on behalf of the victims. In other words, Mr. Proctor's sentence was legal as imposed, even without the order of restitution. Consider the reverse: if restitution had *not* been included as part of Mr. Proctor's agreed sentence, then the State never would have been able to collect it, even if the State had timely submitted the order for restitution. The binding plea agreement contemplated the fact that the order of restitution would be imposed later as a condition of Mr. Proctor's probation. Therefore, nothing about the sentence made it inherently illegal within the meaning of Rule 4-345(a).

*Second*, the caselaw addressing the failure to sentence a defendant pursuant to a binding plea agreement on which the State relies—namely *Cuffley*, *Bonilla*, and *Smith*—is clearly distinguishable from the facts of Mr. Proctor's case. For instance, in *Cuffley*, the concerns were not limited to interpreting the terms of the plea agreement as a contractual agreement; but, more broadly, the "due process concerns for fairness" in *who* received the

benefit of the bargain in addition to "the adequacy of procedural safeguards" that should "guide any interpretation of a court approved plea agreement." *Cuffley*, 416 Md. at 580. Unlike the situation in *Smith*, in the present case, it is not as though the State agreed to forgo certain charges against Mr. Proctor and the court decided—without the State's consent—to impose a lesser sentence than the terms of plea agreement. Nor did the court incorrectly mix up the counts and terms of incarceration when it sentenced Mr. Proctor for first and second-degree assault as in the case of *Bonilla*. In the present case, the *State* bargained for the restitution, and then failed to submit the proposed order. Moreover, in *Smith*, the State noted an appeal after the court imposed a sentence that was below the terms of the plea agreement. 453 Md. at 569-70. Here, to the contrary, the State did not file a motion to correct an illegal sentence at all in the proceedings below. Instead, as Mr. Proctor noted, the State argues for the first time on appeal that Mr. Proctor's sentence was illegal under Rule 4-345(a).

*Third*, a criminal sentence is not indefinite and there must be a sentence to correct in order to provide relief under Rule 4-345(a). *Barnes v. State*, 423 Md. 75, 86 (2011). Restitution, regardless of whether it is imposed as part of a sentence or condition of probation, "is a criminal sanction, not a civil remedy." *State v. Stachowski*, 440 Md. 504, 512 (2014) (citation omitted); *see also Walczak v. State*, 302 Md. 422, 429 (1985) ("Restitution depends on the existence of [the] crime, and the statute authorizes the court to order restitution only where the court is otherwise authorized to impose punishment."). Once a defendant has completed the sentence imposed, however, "there is no longer a

sentence to correct, and a court should dismiss the motion as moot unless special circumstances demand its attention." *Barnes*, 423 Md. at 86.

In this regard, we also find *Bonilla* distinguishable from Mr. Proctor's case because, unlike Mr. Proctor, whose probation ended on June 19, 2020, the defendant in *Bonilla* filed a motion to correct an illegal sentence *that he was still serving*. *Bonilla*, 443 Md. at 5. The same is true in *Smith* where the State appealed the court's imposition of a more lenient sentence—a sentence that Smith was still serving. *See State v. Smith*, 230 Md. App. 214, 232, *aff'd*, 453 Md. 561 (2017). In Mr. Proctor's case, by contrast, the State attempted to get around the problem by filing a *supplemental* petition for violation of probation to squeeze-in restitution, but the State was just over seven-and-a-half months too late. We view the filing of the supplemental petition—more than seven-and-a-half-months after Mr. Proctor's probation ended—as an improper vehicle by which to reopen Mr. Proctor's criminal case because, as the State itself noted during the June 1, 2021, proceeding, the court could not find Mr. Proctor in violation of something that he was never ordered to do. Therefore, we conclude that in this case, the court did not impose an illegal sentence at the sentencing hearing, but rather, the State failed to fulfill its obligation to submit the order of restitution before the Mr. Proctor finished serving his probation. Unfortunately for the victims, the court's imposition of the restitution order seven months *after* Mr. Proctor's probation expired constituted an illegal sentence under Rule 4-345(a).[15]

[15] Our holding does not preclude any other civil remedies that may be available to the victims in this case. *See, e.g.*, CR § 11-603(c)(1) ("A judgment of restitution does not (Continued)

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preclude the . . . victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor.").