

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1260

September Term, 2015

ISSAC TYRONE JONES

v.

STATE OF MARYLAND

Eyler, Deborah S.
Wright,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 26, 2016

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland Court. Md. Rule 1-104.

In 2014 in the Circuit Court for Wicomico County, Issac Jones, the appellant, entered into an *Alford* plea to wearing, carrying, or transporting a handgun.¹ He was sentenced to three years’ imprisonment, consecutive to any sentence he was “currently serving or obligated to serve.” Thereafter, he filed a motion to correct an illegal sentence, arguing that the quoted language made his sentence illegal because he was not serving any sentence at the time his sentence was imposed. The circuit court denied the motion. He appeals, making the same argument he did below. For the reasons that follow, we shall affirm the judgment.

FACTS AND PROCEEDINGS

Two cases are of relevance here. On March 3, 2009, the appellant pled guilty in the Circuit Court for Dorchester County to possession with the intent to distribute CDS and resisting arrest (the Dorchester case). He was sentenced to 20 years of imprisonment for the CDS charge, all but eight years suspended in favor of five years of probation upon his release from prison, and a concurrent 18 months for the resisting arrest charge.

In December 2013, while on probation in the Dorchester County case, the appellant committed the instant handgun offense in Wicomico County (the Wicomico case). On June 19, 2014, he entered an *Alford* plea to that offense and was subsequently sentenced to three years (less 21 days of credit) of imprisonment. The commitment record states that his sentence on the handgun charge is consecutive to “any sentence currently serving or obligated to serve.”

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

On August 28, 2014, a little more than two months after he was sentenced in the Wicomico case, the appellant was found to be in violation of probation in the Dorchester case. His probation was revoked, and he was sentenced to six years of imprisonment (less 226 days of credit) on the CDS conviction.

The appellant filed a motion to correct an illegal sentence in the Wicomico case. The Circuit Court for Wicomico County denied the motion, and the appellant noted this appeal.

DISCUSSION

The appellant contends, as he did below, that the sentence imposed in his Wicomico case is illegal because of the language that it is to be served consecutive to “any sentence currently serving or obligated to serve.” He interprets that language to mean that the sentence in the Wicomico case is to run consecutive to the sentence in the Dorchester case. He argues that this is illegal because when he was sentenced in the Wicomico case he was not serving a sentence in the Dorchester case but was only on parole. We can readily dismiss this argument.

As the appellant and the State both correctly point out, when the appellant was sentenced in the Wicomico case, he was on probation in the Dorchester case but not serving a sentence to which his Wicomico sentence could be consecutive (or concurrent). *See DiPietrantonio v. State*, 61 Md. App. 528, 532–34, *cert. denied*, 303 Md. 295 (1985) (holding that a sentencing court may impose a concurrent or consecutive sentence to any other sentence actually being served or unequivocally scheduled to be served, but a sentencing court *cannot* impose a concurrent or consecutive sentence to a suspended

sentence that is subject to revocation). Therefore, although the commitment record for the Wicomico case refers to a consecutive sentence, the sentence is not, as the appellant incorrectly believes, consecutive to the sentence in the Dorchester case, or to any other sentence for that matter. Imposing a sentence that is consecutive to a sentence that does not exist does not make the sentence illegal. Accordingly, we shall affirm the judgment.

JUDGMENT AFFIRMED.

**COSTS TO BE PAID BY
APPELLANT.**