

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1699

September Term, 2014

AARON WATKINS

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: March 3, 2016

*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.

This appeal alleges that the Circuit Court for Baltimore City failed to correct Appellant’s illegal sentence. Because his motion to correct an illegal sentence did not fall within the narrow scope available for attacking an alleged illegal sentence, we dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

In 1999, following a jury trial in the Circuit Court for Baltimore City, the appellant, Aaron Watkins (“Watkins”), was convicted of first-degree murder; attempted first-degree murder; use of a handgun in the commission of a crime of violence; first-degree assault; and wearing, carrying, or transporting a handgun. Watkins was sentenced (1) to life imprisonment for first-degree murder; (2) to a concurrent twenty-year term without the possibility of parole for the first five years for use of a handgun in the commission of a crime of violence; and (3) to a consecutive life term for attempted first-degree murder. The remaining convictions merged for sentencing purposes.

Watkins filed a motion to correct an illegal sentence. That motion was denied without a hearing. Watkins filed this timely appeal.

DISCUSSION

Watkins alleges three errors. First, Watkins alleges that the circuit court erred by not providing him a hearing before denying his motion to correct an illegal sentence. Second, he complains the circuit court erred by failing to articulate why it denied his motion. Third, Watkins argues that the circuit court failed to recognize that his sentence is illegal and that this Court, therefore, should either order the circuit court to hold a hearing

or order his sentence vacated. For the following reasons, we hold that the circuit court did not err and we dismiss Watkins’ appeal.

1. No Right to a Hearing

Watkins contends that the circuit court erred by not holding a hearing on his motion to correct an illegal sentence. The State argues that Watkins was not entitled to a hearing on his motion unless the circuit court intended to modify, reduce, correct, or vacate Watkins’ sentence. We conclude that Watkins was not entitled to a hearing because the circuit court did not modify his sentence.

When a criminal defendant files a motion to correct an illegal sentence, the circuit court is required to hold a hearing only if the court intends to modify, reduce, correct, or vacate the sentence. Md. Rule 4-345(f) (stating that the court may change a sentence “only on the record in open court, after hearing from the defendant, the State, and from each victim ... who requests opportunity to be heard.”). There is no such requirement if the circuit court does not intend to modify the sentence. *Scott v. State*, 379 Md. 170, 190 (2004) (“the open hearing requirement found in Md. Rule 4-345 ordinarily applies only when the court intends to modify, reduce, correct, or vacate a sentence.”). Here, the circuit court did not alter Watkins’ sentence. Watkins was not, therefore, entitled to a hearing on his motion to correct an illegal sentence.

2. No Right to a Written or Oral Explanation

Watkins also contends that the circuit court erred by “failing to articulate, on the record, its reason for denying [his] motion to correct an illegal sentence.” He argues that

the circuit court’s failure to provide an explanation, either at a hearing or in written form, amounts to a failure to exercise the judicial discretion provided for by Rule 4-345. The State argues that nothing requires the circuit court to articulate on the record its reasons for denying Watkins’ motion. The State also disagrees with Watkins’ contention that the circuit court failed to exercise its discretion. The State instead concludes that ensuring sentence legality and correcting illegal sentences are not discretionary matters because the circuit court does not have the authority to impose illegal sentences.¹ Because of the plain language of Rule 4-345(f), which we quote below, we conclude that Watkins was not entitled to an explanation of why the circuit court denied his motion.

As with the requirement to hold a hearing, the requirement to provide a statement explaining the reasons for the court’s ruling, arises only if the circuit court grants the motion. The rule states that when a circuit court *grants* a motion to correct an illegal sentence, the court “ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.” Md. Rule 4-345(f). There is no requirement for a statement when the circuit court *denies* a motion to correct an illegal sentence.

Here, the circuit court did not grant Watkins’ motion. As a result, it was under no obligation to provide an explanation of its denial of the motion.

¹ Circuit courts do not have the discretion to impose illegal sentences or to leave illegal sentences in place. *Greco v. State*, 427 Md. 477, 513 (2012); *Carlini v. State*, 215 Md. App. 415, 443 (2013) (stating that review of a motion to correct an illegal sentence involves only objectively establishing the outer boundaries for a sentence and then asking whether the ultimate sentence itself was or was not inherently illegal). If a sentence is illegal it must be corrected.

3. Sentence Not Illegal

Watkins’ final contention, and the basis for his original motion, is that his sentence is facially illegal because he was charged by criminal information instead of by grand jury indictment and, therefore, that the circuit court lacked jurisdiction. The State argues that Watkins’ appeal is not properly before this Court and should be dismissed. The State argues that only inherently illegal sentences are subject to review and correction under Rule 4-345(a). Because Watkins’ sentence is not inherently illegal, the State contends, the proper remedy is not to affirm the circuit court, but rather, to dismiss the appeal. We agree.

Although a defendant may file a motion to correct an illegal sentence at any time, not all sentences are reviewable. “If a sentence is ‘illegal’ within the meaning of that section of the rule, the defendant may file a motion to the trial court to ‘correct’ it” even if the defendant failed to object at sentencing, consented to the sentence, or failed to file a timely appeal. *Chaney v. State*, 397 Md. 460, 466 (2007). The scope of Rule 4-345(a), however, is narrow. *Id.* A defendant may attack a sentence through a Rule 4-345(a) motion only if the sentence is “inherently illegal.” *Bryant v. State*, 436 Md. 653, 662 (2014). If a defendant uses a Rule 4-345(a) motion to attack a sentence that is not “inherently illegal” his challenge must be dismissed. A sentence is inherently illegal when “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 intrinsically and substantively unlawful.” *Bryant v. State*, 436 Md. 653, 662-63 (2014)

(citing *Chaney v. State*, 397 Md. 460, 466 (2007)). Thus, we must determine if Watkins’ sentence is reviewable on a motion to correct illegal sentence.

Watkins argues that his sentence is illegal because, he believes, he should have been charged by grand jury indictment, not by criminal information. This is wrong. Although, he could have been charged by indictment, it is also permissible for the State to charge by criminal information in certain circumstances:

In the circuit court, an offense may be tried ... on an information if the offense is (A) a misdemeanor, or (B) a felony within the jurisdiction of the District Court, or (C) any other felony and lesser included offense if the defendant requests or consents in writing to be charged by information, or if the defendant has been charged with the felony and a preliminary hearing pursuant to Rule 4-221 has resulted in a finding of probable cause, or if the defendant has been charged with the felony as to which a preliminary hearing has been waived.

Md. Rule 4-201(c)(2); *see also Moaney v. State*, 28 Md. App. 408 (1975). Moreover, failure to timely request a preliminary hearing constitutes a waiver. Md. Rule 4-221(a)(“Failure to make a timely request[, i.e., at or within ten days after an initial appearance] is a waiver of a preliminary hearing, unless the court orders otherwise.”).

Watkins’ crimes were neither misdemeanors nor within the jurisdiction of the District Court, so subsections (A) and (B) do not apply. Subsection (C) would allow Watkins to be charged with “any other felony,” including the crimes with which he was charged, by information but only if there was a finding of probable cause at his preliminary hearing or if he waived the preliminary hearing entirely. The record is clear that Watkins didn’t have a preliminary hearing, but neither did he request one in a timely fashion. As a

result, we hold that he waived his right to a preliminary hearing. And, critically for our analysis here, that waiver allows for him to have been charged on a criminal information. As a result, moreover, that means that his sentence was not illegal.

While we could affirm the decision of the circuit court denying the motion to correct illegal sentence, we think the better course, where the moving party has failed to make a colorable showing that the sentence he is currently serving is illegal, is to dismiss the appeal.

**APPEAL DISMISSED PURSUANT TO
MARYLAND RULE 8-602(A)(1). COSTS TO
BE PAID BY APPELLANT.**