

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2164

September Term, 2014

NELSON REID

v.

STATE OF MARYLAND

Woodward,
Friedman,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 19, 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.

Nelson Reid, appellant, filed an untimely notice of appeal from the denial of his motion to correct an illegal sentence. Because the notice of appeal was not filed within 30 days after the entry of judgment by the Circuit Court for Baltimore City, we shall dismiss the appeal.

BACKGROUND

In May 1999, Reid was indicted in the Circuit Court for Baltimore City on multiple counts: first-degree murder, second-degree murder, use of a handgun in the commission of a crime of violence, possession of a controlled dangerous substance, robbery, theft over \$300, kidnaping, and false imprisonment. Reid entered a plea of not guilty on July 8, 1999, and elected a jury trial. However, on March 16, 2000, Reid entered a guilty plea pursuant to a binding plea agreement.

As placed on the record, the plea agreement provided that Reid would plead guilty to second-degree murder and the use of a handgun in the commission of a crime of violence. In exchange, the State agreed to enter a *nolle prosequi* as to the remaining charges. The plea agreement recommended that the court impose a sentence of 30 years' imprisonment for the second-degree murder conviction and 15 years' imprisonment for the handgun conviction, the first five years without possibility of parole, to run consecutively. The court agreed to bind itself to those terms.

During *voir dire*, the plea terms were explained to Reid, and the court confirmed that Reid understood the sentence he would receive. As is relevant here, Reid clearly indicated

his understanding that the sentences were to run consecutively; that is, that the aggregate sentence would be 45 years' imprisonment. The circuit court imposed the sentence in accordance with the plea terms.

Approximately 15 years into his imprisonment, Reid filed a *pro se* motion to correct an illegal sentence. He argued that the commitment record did not specify the dates on which the consecutive sentences were to begin, but combined the two sentences into one aggregate sentence. Reid claimed that “the sentencing judge’s actions of lumping the consecutive imposed sentence of fifteen years to the first imposed sentence of thirty years to total them to a one termed confinement of forty five years” violates Maryland Rule 4-351(a)(5).¹ Reid suggested the court correct this error by making his sentences run concurrently. On October 3, 2014, the circuit court denied the motion.

Reid filed a notice of appeal of the denial 53 days later, on November 25, 2014. The circuit court issued a show cause order on December 15, 2014, ordering Reid to show cause

¹Maryland Rule 4-351 provides:

(a) **Content.** When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver to the officer into whose custody the defendant has been placed a commitment record containing:

* * *

(5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence.

in writing why the notice of appeal should not be stricken as untimely. No written response appears in the record.

On January 27, 2015, the circuit court issued an order granting Reid the right to file a belated appeal, giving him until February 26, 2015, to do so. Reid's notice of appeal was docketed the same day.

DISCUSSION

The State does not oppose Reid's appeal on timeliness grounds. Nonetheless, a timely notice of appeal is a jurisdictional requirement for review by this Court. Our jurisdiction is a function of statute; if the Court does not have authorization to hear an appeal, it does not have jurisdiction over that appeal. *Lopez-Sanchez v. State*, 155 Md. App. 580, 606-07 (2004) (Court did not have statutory authority to review an appeal applied for by victim in juvenile criminal case). The Court cannot confer upon itself jurisdictional authority to hear cases that are not filed in accordance with statutory requirements. *Carr v. Lee*, 135 Md. App. 213, 228-29 (2000) (appeal filed prior to entry of final judgment dismissed as untimely).

Maryland Rule 8-201, in conjunction with Rules 8-202 and 8-204, expressly limits the manner in which an appellant can secure review by this Court to two methods: by filing either a notice of appeal or an application for leave to appeal within 30 days after entry of the judgment or order from which the appeal is taken or sought. If this 30-day requirement is not met, we do not acquire jurisdiction, and the appeal must be dismissed. *Griffin v. Lindsey*, 444 Md. 278, 285-86 (2015) (finding crime victim lacked statutory authority to file appeal

from denial of defendant’s motion for reconsideration, thus making appeal untimely and depriving Court of Special Appeals of jurisdiction to review denial of restitution); *Keys v. State*, 195 Md. App. 19, 27 (2010).

Moreover, a circuit court has no authority to restore jurisdiction to the Court of Special Appeals by extending the time for filing an appeal. *Cornwell v. State*, 1 Md. App. 576, 577-78 (1967). Rule 1-204 specifically provides, “The court may not shorten or extend the time for filing . . . a notice of appeal [or] an application for leave to appeal.” Md. Rule 1-204(a).

Reid noted his appeal on November 25, 2014, 53 days after the entry of the order denying his motion to correct an illegal sentence, and 22 days after the filing deadline. The record reveals a letter by Reid addressed to the Clerk of the Circuit Court for Baltimore City indicating that notice of the October 3, 2014, order denying his motion did not reach him until October 17, 2014. The letter, however, does not explain why Reid waited until November 25, 2014, to file the notice of appeal.² The record is equally unclear as to whether Reid answered the circuit court’s December 15 show cause order. Because an untimely notice of appeal does not confer appellate jurisdiction, we must dismiss the appeal.

²The record includes Reid’s notice of appeal, which contains a certificate of service indicating that it was mailed on November 13, 2014. November 13, 2014, is still beyond the thirty-day requirement of Rule 8-202.

Although we lack jurisdiction rule on the merits of Reid’s claim, we are satisfied that the sentences at issue are not illegal sentences. For purposes of Maryland Rule 4-345(a), a sentence is illegal where: (1) there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); (2) the sentence imposed was not a permitted one, *id.*; or (3) the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 514 (2012). The sentences here for second-degree murder and use of a handgun in the commission of a crime of violence are permitted ones, as the terms of imprisonment do not exceed the statutory maximum for either offense. Moreover, the sentences conformed to the terms of the binding plea agreement.

Reid’s complaint is with the commitment record; he asserts that it fails to specify “when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence” as required by Rule 4-351(a)(5). Assuming, *arguendo*, merit to his claim, such is not a valid ground for finding the sentence illegal, or to grant relief by running the two terms concurrently. The commitment record reflects, without ambiguity, what the sentencing hearing transcript shows – that Reid’s sentences were to run consecutively, beginning with the 30-year term for second-degree murder on April 27, 1999.³ Finally, subsection (b) of Rule 4-351 specifically undercuts Reid’s argument: “An

³We note that the Parole Commission views consecutive terms of imprisonment in the aggregate for parole considerations. Md. Code Ann., Corr. Servs. § 7-301(c)(1)(ii). Reid’s parole eligibility is beyond the scope of this opinion.

omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction.” Maryland Rule 4-351(b).

**APPEAL DISMISSED.
COSTS ASSESSED TO APPELLANT.**