UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 170

September Term, 2016

PERRY EUGENE DAVIS

v.

STATE OF MARYLAND

Krauser, C. J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 5, 2017

Perry Eugene Davis appeals from the denial, by the Circuit Court for Montgomery County, of his "Motion to Correct an Illegal and/or Ambiguous Sentence." The State has moved to dismiss the appeal, on the grounds that the purported trial court errors alleged by Davis do not render his sentence illegal within the meaning of Md. Rule 4-345(a). We agree and shall dismiss the appeal.

In 1994, a jury convicted Davis of first degree rape, first degree sexual offense, kidnapping and carjacking, and was sentenced, by the court, as follows:

> On First Degree Rape, I will impose a sentence to the Department of Corrections for the rest of his natural life. The Sexual Offense in the first degree, I will also impose a sentence of life in prison. I will run the two of them concurrent. As to the Kidnapping, I will impose a sentence to the Department of Corrections for a period of 25 years, to run consecutive to the life sentences, and as to the Carjacking a period of 15 years to run consecutive to the other sentences.
>
> * * *
>
> The sentences will commence as of the date of incarceration of January . . . 12, 1994.

In 2015, Davis filed a "Motion to Correct an Illegal and/or Ambiguous Sentence" in which he requested a resentencing hearing to resolve an alleged ambiguity in his sentence. The circuit court denied the motion and this appeal followed, in which Davis claims that the sentence is ambiguous because, in his view, "[b]y announcing that '[t]he sentences will commence . . . on January . . . 12, 1994' the trial court rendered the sentences imposed [for kidnapping and carjacking] concurrent with, rather than consecutive to, the two life sentences[.]" Davis also suggests that there is an error in the commitment record that operates to suspend his entire sentence.

Davis seeks relief under Md. Rule 4-345(a), which provides that "the court may correct an illegal sentence at any time." The rule "creates a limited exception to the general rule of finality, and sanctions a method of opening a judgment otherwise final and beyond the reach of the court." *Colvin v. State,* 450 Md. 718, 724 (2016) (citation omitted). "[T]he scope of this privilege," however, "is narrow." *Id.* at 725 (citation omitted). The Court of Appeals has explained that there is no relief under Rule 4-345(a) where "the sentences imposed were not inherently illegal, despite some form of error or alleged injustice." *Matthews v. State,* 424 Md. 503, 513 (2012).

A sentence is considered "illegal" for purposes of Rule 4-345(a) where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not a permitted one, *id.*; where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement, *Matthews,* 424 Md. at 514; or where a defendant was sentenced for a crime for which he was never charged, *Johnson v. State,* 427 Md. 356, 378 (2012).

Davis does not contend that his sentence is illegal for any of the reasons stated above. Instead, he claims that the court's pronouncement of his sentence was ambiguous and that the resulting commitment record was inaccurate. As the Court of Appeals has explained, however, "where the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for the purposes of Rule 4-345(a)." *Tshiwala v. State*, 424 Md. 612, 619 (2012) (citation omitted), *reconsideration denied*. *See also State v. Wilkens*, 393 Md. 269, 284

(2006) (noting that, to come within the purview of Rule 4-345(a), the illegality "must inhere in the sentence, not in the judge's actions"). Accordingly, the appeal is dismissed.

In any event, the claim that his sentence is ambiguous lacks merit. The court stated that "the sentences," but not all of the sentences, were to commence on January 12, 1994. The court's use of the plural term "sentences" was an obvious reference to the life sentence for first degree rape and the life sentence for first degree sexual offense, which were both to begin on that January date. Moreover, the transcript of the sentencing hearing in the instant case clearly and unambiguously demonstrates that the court imposed consecutive sentences for kidnapping and carjacking. In addition, the commitment record and docket entries accurately reflect that these sentences were consecutive. *See Collins v. State,* 69 Md. App. 173, 197 (1986), *cert. denied,* 308 Md. 572 (1987) (even when a sentencing judge does not clearly articulate the period of confinement, "where the duration of a sentence is otherwise discernable from the record, it will be upheld without resort to the presumption of leniency"). Finally, contrary to what Davis claims, there is nothing in the commitment record indicating that the sentences were suspended.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.