

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1318

September Term, 2016

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ALEXANDER CRIPPEN

v.

STATE OF MARYLAND

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Berger,  
Nazarian,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 5, 2017

\*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.

In December 2010, following a bench trial in the Circuit Court for Worcester County, Alexander Crippen, appellant, was convicted of attempted first-degree murder and several other offenses. On April 8, 2011, the court sentenced Crippen to life imprisonment, with all but twenty-five years suspended, for attempted first-degree murder and to a concurrent term of ten years' imprisonment for use of a handgun in the commission of a felony or crime of violence. (Other convictions were merged for sentencing purposes.) The court, however, failed to impose a period of probation with respect to the suspended portion of the life sentence.

In 2015, Crippen, proceeding *pro se*, filed a motion to correct an illegal sentence pursuant to Rule 4-345(a) in which he asserted that, given that his life sentence did not include a period of probation, it was illegal. The court acknowledged that the “record establishes that the court did fail to announce the period, terms and conditions of probation” and ordered that “a hearing be scheduled to correct the defendant’s sentence, said hearing to be limited to establishing the period, terms, and conditions of defendant’s probation.”

On August 12, 2016, a hearing was held. Crippen was then represented by counsel who argued that, under *Cathcart v. State*, 397 Md. 320 (2007), the court’s failure to impose a period of probation at the time Crippen was sentenced meant that his sentence to life, with all but twenty-five years suspended, was effectively a flat sentence of twenty-five years' imprisonment. Accordingly, counsel asked the court “to simply correct its own records as to the nature of the sentence, it being twenty-five years' incarceration” and to “issue an amended commitment record” reflecting that fact. Instead, the court, after noting that it had intended to impose a term of probation when it sentenced Crippen in 2011, added

a five-year term of supervised probation to Crippen’s original sentence. An amended commitment record was issued showing a sentence of life imprisonment, with all but twenty-five years suspended, for attempted first-degree murder, to be followed by a five-year period of supervised probation upon release. Crippen appeals that judgment. For the reasons to be discussed, we hold that the circuit court erred in altering Crippen’s sentence for attempted first-degree murder and, accordingly, we vacate that sentence and remand with instructions to amend the commitment record to reflect that Crippen’s sentence for attempted first-degree murder is twenty-five years’ imprisonment.

We agree with Crippen that *Cathcart, supra*, dictates the outcome of this case. In *Cathcart*, the defendant was sentenced to ten years for assault and to a consecutive life sentence, all but ten years suspended, for false imprisonment. 397 Md. at 322. No period of probation was imposed with respect to the suspended part of the life sentence. *Id.* at 322-323. *Cathcart* appealed and argued that, under the circumstances of his case, imposition of a life sentence for false imprisonment was unconstitutionally disproportionate and therefore illegal. *Id.* at 324. This Court concluded that, given the fact that no period of probation was imposed, the life sentence (suspend all but ten years) was effectively a flat sentence of ten years and, therefore, was not unconstitutionally disproportionate. *Id.* On further appeal to the Court of Appeals, *Cathcart*, pointing to parole implications of the life sentence, continued to argue that his sentence was illegal. The Court of Appeals rejected that contention, and agreed with this Court that the failure of the sentencing court to impose a period of probation resulted in “two ten-year sentences,

one consecutive to the other, and there is nothing unlawful in its doing so.” *Id.* at 325. The Court explained:

Failure to impose a period of probation does not necessarily make the sentence illegal, but simply precludes it from having the status of a split sentence under Criminal Procedure, § 6-222. Because the effect of the omission is to limit the period of incarceration to the unsuspended part of the sentence, that becomes, in law, the effective sentence. If the court has chosen not to impose a period of probation and thereby limited the period of incarceration to the unsuspended portion of the sentence, the effect of remanding the case for it to do so would be tantamount to allowing it to increase the sentence from that fixed number of years to a life sentence, and our jurisprudence does not allow for that.

Because the effective sentence imposed on the false imprisonment conviction was ten years, it has none of the attributes of a life sentence, for parole eligibility or any other purpose. It therefore presents none of the issues complained of by Cathcart. As a housekeeping measure, however, the judgment as recorded on the docket should be amended to reflect the true nature of the sentence.

*Id.* at 330 (internal citations omitted).

Because the sentencing court here failed to impose a period of probation, Crippen’s sentence to life, suspended all but twenty-five years, was, by operation of law, a sentence of twenty-five years’ imprisonment. That was a legal sentence for attempted first-degree murder.<sup>1</sup> That the sentencing court in 2011 may have intended to impose a term of probation, and only inadvertently failed to do so, is of no import. Rule 4-345(c) provides that “[t]he 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

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<sup>1</sup> Section 2-205 of the Criminal Law Article provides: “A person who attempts to commit murder in the first degree . . . is subject to imprisonment not exceeding life.”

sentencing proceeding.” (Emphasis added.) Thus, the Court of Appeals has stated that, although ““an illegal sentence may be corrected any time, [ ] correcting a mistake in a sentencing order that results in an increased sentence may only occur before the defendant leaves the courtroom following the sentencing procedure.”” *Hoile v. State*, 404 Md. 591, 626 (2008) (quoting *Ridgeway v. State*, 360 Md. 165, 170 (2002) (further quotation omitted)). Accordingly, the court in 2016 lacked jurisdiction to rectify its mistake by adding a term of probation to Crippen’s sentence. To be clear, the revised sentence to life imprisonment, with all but twenty-five years suspended, followed by a five-year term of probation, was illegal because (1) the court did not have jurisdiction to impose it and (2) it was an impermissible increase in Crippen’s sentence.

Finally, we reject the State’s suggestion that Crippen’s appeal is not properly before us because his sentence as originally imposed was not “inherently illegal” and, therefore, his motion filed pursuant to “Rule 4-345(a) was unavailable in the circumstances of this case.” The caption of Crippen’s *pro se* motion is not determinative. “As an appellate court, ‘our concern is with the nature of the issues legitimately raised by the pleadings, and not with the labels given to the pleading.’” *Carter v. State*, 193 Md. App. 193, 207 (2010) (quoting *Higgins v. Barnes*, 310 Md. 532, 535 n. 1 (1987)). At the hearing on his motion, counsel, in express reliance on *Cathcart, supra*, clearly sought the court’s recognition that Crippen’s sentence was a flat twenty-five years’ imprisonment and requested the court to issue an amended commitment record to reflect that fact. Instead, the court attempted to remedy its 2011 sentencing error by impermissibly adding a period of probation to the suspended portion of the life sentence. The illegal increase in his sentence is what Crippen

appeals, and appellate review of that action is permissible under Section 12-301 of the Courts & Judicial Proceedings Article of the Maryland Code.

**JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY ADDING A TERM OF PROBATION TO APPELLANT’S SENTENCE VACATED. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO CORRECT ITS RECORDS AND TO ISSUE AN AMENDED COMMITMENT RECORD REFLECTING A SENTENCE OF TWENTY-FIVE YEARS’ IMPRISONMENT FOR ATTEMPTED FIRST-DEGREE MURDER.**

**COSTS TO BE PAID BY WORCESTER COUNTY.**