UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2896

September Term, 2015

RONALD N. WOOTEN-BEY

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: March 7, 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.

Ronald N. Wooten-Bey, appellant, appeals the denial, by the Circuit Court for Prince George's County, of his motion to correct an illegal sentence that he had filed pursuant to Rule 4-345(a). The State moves to dismiss the appeal because Wooten-Bey has not raised a claim that is cognizable under Rule 4-345(a). We agree with the State that the trial court errors Wooten-Bey has alleged do not render his sentence illegal within the meaning of Rule 4-345(a). We therefore dismiss the appeal.

In 1983, Wooten-Bey was charged with murder and other offenses. Following a jury trial, he was found guilty of conspiracy to commit robbery and acquitted of premeditated murder, second-degree murder, and manslaughter. The jury could not reach a verdict on felony murder, attempted robbery with a dangerous weapon, and use of a handgun in the commission of a felony or crime of violence and, accordingly, the court declared a mistrial on those counts. When the State sought to retry Wooten-Bey on the hung counts, Wooten-Bey moved to dismiss the felony murder charge on the ground that a retrial on that crime would violate the constitutional prohibition against double jeopardy. The motion was denied, and Wooten-Bey took an immediate appeal. This Court affirmed and, following a grant of a writ of certiorari, so did the Court of Appeals. *Wooten-Bey v. State,* 308 Md. 534 (1987) (*"Wooten-Bey I"*). The Court of Appeals held that the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution did not bar a retrial on the felony murder charge. *Id.* at 543. The Court also rejected Wooten-Bey's "alternative theory" that the retrial was barred, under the doctrine of collateral estoppel, because the first jury had acquitted him of second-degree murder and manslaughter. *Id.* at 543-545.

Upon retrial, a jury convicted Wooten-Bey of felony murder, attempted robbery with a dangerous weapon, and the use of a handgun in the commission of a felony or crime of violence. The court sentenced him to life imprisonment and to an additional term of twenty years' imprisonment, to run consecutive to the life sentence. Upon appeal, this Court affirmed the judgments, *Wooten-Bey v. State,* 76 Md. App. 603 (1988), and the Court of Appeals agreed with that decision. *Wooten-Bey v. State*, 318 Md. 301 (1990).

In 2015, Wooten-Bey filed a motion to correct an illegal sentence in which he alleged that his sentence was illegal because his conviction for felony murder was illegal. He asserted that the retrial was "unconstitutional and statutorily invalid" because the State had sought the death penalty; his acquittal in the first trial of premeditated murder "fully and finally decided that he was not the principal in the first degree in the killing of the victim"; and the second trial was "a violation of double jeopardy principles of collateral estoppel." Following a hearing, the circuit court denied the motion.

Wooten-Bey makes essentially the same arguments on appeal as he did in his motion before the circuit court. His claims, however, are not cognizable in a Rule 4-345(a) motion to correct an illegal sentence because they are an attack on the underlying conviction and only indirectly on the sentence itself.

Rule 4-345(a) "'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) (quoting *State v. Griffiths,* 338 Md. 485, 496 (1995)). "The scope of this privilege," however, "is narrow." *Id.* at 725 (quotation 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). Thus, a sentence is "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 (2012). None of these situations apply here.

Wooten-Bey's contention that a retrial was "unconstitutional and statutorily invalid" because the State had sought the death penalty is a complaint about trial procedures. The Court of Appeals has said, however, that a motion to correct an illegal sentence "is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case." *Wilkins v. State,* 393 Md. 269, 273 (2006). Moreover, Wooten-Bey was not sentenced to death.

The point of Wooten-Bey's contention that his acquittal in the first trial of premeditated murder "fully and finally decided that he was not the principal in the first degree in the killing of the victim" is unclear. Under the felony-murder doctrine, "a participant felon is guilty of murder when a homicide has been committed by a co-felon in furtherance of the underlying felony." *Watkins v. State,* 357, Md. 258, 268-269 (2000) (quotation omitted). Thus, even if we assume that Wooten-Bey was not "the principal in the first-degree," he still could have been found guilty of felony murder.

In support of his claim that the retrial violated "double jeopardy principles of collateral estoppel," Wooten-Bey relies on *Yeager v. United States,* 557 U.S. 110 (2009), which he maintains overrules the Court of Appeals' decision in *Wooten I*.[1] Even if we were to assume that *Yeager* would have mandated a different result in *Wooten I*, such a claim is not the proper subject of a motion to correct an illegal sentence. As we have previously held, "an argument that challenges the merits of a conviction," including that a second trial was barred by double jeopardy, "is not properly raised by way of a motion to correct an illegal sentence." *Ingram v. State*, 179 Md. App. 485, 488 (2008). In sum, Wooten-Bey is attacking the validity of the underlying conviction, not an "inherently illegal" sentence.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[1] In *Yeager*, the Supreme Court addressed "whether an apparent inconsistency between a jury's verdict of acquittal on some counts [fraud] and its failure to return a verdict on other counts [insider trading] affects the preclusive force of the acquittals under the Double Jeopardy Clause of the Fifth Amendment." The Supreme Court held that "it does not." 557 U.S. at 112.