

Circuit Court for Harford County
Case No. 12-K-08-001397

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2333

September Term, 2017

KEVIN JONATHAN SORRICK

v.

STATE OF MARYLAND

Wright,
Graeff,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: August 1, 2019

*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.

Kevin Jonathan Sorrick appeals from an order of the Circuit Court for Harford County denying his Motion to Correct Illegal Sentence, asserting that the court erred in denying the motion without holding a hearing, as he had requested.

BACKGROUND¹

Sorrick entered a plea of guilty to first degree murder on March 24, 2009, and, on May 21, 2009, was sentenced to life in prison, with all but 40 years suspended. On June 5, 2009, Sorrick filed a Petition to Modify Sentence, requesting, *inter alia*, that the motion be held *sub curia*. On three occasions – in an *ex parte* letter to the judge on January 27, 2014, in a motion on March 26, 2014, and in a letter on December 30, 2015² – acting *pro se*, he requested a hearing on the motion. No hearing was held.

On November 7, 2017, Sorrick filed a Motion to Correct Illegal Sentence, which included a request for a hearing. On December 28, 2017, the court denied his motion, without a hearing. The court wrote, in part, “there was no illegal sentence; there is nothing to correct. The [trial] Court did not deny the Motion for Modification; the Court had determined that sufficient time had not passed yet for the Court to schedule a modification hearing....”³

¹ Because our discussion relates only to procedural matters, it is not necessary “to recite the underlying facts in any but a summary fashion” *Teixeira v. State*, 213 Md. App. 664, 666 (2013). Sorrick shot and fatally wounded the husband of his live-in girlfriend after an argument during a birthday party for Sorrick and the victim’s child.

² The court docket entries note a December 30, 2015 letter from Sorrick to the trial judge having been received, but the letter does not appear in the record.

³ We infer from the court’s use of the past tense that the reference was to the sentencing judge, who had since retired.

Sorrick raises one question for our review, which we have recast for brevity and clarity. He asks:

Did the circuit court err in denying his motion without a hearing, thereby breaching a condition of his plea agreement?

We shall affirm the judgment of the circuit court.

DISCUSSION

At the hearing at which Sorrick entered his guilty plea, after the prosecutor and defense counsel related the terms of the plea agreement to the court, the following ensued:

[DEFENSE COUNSEL]: In addition, the Court knows we will be filing a Motion for Modification at an appropriate time and the Court will listen to that modification within a proper time and keep an open mind as far as future possible reduction.

[PROSECUTOR]: The State has made no promises on that.

* * *

THE COURT: Reserve the right. It is far enough in the future, no matter how we cut this, it is an academic exercise.

[DEFENSE COUNSEL]: Absolutely.

During qualification of Sorrick's guilty plea, the court said:

THE COURT: You do have the right to file for a modification of sentence if you do so within 90 days of the date the sentence is imposed. [Your counsel] has stated that he will file that Motion. It will not be ruled on anytime in the near future. It will be held for an indefinite period of time. No one is making any promises. I am not. No other judge is in a position to make a promise even if I am retired or something like that and the State is reserving the right to impose [sic] it or what position they think is appropriate. The only thing that I will say is I will keep an open mind. That's all I will say.

Has anybody made any promises [to you] other than that?

[DEFENDANT]: No.

Sorrick’s Petition to Modify Sentence was timely filed under Maryland Rule 4-345(e)(1), *i.e.*, within 90 days of the date of the imposition of sentence. He asserts that the words spoken by the sentencing court, *supra*, recognized that his guilty plea was induced, in some part, by a promise that when filed, his motion would be heard by the court. At this point we note, for clarity, that a hearing on such motion is required only if the court intends to modify, reduce, correct, or vacate a sentence. Rule 4-345(f). Sorrick emphasizes in his brief that he now seeks, not a modification, but a hearing on his previously filed motion for modification.

Finally, Sorrick asserts that the court has breached his plea agreement by not holding a hearing. He concludes that he is entitled to a hearing at which he would make an election to either withdraw his guilty plea or have the plea agreement specifically enforced.

The State responds that the court was correct in denying Sorrick’s motion, but for the wrong reasons.⁴ The State posits, *arguendo*, that even if the court had breached the

⁴ The State posits that the court

seemed to be of the view that “the expiration of the [five-year] period set forth in Rule 4-345(e)” would only “bar any modification of the sentence’ in the absence of ‘the consent of the State[.]” Apparently, from [the court’s] perspective, it would be possible for the circuit court to issue a ruling on the Motion for Modification “after five years with[] the consent of the State[.]” if the State eventually chose to “waive the Rules[.]”

[T]he State respectfully disagrees with the circuit court that the parties have the power to waive the five-year limit on a circuit court’s exercise of revisory power over a sentence under Rule 4-345(e).

(Quoting the motions court’s Memorandum Opinion and Order, 4).

plea agreement the breach did not create an illegal sentence. Hence, the State concludes, a breach of the plea agreement cannot be cured by a motion to correct an illegal sentence.

Under Rule 4-345(a) a sentence is illegal if the illegality “inheres in the sentence itself.” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). The Court of Appeals pointed out that a sentence is illegal if “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.” *Id.* (internal quotations and citations omitted). The Court has further opined that “[a] sentence does not become ‘an illegal sentence because of some arguable procedural flaw in the sentencing procedure[.]’” *Tshiwala v. State*, 424 Md. 612, 619 (2012) (citation omitted); that courts must “den[y] relief pursuant to Rule 4-345(a) [where] the sentences imposed were not *inherently illegal*, despite some form of error or alleged injustice[.]” *Bonilla v. State*, 443 Md. 1, 6 (2015) (emphasis in *Bonilla*) (internal quotations and citation omitted); and that “any illegality must inhere in the sentence, not in the judge’s actions.” *State v. Wilkins*, 393 Md. 269, 284 (2006).

The sentence imposed on Sorrick’s guilty plea was neither outside the range contemplated by the plea agreement, nor was it a sentence not permitted for the conviction of first degree murder. We shall affirm the court’s denial of his Motion to Correct Illegal Sentence. We do so, however, without reaching the question of whether the court breached

Because our conclusion that the court was correct in ruling that Sorrick’s Motion to Correct Illegal Sentence is without merit, we need not address the State’s exception to the court’s methodology.

the terms of the plea agreement. We leave Sorrick to pursue his available remedies for the alleged breach of the agreement.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED;
COSTS ASSESSED TO APPELLANT.**