

Circuit Court for Carroll County  
Case No. 06-K-09-039263

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2546

September Term, 2018

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DALE VERNON BIGHAM

v.

STATE OF MARYLAND

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Wright,  
Kehoe,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: September 26, 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.

In 2011, a jury in the Circuit Court for Carroll County convicted Dale Bigham, appellant, of conspiracy to commit first-degree rape, second-degree assault, and two counts of third-degree sexual offense.<sup>1</sup> The court imposed a 40-year sentence on the conspiracy count and consecutive 10-year sentences on the sexual offense counts.<sup>2</sup> The sentences imposed on the sexual offense counts were ordered to run concurrently to the conspiracy count. Following a review by a three-judge panel, Mr. Bigham’s sentence for conspiracy to commit first-degree rape was reduced to 35 years’ imprisonment. We affirmed Mr. Bigham’s convictions on direct appeal. *See Bigham v. State*, No. 746, Sept. Term 2011 (filed Aug. 8, 2012).

In 2018, Mr. Bigham filed a motion to correct illegal sentence, claiming that: (1) there was insufficient evidence to sustain his conviction for conspiracy to commit first-degree rape; (2) that his sentence for conspiracy to commit first-degree rape should have merged with his sentence for third-degree sexual offense under the rule of lenity; and (3) that he “could not be sentenced for conspiracy to commit first-degree rape when he could be guilty at most of conspiracy to [commit] second-degree rape[.]” The circuit court denied his motion without a hearing. On appeal, Mr. Bigham raises the same contentions that he

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<sup>1</sup> Mr. Bigham was also charged with first-degree rape and second-degree rape; however, the jury was unable to reach a verdict on either count and the court declared a mistrial.

<sup>2</sup> The court merged Mr. Bigham’s assault conviction for sentencing purposes.

raised in his motion to correct illegal sentence.<sup>3</sup> Because Mr. Bigham’s sentences are not illegal, we shall affirm.

Mr. Bigham’s challenge to the sufficiency of the evidence is not cognizable in a motion to correct illegal sentence. *See Bryant v. State*, 436 Md. 653, 665-66 (2014) (holding that, where appellant’s “complaint relate[d] to the sufficiency of the evidence” to prove that he had been convicted of predicate crimes, his appellate challenge to enhanced sentence was not cognizable under Rule 4-345(a)). Similarly, his claim that his sentence for conspiracy to commit first-degree rape is excessive is not cognizable because it is premised entirely on his contention that there was insufficient evidence to convict him of that offense.<sup>4</sup> Finally, there is no merit to Mr. Bigham’s assertion that his sentence for conspiracy to commit first-degree rape should merge into his sentence for third-degree sexual offense as the crime of conspiracy is “a separate criminal act[ ] for which the Legislature has provided [a] distinct punishment[.]” *Wooten-Bey v. State*, 76 Md. App.

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<sup>3</sup> We note that, in his reply brief, Mr. Bigham asserts for the first time that he was only convicted of conspiracy to commit first-degree rape, rather than conspiracy to commit third-degree sexual offense, because the State did not submit any other conspiracy charges to the jury. This argument is entirely speculative and is not supported by the record. But, to the extent Mr. Bigham is asserting that the State should have submitted other conspiracy charges to the jury, such a claim may not be raised in a motion to correct illegal sentence.

<sup>4</sup> We note that Mr. Bigham’s sentence for conspiracy to commit first-degree rape is not otherwise illegal. A person convicted of conspiracy can be sentenced up to the maximum punishment for the offense that was the objective of the conspiracy even if the object of the conspiracy was never realized. Because the maximum punishment for first-degree rape is life imprisonment, his 35-year sentence for that offense is not excessive.

603, 629-30 (1988). Consequently, the circuit court did not err in denying Mr. Bigham's motion to correct illegal sentence.

**JUDGMENT OF THE CIRCUIT  
COURT FOR CARROLL COUNTY  
AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**