

Circuit Court for Baltimore County
Case No. 03-K-15-006753

UNREPORTED
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2570

September Term, 2016

JOHN BAPTIST WATKINS, III

v.

STATE OF MARYLAND

Wright,
Graeff,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: March 2, 2018

* 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.

John Baptist Watkins, III, pled guilty to a charge of illegal possession of a regulated firearm as a felon, and was sentenced to eight years, all but five years suspended with the possibility of parole, and five years of probation. He moved later to correct an illegal sentence. After a hearing, the Circuit Court for Baltimore County denied his motion, but resentenced him to five years *without* the possibility of parole. Mr. Watkins appeals that decision and we affirm.

I. BACKGROUND

Mr. Watkins was charged with possession of a firearm as a convicted felon, among other offenses,¹ in November 2015. The State sought the mandatory minimum sentence of “between 4 and 8 years,” and recommended a split sentence “with the first five to be served without parole.” Mr. Watkins pled guilty to the gun charge and the trial court sentenced him to eight years, all but five years suspended with the possibility of parole, followed by five years of probation.

After discovering conflicting information between the probation order and commitment order, Mr. Watkins filed a motion for modification and sought clarification of his sentence. The circuit court denied his motion because “[f]ive years without parole is [the] mandatory minimum sentence as required by law. . . [and the] [c]ourt has no discretion to change [it].” At some point, the Maryland Department of Public Safety and Correctional Services (the “Department”) informed the State and Mr. Watkins’s counsel that Mr. Watkins’s sentence was illegal, and changed his sentence to reflect five years without the

¹ The remaining charges were dismissed.

possibility of parole. On November 9, 2016, Mr. Watkins filed a motion to correct illegal sentence, and took issue with the Department’s decision “that [he] was not eligible for Parole,” contrary to the trial court’s intent to “sentence [him] to a sentence not involving the minimum mandatory sentence.” He also requested a hearing. The court denied his motion, but resentenced him to five years without the possibility of parole. This timely appeal followed. We supply additional facts as necessary below.

II. DISCUSSION

Mr. Watkins raises a single issue on appeal: was the trial court authorized to change his sentence?² He argues *first* that because the State didn’t appeal Mr. Watkins’s initial illegal sentence, the trial court “had no present jurisdiction to increase the sentence.” *Second*, Mr. Watkins argues that the trial court erred by resentencing him to five years without the possibility of parole because doing so abrogated the plea agreement.³ The State responds, arguing that the trial court properly denied Mr. Watkins’s motion pursuant to Md. Rule 4-345(a). It points us to *State v. Crawley*, in which the Court of Appeals held that

² In his brief, Mr. Watkins phrased the Question Presented as follows:

Did the trial Judge have the authority to alter a sentence which was the result of a plea bargain and for which there was no evidentiary foundation.

³ Mr. Watkins also argues that the trial court lacked sufficient evidence to support the change to his sentence. But we decline to reach that argument, as it was not properly preserved for review. *See Bryant v. State*, 436 Md. 653, 666 (2014) (explaining that if an appellant fails to raise a challenge to the sufficiency of the evidence to support a sentence at the trial court, he can’t raise it for the first time on direct appeal). Mr. Watkins’s counsel failed to object to the trial court’s finding of “sufficient” evidence to find Mr. Watkins guilty.

a trial court acted within its discretion in correcting a defendant’s unlawful sentence “regardless of whether the sentence has been negotiated and imposed as part of a binding plea agreement.” 455 Md. 52, 67 (2017). We agree with the State and affirm.

Whether a sentence is illegal under Maryland Rule 4-345(a) is a question of law subject to *de novo* review. *Meyer v. State*, 445 Md. 648, 663 (2015). Sentencing courts lack the authority to impose a sentence that conflicts with a legislatively mandated sentence, *Cathcart v. State*, 397 Md. 320, 325 (2007), and can correct that illegal sentence at any time. Md. Rule 4-345(a). The mandatory minimum sentence for the crime of illegal possession of a regulated firearm by a felon is five years with no eligibility for parole. MD. CODE ANN. PUB. SAFETY ART. § 5-133(c)(2)(i)–(iii).

At the motion hearing, Mr. Watkins’s counsel agreed that the trial court gave him an illegal sentence, but argued that the court did not have the power to correct it:

THE STATE: Your Honor, just the history of the case. Mr. Watkins entered a guilty plea as to illegal possession of a regulated firearm, a 15 year [sentence]. Both counsel and I thought it was discretionary based on the old conviction probation. Apparently, we received a letter from the [Department]. That was not correct. So it has to be five without parole.

[MR. WATKINS’S COUNSEL]: Well, first of all, there is three issues, Your Honor. The first issue is that Mr. Watkins was sentenced to five years . . . with three years probation. But the [Department] has him with five years probation. The second issue is the [Department] did not give him credit for
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THE COURT: Okay. Well wait a minute now. My notes have five years probation, and in the court file, the commitment says five years probation. I have listened to the tape, and I said five years probation, so I didn't know that that was an issue.

Now this parole thing that is a whole different thing.

[MR. WATKINS'S COUNSEL]: What I am arguing is the [Department] does not have the power to change Your Honor's sentence. Your Honor's sentence is what it is.

THE COURT: But if I gave an illegal sentence, then I can't do that. The best I can do for him, if that is – I went on what you all told me was, that it was discretionary, and I said on the record I was granting him parole, making this parolable time.

However, if that's an illegal sentence, in that I did not have discretion to do that, the best I can do is allow him to withdraw his plea and he can start over, because he was obviously misinformed. That is the best I can do for him. But I can not – I can't give him an illegal sentence.

[MR. WATKINS'S COUNSEL]: My argument would be, *Your Honor, you did give him an illegal sentence apparently, but in order for that to change, the state would have to ha[ve] filed an appeal in the appropriate appellate period, appeal that sentence to the Court of Special Appeals, and had a judicial reversal of that decisions.* There can't be an administrative reversal of a judicial decision. (Emphasis added).

Mr. Watkins acknowledged that the sentence originally imposed after his guilty plea was illegal and therefore subject to correction pursuant to Md. Rule 4-345(a). In fact, he— not the State—moved to have the trial court correct his sentence. Nevertheless, he insists that the trial court couldn't correct that sentence on its own because the illegal sentence arose out of a plea agreement and the State did not appeal the illegal sentence. He cites no

legal authority to support his contention, and there isn't any. And in any event, Rule 4-345(a) unequivocally authorizes the trial court (and this Court) to correct an illegal sentence at any time. *See e.g., Mateen v. Saar*, 376 Md. 385, 397 (2003) (noting that a trial court may correct an illegal sentence at any time, “even on its own initiative”); *Barnes v. State*, 423 Md. 75 (2011) (explaining that the Rule grants a trial court limited continuing authority to revise an illegal sentence); *Addison v. State*, 191 Md. App. 159, 183 (2010) (“We may correct an illegal sentence on appeal even if no objection was made in the trial court.”). So regardless of the “vehicle that brought the issue [of an illegal sentence] before the [c]ourt,” the trial court had the authority to change Mr. Watkins’s illegal sentence.

Next, Mr. Watkins argues that “[w]hen a trial court accepts the terms of the plea agreement, it cannot subsequently change the sentence so that it abrogates the terms of the plea agreement.” We disagree. “The principle that a substantively illegal sentence must be corrected applies regardless of whether the sentence has been negotiated and imposed as part of a binding plea agreement.” *Crawley*, 455 Md. at 67. Moreover, the court may correct an illegal sentence with a legal sentence that exceeds the original. *See Hoile v. State*, 404 Md. 591, 620 (2008) (“The correction of an illegal sentence may result in an increase over the erroneous sentence previously imposed on the defendant.”); *Mateen v. Galley*, 146 Md. App. 623, 649 (2002) (An illegal sentence “may be corrected by the imposition of a legal sentence, even though the corrected sentence is longer than the original illegal sentence.”), *rev'd on other grounds, Mateen v. Saar*, 376 Md. 385 (2003). The circuit court

remedied the original unlawful sentence when it reimposed the mandatory minimum of five years and removed the possibility of parole, and it acted properly in doing so.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**