

Circuit Court for Charles County
Case Nos.: 08-K-13-000360 & 08-K-13-001397

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3086

September Term, 2018

ANTHONY DEANDRE DANCE

v.

STATE OF MARYLAND

Fader, C.J.,
Friedman,
Gould,

JJ.

Opinion by Friedman, J.

Filed: March 12, 2020

*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.

On May 21, 2014, Anthony Deandre Dance pleaded guilty, pursuant to a three-party binding guilty plea agreement, in the Circuit Court for Charles County. Under the plea agreement, the court bound itself to impose a period of active incarceration¹ not exceeding thirty years and, in the event that the court imposed active sentences on more than one count, bound itself to impose those active sentences concurrent with each other. On July 22, 2014, the court initially sentenced Dance contrary to the latter term of the plea agreement by imposing active sentences totaling thirty years consecutive to each other. Shortly thereafter, Dance’s counsel brought the sentencing error to the attention of the court, and the court re-sentenced Dance in compliance with the plea agreement.

Years later, Dance filed a motion to correct an illegal sentence asserting that when the court re-sentenced him, it illegally increased his sentence. At the conclusion of a hearing on the motion, the court denied it from the bench. Dance noted an appeal from that denial wherein he asks us one question, which we have re-phrased: Did the court illegally increase Dance’s sentence when it re-sentenced him? Because we hold that his sentence was not illegal, we affirm.

BACKGROUND

Dance’s appeal is based on his view that the circuit court illegally increased his sentence. As a result, our factual summary will focus primarily on the events that led to

¹ A sentence of “active” incarceration refers to the period of actual incarceration served. See *Lafontant v. State*, 197 Md. App. 217, 223 (2011) (highlighting the exchange between the trial court and counsel for defendant in which the court explained, pursuant to a plea agreement, that the defendant would be sentenced to “no more than four years of *actual* incarceration”) (emphasis added).

Dance's sentences for his participation in two unrelated criminal episodes, one involving a non-fatal shooting during a robbery of two victims, and one involving the robbery and armed carjacking of a different victim. Dance agreed to plead guilty, pursuant to a written plea agreement, to two counts of attempted second-degree murder, the use of a handgun in the commission of a crime of violence for one of the incidents,² and armed carjacking for the other.³

As part of the agreement, the State agreed to dismiss the remaining charges. The circuit court bound itself to impose a period of active incarceration not exceeding thirty years and, in the event that the court imposed active sentences on more than one count, bound itself to impose those sentences concurrently with each other. The agreement also called for the overall active sentence to be within the sentencing guideline range. The amount of any suspended time was left to the court's discretion.

Several months after Dance pleaded guilty, he appeared for sentencing where the court imposed an aggregate sentence of fifty years' imprisonment with all but thirty years suspended. Specifically, in Case No. 08-K-13-000360, the court sentenced Dance to the following terms of imprisonment: (1) fifteen years for count three, attempted second-degree murder; (2) fifteen years for count four, attempted second-degree murder, to run concurrent to count three; and (3) five years without parole for count 26, use of a handgun in the commission of a crime of violence, to run consecutive to counts three and four. In

² These counts were included as part of Case No. 08-K-13-000360.

³ This count was included as part of Case No. 08-K-13-001397.

Case No. 08-K-13-001397, the court sentenced Dance to thirty years’ imprisonment with all but ten years suspended, consecutive to the sentences imposed in Case No. 08-K-13-000360. Ultimately, this sentence resulted in an aggregate term of fifty year’s incarceration with all but thirty years suspended.

Within minutes, counsel for Dance informed the court that it had incorrectly imposed a sentence not in conformance with the plea agreement, which provided that, in the event that the court imposed active sentences on separate counts—which it did—they were to be imposed concurrently. Instead, the court had imposed them consecutively. The case was then re-called,⁴ and the parties agreed with the court that the sentences needed to be “refashion[ed]”.

After some discussion, the court “refashioned” the sentence as follows: in Case No. 08-K-13-000360 (1) thirty years for count three, attempted second-degree murder; (2) thirty years for count four, attempted second-degree murder, to run concurrent to count three; and (3) five years without parole for count 26, use of a handgun in the commission

⁴ Even though it is not explicit from the transcript of the sentencing proceeding, it can be inferred that the presiding judge left the courtroom after the first sentence based on the courtroom clerk’s “All rise” pronouncement just before the case was called and the attorneys identified. What is not clear from the record, however, is whether Dance had left the courtroom. The parties do not contest that he left the courtroom, and, during the hearing on the motion to correct an illegal sentence, he testified that he left the courtroom. We will assume that Dance left the courtroom between the two proceedings. Whether Dance left the courtroom affects the court’s authority to correct the sentence. Pursuant to Md. Rule 4-345(c), the 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 sentencing proceeding.” In the instant case, therefore, we view trial counsel’s actions as orally moving to correct an illegal sentence, which may be done “at any time,” pursuant to Md. Rule 4-345(a).

of a crime of violence, to run concurrent to counts three and four. In Case No. 08-K-13-001397, the court sentenced Dance to twenty years, all suspended, consecutive to the sentences imposed in Case No. 08-K-13-000360. This sentence also resulted in an aggregate sentence of fifty years' imprisonment with all but thirty years suspended.⁵

As noted above, Dance later filed a motion to correct an illegal sentence pursuant to Maryland Rule 4-345(a),⁶ asserting that when the court re-sentenced him, it illegally increased his sentence. This occurred, according to Dance, because during the first sentencing proceeding the court imposed two fifteen-year sentences (one for each of the two counts for attempted second-degree murder) but then increased those sentences to thirty years each during the second sentencing proceeding. The court denied the motion on

⁵ The following table reflects the sentences imposed for the various counts:

Count	Offense	Initial Sentence	“Refashioned” Sentence
Case No. 08-K-13-000360 Count 3	Attempted-second degree murder	15	30
Case No. 08-K-13-000360 Count 4	Attempted-second degree murder	15 concurrent to count 3	30 concurrent to count 3
Case No. 08-K-13-000360 Count 26	Use of a handgun in the commission of a crime of violence	5 without parole consecutive to counts 3 & 4	5 without parole concurrent to counts 3 & 4
Case No. 08-K-13-001397 Count 1	Armed carjacking	30 suspend all but 10 consecutive to Case No. 08-K-13-000360	20 all suspended consecutive to Case No. 08-K-13-000360
TOTAL		50 suspend all but 30	50 suspend all but 30

⁶ Maryland Rule 4-345(a) provides that “[t]he court may correct an illegal sentence at any time.”

the basis that Dance’s overall aggregate sentence remained the same before and after the court re-sentenced him.

DISCUSSION

We review the denial of a motion to correct an illegal sentence without deference. *Rainey v. State*, 236 Md. App. 368, 374, *cert. denied*, 460 Md. 23 (2018). In so doing, we “defer to the trial court’s findings of fact, and will not disturb those findings unless they are clearly erroneous.” *Kunda v. Morse*, 229 Md. App. 295, 303 (2016). Maryland Rule 4-345(a)’s authorization for a trial court to correct an illegal sentence “at any time,” “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.” *State v. Griffiths*, 338 Md. 485, 496 (1995).

Under Rule 4-345(a), an illegal sentence “is one in which the illegality inheres in the sentence itself; *i.e.*, 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.” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)).

Dance’s claim is that the court was not permitted to increase his sentences for the two attempted second-degree murder convictions from two fifteen-year concurrent sentences to two thirty-year concurrent sentences. In support of this argument, Dance relies on *Wilson v. State* for the proposition that a court may not increase the sentence on an individual count, even though the result would be that the overall sentence decreased, because each sentence must be viewed singly. 45 Md. App. 675, 677 (1980). In our view,

Dance’s reliance on *Wilson* is overstated in light of *Twigg v. State*, where the Court of Appeals held that a sentence will only be considered to have increased if the total sentence “package” re-imposed is greater than the total sentence “package” originally imposed.⁷ 447 Md. 1, 28-30 (2016). Furthermore, *Twigg* also held that so long as the overall sentence, when viewed in the aggregate, does not increase after re-sentencing following an appellate remand, a court may increase the sentence for individual convictions. *Id.* at 30.

When read together, *Wilson* and *Twigg* indicate to us that, in assessing the illegality of an imposed sentence, this Court must evaluate the individual counts in determining whether the aggregate sentence “package” has increased. In those cases where the sentence “package” has increased, we are bound to conclude that the sentence is illegal. As stated above, the trial judge’s initial sentence for Dance was for a total of fifty years’ imprisonment, all but thirty years suspended. The final sentence, now being challenged, was also for a total of fifty years’ imprisonment, all but thirty years suspended. This was not a sentence increase. The only difference between the sentences is that initially, the judge improperly made the active incarceration term for the counts consecutive. In the final sentence, the trial judge corrected this error and, in compliance with the plea agreement, announced that all periods of active incarceration were to run concurrently. Dance, in

⁷ Dance also fails to acknowledge a significant procedural difference between his case and *Wilson*. In *Wilson*, the sentence increase was the result of a motion for modification or reduction of a sentence, through which a court is not permitted to use its revisory power to increase a sentence. MD. RULE 4-345(e). For Dance, however, the sentence increase occurred following an oral motion to correct an illegal sentence, to which the restriction in *Wilson* does not apply.

effect, received the relief he requested when he initially asked the court to correct his sentence.

Dance attempts to distinguish *Twigg* by asserting that, because *Twigg* arrived at its holding by interpreting Md. Code, Courts and Judicial Proceedings Article (“CJP”) § 12-702(b) (which, by its terms, only applies to re-sentencing after an appellate remand), *Twigg* is only applicable after an appellate remand for re-sentencing. But it is worth noting that the *Twigg* Court saw “no material distinction, for purposes of protecting due process, between [re-sentencing following re-conviction] and a remand for a new sentence on an unchallenged conviction[.]” *Twigg*, 447 Md. at 23. Similarly, in Dance’s case, we see no meaningful distinction between a resentencing that occurs as a result of an appellate remand and one that occurs as the result of a grant of a motion to correct an illegal sentence. Hence, while we need not decide whether *Twigg* applies to every re-sentencing, we do find that it applies here—where a trial court grants a motion to correct an illegal sentence and then undertakes to re-sentence the defendant.

If we followed Dance’s argument to its ultimate conclusion, it would lead to the absurd result that the trial court would have the power, under *Twigg*, to increase his individual sentences (without increasing the total sentence “package”) *only* if the trial court had denied his initial oral motion to correct an illegal sentence and if this Court had agreed and remanded following his appeal. Despite that power, however, because the court granted his motion to correct an illegal sentence, it could not increase the sentence on any individual counts. That cannot be the law. We believe that the spirit of *Twigg* extends well beyond

the narrow circumstances of a re-sentencing following an appellate remand. We, therefore, hold that the trial court's refashioned sentence was not illegal.

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.