

Circuit Court for Baltimore County
Case No: 03-K-94-002016

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3271

September Term, 2018

SEAN SANFORD

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 13, 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.

Sean Sanford appeals the decision of the Circuit Court for Baltimore County denying his motion to correct an illegal sentence. He challenges the validity of his conviction for murder and hence maintains that his sentence to life imprisonment for that offense is illegal. Because the issue he is raising is not cognizable in a Rule 4-345(a) motion to correct an illegal sentence, we shall affirm.

In 2006, a jury found Mr. Sanford guilty of first-degree murder, two counts of robbery with a dangerous weapon, assault, and use of a handgun in the commission of a crime of violence. The court sentenced him to life imprisonment for the murder and to lesser concurrent terms of imprisonment for the remaining offenses. On direct appeal, Mr. Sanford argued, among other things, that the court erred by imposing separate sentences for robbery and assault because, he claimed, the assault merged into robbery and robbery into felony murder. In addressing this contention, we stated:

[T]he jury was instructed that it could convict appellant for first-degree murder on either the theory of premeditated murder or felony murder. The jury subsequently found appellant guilty of “first degree murder.” At no point was the jury asked to specify the theory upon which that verdict was based. Because the record provides no basis upon which to determine the exact theory on which the jury’s first-degree murder verdict was based, that ambiguity must be resolved in appellant’s favor. Consequently, we assume that the jury convicted appellant on a theory of felony murder.

Sanford v. State, No. 2444, Sept. Term, 2013 (filed March 31, 2015), slip op. at 30.

In 2018, Mr. Sanford filed a motion to correct an illegal sentence in which he asserted that, because the State did not submit a charge of second-degree murder to the jury, “the prosecutor effectively nol prossed” that charge and because it was nol prossed

after trial began, “it operate[d] as an acquittal” of second-degree murder. Mr. Sanford then argued that, because second-degree murder is a lesser included offense of first-degree murder, the acquittal of the second-degree murder charge acted as an acquittal of the first-degree murder count and, therefore, “his conviction and sentence for first-degree murder must be vacated.” The State pointed out that on direct appeal this Court “presumed” that Mr. Sanford was convicted of first-degree felony murder and asserted that second-degree murder is not a lesser included offense of first-degree felony murder. The circuit court denied the motion.

On appeal, Mr. Sanford makes the same arguments he did in the circuit court. The State disputes his assertion that the prosecutor’s decision not to send a particular charge to the jury acts as an acquittal. The State also maintains that even if it were true, Mr. Sanford’s claim “would be of an inconsistent verdict” and a “sentence which is the result of an inconsistent verdict is not illegal.”

There is no dispute that Mr. Sanford is challenging his sentence by attacking his conviction for first-degree murder. A Rule 4-345(a) motion to correct an illegal sentence is very narrow in scope, however, and ““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.”” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Wilkins v. State*, 393 Md. 269, 273 (2006)). Mr. Sanford’s contention is focused not on his sentence, but on the merits of his underlying conviction and, as such, the circuit court properly denied the motion to correct his sentence. *See Rainey v. State*, 236 Md. App. 368 (2018) (holding that

a sentencing challenge premised on an alleged illegality of the underlying conviction is not cognizable in a Rule 4-345(a) motion to correct an illegal sentence).

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