

Circuit Court for Baltimore County
Case No: 03-K-09-004701

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3272

September Term, 2018

WILBERT LEROY JONES

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: November 8, 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.

Wilbert Leroy Jones appeals the denial, by the Circuit Court for Baltimore County, of his motion to correct an illegal sentence. Because his sentence is legal, we shall affirm.

In April 2010, following a bench trial, the court convicted Mr. Jones of theft over \$500 and sentenced him to 10 years’ imprisonment, all but three years suspended, to be followed by a two-year period of supervision. In May 2013, while on probation, he violated a condition of his probation.¹ The docket entries reflect that, on January 30, 2014 (about seven weeks after Mr. Jones claims his probation had expired), Parole & Probation filed a report with the court charging Mr. Jones with violating conditions of his probation.² A subpoena was issued that same day and served on Mr. Jones on March 13, 2014. Following a revocation hearing held on August 27, 2014, the court found that Mr. Jones had violated his probation, revoked it, and ordered him to serve two years of his previously suspended time, to run consecutive to any outstanding sentence.³ Mr. Jones did not seek leave to appeal that judgment.

In 2018, Mr. Jones, as a self-represented litigant, filed a Rule 4-345(a) motion to correct an illegal sentence in which he requested “that his sentence be corrected.” As grounds, he asserted that the State had filed its petition seeking the revocation of his

¹ It is not clear from the limited record before us, what condition(s) of probation Mr. Jones violated. It appears, however, that he had committed a new crime.

² Mr. Jones claims that his probation expired on December 6, 2013.

³ The docket entries reflect that Mr. Jones “failed to appear” at a revocation hearing convened on March 28, 2014, prompting a postponement. The hearing was also postponed on at least one other occasion when Mr. Jones, then in custody, was not transported to the court.

probation after the probationary period had ended and more than six months after he had committed the violation. Accordingly, he maintained that “this [violation of probation] verdict must be overturned and this VOP sentence and conviction denied with prejudice as being inherently illegal.” The circuit court concluded that the “sentence imposed was fair and authorized by law” and “not illegal” and denied the motion without a hearing.

Mr. Jones makes the same argument on appeal that he did in the circuit court. He relies on § 6-223 of the Criminal Procedure Article which states:

- (a) A circuit court or the District Court may end the period of probation at any time.
- (b) On receipt of written charges, filed under oath, that a probationer or defendant violated a condition of probation during the period of probation, *the District Court may, during the period of probation or within 30 days after the violation, whichever is later*, issue a warrant or notice requiring the probationer or defendant to be brought or appear before the judge issuing the warrant or notice: (1) to answer the charge of violation of a condition of probation or of suspension of sentence; and (2) to be present for the setting of a timely hearing date for that charge.

(Emphasis added.)

As noted, Mr. Jones’s argument centers on his allegation that the charges in his case were filed after his probationary term had expired and about six months after he committed the violation and, therefore, he maintains that the circuit court had no authority to proceed with the revocation of his probation. By its express language, however, Crim. Proc. § 6-223(b) only applies to the District Court. Mr. Jones’s violation was both initiated in and prosecuted in the circuit court.

Prior to amendments enacted in 2009, Crim. Proc. § 6-223(b) provided that the District Court could initiate a revocation proceeding by issuing a “warrant or notice” to the probationer “[d]uring the period of probation[.]” In 2009, Crim. Proc. § 6-223(b) was amended to permit the District Court to initiate revocation proceedings “during the period of probation or within 30 days after the violation, whichever is later.” No such time restraints were placed on the circuit court either before or after 2009. In fact, the Department of Legislative Services’ Fiscal and Policy Note accompanying Senate Bill 145, setting forth the 2009 amendments to Crim. Proc. § 6-223(b), made clear that the amendment applied only to the District Court. In contrast, the Fiscal and Policy Note stated that “[i]n the circuit courts, revocation of proceedings may begin at any time for a violation of probation or suspended sentence, as long as ‘the State proceeds with reasonable promptness and diligence.’ *State v. Miller*, 289 Md. 443 (1981).”

In *Miller*, the Court of Appeals addressed an issue similar to that raised by Mr. Jones. In Mr. Miller’s case, the period of probation expired on November 21, 1977 and the warrant charging him with violating conditions of his probation was issued on January 6, 1978. *Id.* Following a hearing, the court found Mr. Miller in violation of his probation, revoked the probation, and ordered him to serve his previously suspended sentence. On appeal, this Court reversed, holding that the trial court lacked jurisdiction to revoke the probation given that the arrest warrant was issued and the revocation hearing was held after the probationary term had expired. *Id.* The Court of Appeals reversed this Court, holding that, “so long as the State proceeds with reasonable promptness and diligence to prosecute a defendant for a violation of probation and so long as the violation itself occurs within the

probationary period, the revocation proceedings may be initiated at any time, even if the probationary period has expired.” *Id.* at 446.

Here, Mr. Jones does not dispute that he violated his probation or that the violation occurred while he was on probation. The circuit court, therefore, had the authority to revoke his probation and order him to serve additional time. Any contention that the State had failed to proceed with reasonable promptness and diligence in prosecuting Mr. Jones for violating probation is not the proper subject of a Rule 4-345(a) motion. *Colvin v. State*, 450 Md. 718, 725 (2016) (A “motion to correct an illegal sentence 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.”) (quotation omitted)).

For these reasons, we hold that the circuit court did not err in denying Mr. Jones’s motion to correct his sentence.

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