

Circuit Court for Baltimore County
Case No. 03-K-82-001467

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3505

September Term, 2018

RICHARD O'BRIEN PRESTON

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Wells,

JJ.

Opinion by Nazarian, J.

Filed: January 13, 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.

Richard O'Brien Preston pleaded guilty to first-degree murder and conspiracy to commit robbery in the Circuit Court for Baltimore County. He was sentenced to life imprisonment for the first-degree murder count and ten years' imprisonment, to be served consecutively, for the count announced by the sentencing court as conspiracy to commit murder. On appeal, he asserts that his sentences are illegal for two reasons. He argues *first* that the sentencing court did not credit him for the 219 days he spent in pretrial detention. We disagree. He argues *second* that the sentencing court breached the terms of his plea agreement by sentencing him to conspiracy to commit *murder* instead of conspiracy to commit *robbery*. We agree that the sentencing court misstated the conspiracy count, vacate his sentence on that count, and remand for re-sentencing.

I. BACKGROUND

On April 20, 1982, Mr. Preston was arrested and charged with multiple felonies stemming from a murder. He pleaded guilty on August 16, 1982 to first-degree murder and conspiracy to commit robbery. Between the time he was arrested on April 20, 1982 and the time he was sentenced on November 24, 1982, a total of 219 days, Mr. Preston remained detained at the Baltimore County Detention Center.

At the sentencing hearing, the court summarized the facts giving rise to Mr. Preston's conviction: "[his] cousin, called a cab, got in the cab, attempted to rob the cab driver, and when the cab driver resisted, Mr. Preston murdered him." On those facts, the sentencing court stated that it could not "find any other sentence than a life sentence to be appropriate" for the first-degree murder conviction. The court then sentenced

Mr. Preston on both the murder and conspiracy counts although, in the process, it misidentified the object of the conspiracy:

[THE COURT]: Having considered all of the mitigating factors that have been presented in argument as well as what has been stated in the pre-sentence report and also taking into consideration the comments in the report of Dr. Smith, with respect to criminal case 82-CR-1467 in the first count, it's the judgment of this Court that the Defendant Mr. Preston be committed to the Division of Correction to serve a term of life imprisonment for life. With respect to the sixth count, **the conspiracy to commit murder**, it's the judgment of this Court that the Defendant be committed to the Division of Correction for a period of ten years. That sentence shall run consecutively. (emphasis added).

The transcript of the plea hearing on August 16, 1982 reflects unequivocally that Mr. Preston pleaded guilty to conspiracy to commit robbery, not conspiracy to commit murder:

THE COURT: Do you understand that the possible maximum sentence is life imprisonment?

[MR. PRESTON]: Yes.

THE COURT: Do you understand, sir, that you have an absolute right to plead not guilty to this and the other charges along with the 6th count?

[MR. PRESTON]: That's correct, Your Honor.

THE COURT: Which is **conspiracy to commit a robbery**? Do you understand that you have that right to plead not guilty?

[MR. PRESTON]: Yes, I do. (emphasis added).

Since his sentencing in 1982, Mr. Preston has launched numerous challenges to his convictions and sentences; one, which is not the subject of this appeal, adds helpful context. On March 24, 2014, Mr. Preston filed a Petition for Writ of Habeas Corpus with Request for an Expedited Hearing in the Circuit Court for Anne Arundel County (“habeas

petition”). On July 9, 2014, the circuit court denied Mr. Preston’s habeas petition. He appealed to this Court. We concluded that a habeas petition was the wrong vehicle for Mr. Preston to bring his claims, because he challenged “the legality of the length of his sentence, the validity of his plea agreement, and its alleged violation,” which all directly address the legality of his conviction or sentence. *Preston v. Wolfe*, No. 1226, Sept. Term, 2014 (Md. App. Nov. 16, 2016) (unreported).

On November 8, 2018, Mr. Preston filed a Motion to Correct Illegal Sentence in the Circuit Court for Baltimore County. The arguments raised in his habeas petition are the same as those raised in his Motion to Correct Illegal Sentence. The circuit court denied his motion without a hearing. Mr. Preston noted this timely appeal. We supply additional facts as necessary below.

II. DISCUSSION

On appeal, Mr. Preston challenges the legality of his sentence, alleging two errors.¹ He argues *first* that his sentence is illegal because he was not credited for time he spent in pretrial detention. He argues *second* that his sentence is illegal because he pleaded guilty

¹ Mr. Preston frames his Questions Presented as the following:

1. Did the lower court violate Appellant’s 5th and 14th Amendment Rights to due process and equal protection by not diminishing his life sentence, as predicated under Maryland Article 27 § 638C(a)(d)?
2. Did the lower court err by denying Appellant’s Motion To Correct An Illegal Sentence without an hearing to determine allegation of breach of plea agreement, where a sentence was imposed for crime not embodied in indictment or part the accepted plea agreement?

to first-degree murder and conspiracy to commit *robbery*, but the sentencing court imposed a ten-year sentence for conspiracy to commit *murder*. We review *de novo* whether a sentence is legal under Maryland Rule 4-345. *State v. Schlick*, 465 Md. 566, 673 (2019).

Under Maryland Rule 4-345, a “court may correct an illegal sentence at any time.” An illegal sentence “must actually inhere in the sentence itself and must not be a procedural illegality or trial error antecedent to the imposition of sentence.” *Carlini v. State*, 215 Md. App. 415, 425–26 (2013). A sentence is inherently illegal when “there either has been no conviction warranting any sentence for [a] particular offense or the sentence is not a permitted one for the conviction upon which it was imposed.” *Chaney v. State*, 397 Md. 460, 466 (2007). Although the distinction between inherent and procedural illegalities is difficult to ascertain, “Rule 4-345(a)’s threshold concern is not with the severity of the alleged infirmity but only with its situs.” *Carlini*, 215 Md. App. at 431.

A. Mr. Preston Received Credit For 219 Days Of Pretrial Incarceration.

Mr. Preston asserts that he did not receive credit for the 219 days he was detained in the Baltimore County Detention Center between the time of arrest and sentencing, and that this deprived him of his Fifth and Fourteenth Amendment rights to due process and equal protection under the United States Constitution. The State agrees that Mr. Preston was entitled to credit for the 219 days of detention, but replies that Mr. Preston received credit for that time because the commitment record reflects that the sentence commenced on April 20, 1982, which was the date of his arrest. The State is correct.

A defendant is entitled to “credit against and a reduction of the term of a definite or

life sentence . . . for all time spent in custody of a correctional facility” Md. Code Ann. (2001, 2018 Repl. Vol.), § 6-218(b)(1) of the Criminal Procedure Article (“CP”).² “Thus, subject to caveats not relevant here, a sentence imposed against a defendant must credit him or her for time spent in custody.” *State v. Bratt*, 241 Md. App. 183, 192 (2019), (citing *Lawson v. State*, 187 Md. App. 101, 107 (2009)), *cert. granted*, 466 Md. 191 (2019). Maryland Rule 4-351 requires the commitment record to contain “the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law.”

The State is correct that Mr. Preston was credited for the 219 days he spent in pretrial detention. The Commitment Record reflects that he was sentenced on November 24, 1982 and that the sentence commenced on April 20, 1982 (the date of arrest). Because the Commitment Record reflects that Mr. Preston’s sentence commenced on the date of his arrest, he got credit for the 219 days he spent in pretrial detention, as required by CP § 6-218(b)(1), and his sentence is legal.

B. Mr. Preston’s Sentence For Conspiracy To Commit Murder Is Illegal.

Mr. Preston also argues that the sentencing court breached his plea agreement when it sentenced him to ten years imprisonment for conspiracy to commit *murder* instead of

² Mr. Preston raises his argument under Maryland Code Art. 27 § 638(C). Mr. Preston does not reference which volume of the code is relevant for our purposes, but the State directs us to the 1992 replacement volume. In fact, because Mr. Preston was sentenced in 1982, the 1981 supplement controls. CP § 6-218 however, was enacted, effective October 1, 2001, to replace, without substantive change, former Maryland Code Art. 27 § 638(C) (1957, 1981 Repl. Vol., 1981 Supp.), and our analysis is the same either way.

conspiracy to commit *robbery*, and therefore his sentence is illegal. In response, the State asserts that the sentence was not illegal because the sentencing court “correctly noted which *counts* of the indictment [Mr. Preston] was to be sentenced on, but mistakenly described one of the *offenses*.” Despite the mistake, the State argues that Mr. Preston “received exactly what he bargained for,” and that there ultimately was no error on the part of the sentencing court. As we consider these arguments, the transcript of the sentencing hearing prevails over the docket entry or commitment record, unless the transcript is shown to be inaccurate. *See Gatewood v. State*, 158 Md. App. 458, 481–82 (2004); *Douglas v. State*, 130 Md. App. 666, 673 (2000); *Jackson v. State*, 68 Md. App. 679, 688 (1986). The parties agree that the sentencing hearing transcript is accurate, so we confine our review to that.

Illegal sentences include those imposed in violation of the terms of a binding plea agreement. *Matthews v. State*, 424 Md. 503, 519 (2012). When a defendant has been sentenced for a crime that wasn’t charged, an illegal sentence has been imposed. *Moosavi v. State*, 355 Md. 651, 662 (1999); *see Johnson v. State*, 427 Md. 356, 376–78 (2012) (vacating an “inherently illegal” sentence imposed for a crime for which the defendant had never been indicted); *Campbell v. State*, 325 Md. 488, 509 (1992) (defendant was illegally sentenced because he had been charged under the wrong statute). A “sentence is illegal if, without the permission of both parties to the agreement, a judge fails in its judgment to embody . . . the terms of the binding plea agreement.” *Smith v. State*, 453 Md. 561, 575 (2017). And “the only relevant facts concerning the sentencing term of the plea agreement are those that are manifest from the record of the plea proceeding.” *Baines v. State*, 416

Md. 604, 619 (2010).

Although it could well have been a slip of the tongue—and indeed, the commitment record here lists the charges correctly—we agree that Mr. Preston’s sentence is illegal insofar as the court sentenced him for conspiracy to commit *murder* instead of conspiracy to commit *robbery*. The plea proceeding plainly reflected that Mr. Preston pleaded guilty to conspiracy to commit robbery and not conspiracy to commit murder. In doing so, the sentencing court imposed a sentence for a charge for which there was no conviction and misstated the terms of the plea agreement. We recognize that the sentence itself is a legal sentence for conspiracy to commit robbery, and that neither the term of years nor the court’s decision to run the two sentences consecutively raises any legality concerns. Even so, and even if the court were to re-impose an identical sentence for the correct conspiracy, we cannot overlook the disconnect between the charge to which Mr. Preston pleaded and the charge for which he was sentenced.

The State agrees in its brief that “should this Court find error, it should vacate any existing sentence for conspiracy to commit murder and remand for resentencing on conspiracy to commit robbery.” *Accord Cuffley v. State*, 416 Md. 568, 583 (2010); *Tweedy v. State*, 380 Md. 475, 488 (2004). Mr. Preston also asks us to “vacate[] and [remand] for resentencing pursuant to Maryland Rule 4-345,” and so we shall. For the foregoing reasons, we vacate the sentence for conspiracy to commit murder and remand for resentencing in conformance with the plea agreement.

**SENTENCE BY THE CIRCUIT COURT
FOR BALTIMORE COUNTY FOR
CONSPIRACY TO COMMIT MURDER
VACATED. ALL SENTENCES
OTHERWISE AFFIRMED. CASE
REMANDED FOR RESENTENCING
CONSISTENT WITH THIS OPINION.
COSTS TO BE DIVIDED EQUALLY.**