Circuit Court for Prince George's County
Case No. CT19188

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 837

September Term, 2017

ISAIAH FEASTER

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 8, 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.

Isaiah Feaster appeals the denial, by the Circuit Court for Prince George's County, of his motion to correct an illegal sentence. He asserts that the court erred in denying his motion, and in doing so without a hearing and without appointing counsel to represent him. For the reasons to be discussed, we affirm.

In 1978, Feaster was charged with first-degree rape, assault and battery, and related offenses and, after electing to be tried by the court without a jury, he was convicted of first-degree rape and assault and battery of the 77-year old victim. He was sentenced to life imprisonment for rape, and to a concurrent term of twenty years for assault and battery. This Court affirmed the judgments. *Feaster v. State*, No. 899, September Term, 1978 (filed April 23, 1979). His numerous attempts for relief, following this Court's affirmance of his conviction, have been unsuccessful.

In 2016, Feaster, representing himself, filed a motion to correct an illegal sentence in which he asserted that his life sentence was illegal for various reasons. His motion included a request for a hearing and a request that the court appoint counsel to represent him. Six months later, a "paralegal assistant" to the judge who was assigned the motion sent a letter to Feaster informing him that a copy of his motion would be "forward[ed] to the Office of the Public Defender . . . to see if they will take your case." Apparently, the Office of the Public Defender chose not to represent Feaster on this motion (as no appearance was entered), and on April 27, 2017 (four months after the paralegal's letter was sent to Feaster), the circuit court summarily denied the motion, without a hearing.

We hold that the circuit court did not err in denying Feaster's motion. First, we note that a hearing was not required. Rule 4-345(e) requires a hearing in open court before a

court may "modify, reduce, correct, or vacate a sentence," but a hearing is not required before a court may *deny* a motion to correct a sentence. Second, the court did not err or abuse its discretion in failing to appoint counsel to represent Feaster. Feaster cites no authority entitling him to legal representation on a Rule 4-345(a) motion, and we are aware of none. Nor does he point to anything suggesting that the Office of the Public Defender had agreed to represent him on this motion.[1] Finally, the court did not err in denying the motion on the merits.

None of Feaster's claims were the proper subject of a Rule 4-345(a) motion to correct an illegal sentence. The rule is very narrow in scope and "only applies to sentences that are 'inherently' illegal." *Bryant v. State*, 436 Md. 653, 662 (2014) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). An "inherently illegal" sentence is one in which "'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[.]'" *Bryant*, 436 Md. at 663 (quoting *Chaney*, 397 Md. at 466). "[W]here the matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a)." *Tshiwala v. State*, 424 Md. 612, 619 (2012). Feaster's allegations of error, for the most part, were an attack on pre-trial procedures, not the inherent illegality of his sentence.

First, he asserted that the indictment charging him with first-degree rape was "fatally defective because it failed to inform the accused of the essential elements of the

[1] Notably, Feaster continues to represent himself on appeal.

allegation" and, therefore, he maintained that the trial court "lacked subject matter jurisdiction" over the case. The allegation has no merit.

By indictment filed on May 3, 1978, Feaster was charged with seven counts. Count 1 of the indictment stated:

> The Grand Jurors for the State of Maryland, for the body of Prince George's County, on their oath do present that ISAIAH TIMOTHY FEASTER late of Prince George's County, aforesaid, on or about the 23rd day of March, in the year of our Lord nineteen hundred and seventy eight, in Prince George's County aforesaid, did unlawfully commit a rape in the first degree upon [victim's name was given], in violation of Article 27, Section 462 of the Annotated Code of Maryland, 1957 edition, as amended, and against the peace, government and dignity of the State.

Contrary to Feaster's assertions, the indictment was sufficient to charge him with first-degree rape. At the time he was charged, Article 27, Section 461B of the Annotated Code of Maryland (1976 Repl. Vol., 1977 Supp.) set forth a "general form of indictment or warrant for rape" and provided:

> (a) In any indictment or warrant charging rape or a sexual offense, it shall be sufficient to use a form substantially to the following effect: "That A-B on the . . . day of . . . . . , 19 . . , in the County (City) aforesaid did unlawfully commit a rape or sexual offense upon C-D, in violation of Article 27, section (here state section violated), of the Annotated Code of Maryland; contrary to the form of the Act of Assembly in such case made and provided and against the peace, government and dignity of the State."
>
> (b) In any case in which this general form of indictment, information, or warrant is used to charge a rape or a sexual offense, the defendant shall be entitled to a bill of particulars specifically setting forth the allegations against him.

Because Count 1 of the indictment charging Feaster with first-degree rape clearly tracked the statutory "general form of indictment" for rape, it was entirely proper. Moreover, the record before us reflects that, on June 5, 1978, Feaster's attorney filed a "Demand for Bill of Particulars" and that the State's "Answer to Demand for Bill of Particulars" was filed on August 4, 1978. *See Biggus v. State*, 323 Md. 339, 348 (1991) ("The specific manner in which [ ] [the sexual offense statute] was violated, or the specific subsection, is obviously not contemplated as the offense. Instead, it is a detail to be supplied by the statutory right to a bill of particulars *if a bill is requested by the defendant*.") (citation omitted) (emphasis added)).

Next, Feaster argued that his life sentence was illegal because "the indictment allegedly returned by the grand jury did not have 'A True Bill' indorsement, and further, it did not have any signature by the foreman or assistant foreman; it was signed only the State's Attorney and an Assistant State's Attorney." Feaster is factually incorrect. The original indictment is in the record before us and its cover page is captioned "Indictment True Bill" and was signed by an individual identified as the "Foreman."

Feaster also argued that his sentence was illegal "because his conviction and trial was unlawful because the trial court was without subject matter jurisdiction to try, convict, and sentence because there was no voluntary and knowing waiver of jury trial rights by [him] on the record in open court." We disagree. Following a suppression hearing held on August 4, 1978, the court examined Feaster on the record about his decision to be tried by the court. The court ensured that Feaster understood the charges, including that he was charged "with a first degree rape"; that it was his intention to be tried by a court; and that

he understood that he had "a constitutional right to be tried by 12 people of this county." Moreover, when the court asked Feaster if he had "discussed this matter fully and completely" with his attorney, he responded in the affirmative. The court then, again, asked him "how" he wanted to be tried and Feaster replied: "By the court." Feaster, nonetheless, maintains that the court failed to make "a lawful determination on the record, of a knowing and voluntary waiver of jury trial rights." If Feaster's complaint is that the court failed to *announce* on the record its determination that Feaster knowingly and voluntarily waived his right to a jury trial, we note that, prior to January 1, 2008, the court was not required to announce its finding that a defendant was knowingly and voluntarily waiving his right to a jury trial. *See* Rules Order, Court of Appeals of Maryland, December 4, 2007. Moreover, any alleged deficiency with Feaster's jury trial waiver should have been raised on direct appeal. *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.'" (quoting *Wilkins v. State*, 393 Md. 269, 273 (2006)).

Finally, Feaster claimed, without reference to any supporting documentation, that "the Department of Public Safety and Correctional Services has increased [his] sentence by the parole board, to register as a sex offender for life." He asserted that this action "is illegal because the Department of Correction does not have the authority to arbitrarily increase [his] sentence due to a change in law." He cited *Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535 (2013) for the proposition that the retroactive application of Maryland's sex offender registration laws is unlawful. In short,

he appeared to assert that he will be required to register as a sex offender, if and when he is released from prison. There is nothing in the record before us, however, that reflects that Feaster's sentence was modified in any manner to include sex offender registration.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.