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## RECENT DEVELOPMENT

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***JOHNSON V. STATE: CONVICTING AND SENTENCING A DEFENDANT FOR A CRIME NOT INCLUDED IN AN INDICTMENT CONSTITUTED AN INHERENTLY ILLEGAL SENTENCE AND MUST BE VACATED UNDER MARYLAND RULE 4-345(A); A MOVANT'S CLAIM TO CORRECT AN INHERENTLY ILLEGAL SENTENCE IS CORRECTABLE AT ANY TIME AND IS NOT SUBJECT TO DISMISSAL DUE TO WAIVER BY CONSENT OR CONSTRUCTIVE AMENDMENT.***

**By: James M. Darrah**

The Court of Appeals of Maryland held that a court cannot convict a defendant of a crime not charged in a Grand Jury indictment. *Johnson v. State*, 427 Md. 356, 362, 47 A.3d 1002, 1006 (2012). Specifically, the court held that sentencing a defendant to a crime not contained in the indictment constituted an illegal sentence and was therefore correctable at any time under Maryland Rule 4-345(a). *Id.* at 371, 47 A.3d at 1011. The court further ruled that neither waiver by consent nor constructive amendment barred such a claim. *Id.*

On March 6, 1992, law enforcement officials executed a search warrant at 630 Baker Street in Baltimore City. Upon entering the residence, the officers observed Jarmal Johnson (“Johnson”) firing an automatic weapon in their direction. The officials arrested Johnson and prepared a statement of charges that included assault with intent to murder. The Grand Jury did not include the assault with intent to murder charge in the indictment.

Although the attorneys did not mention assault with intent to murder when reviewing the charges, during their opening statements, or during the trial, the circuit court instructed the jury about assault with intent to murder and included the charge on the verdict sheet. The jury acquitted Johnson of attempted murder, but found him guilty of the remaining charges, including assault with intent to murder.

In January 2008, sixteen years after his conviction, Johnson filed a motion to correct an illegal sentence with the Circuit Court for Baltimore City. Johnson argued that his sentence for assault with intent to murder was illegal because the Grand Jury did not include the crime on the indictment. The circuit court denied Johnson’s motion and he appealed to the Court of Special Appeals of Maryland. The intermediate appellate court affirmed the decision of the lower court and held that Johnson’s claim was untimely for direct appeal. The Court of Appeals of Maryland

granted Johnson's petition for writ of certiorari, as well as a conditional cross-petition from the State.

In affirming the Court of Special Appeals' decision, the Court of Appeals of Maryland began its analysis by holding that Johnson's failure to include a transcript of his arraignment did not bar a review of his claims. *Johnson*, 427 Md. at 364, 47 A.3d at 1007. The court reasoned that because Johnson challenged a sentence for a conviction that did not appear on the indictment, the court could reasonably conclude whether the trial court erred without a transcript of the arraignment. *Johnson*, 427 Md. at 364-65, 47 A.3d at 1007. The court proceeded to address the merits of Johnson's claims. *Id.*

The court first examined the timeliness of Johnson's motion to correct an illegal sentence. *Johnson*, 427 Md. at 365, 47 A.3d at 1007. The Court of Appeals of Maryland rejected the Court of Special Appeals' jurisdictional finding and examined Johnson's contention under Maryland Rule 4-252(d) and Maryland Rule 4-345(a). *Id.* at 365-66, 47 A.3d at 1008. The court held that Maryland Rule 4-345(a) allowed the court to correct Johnson's illegal sentence "at any time" as it was intended to accommodate post-conviction motions filed after the time permitted for direct appeal. *Id.* at 371-72, 47 A.3d at 1011 (citing *Chaney v. State*, 397 Md. 460, 466-67, 918 A.2d 506, 509 (2007)). The court emphasized that the rule creates an exception to the general rule of finality that can be utilized if the court determines that a sentence was inherently illegal. *Johnson*, 472 Md. at 371-72, 47 A.3d at 1011 (citing *Chaney*, 397 Md. at 466-67, 918 A.2d at 509).

A sentence is illegal under Maryland Rule 4-345(a) if the illegality stems from the sentence itself and not from trial court error. *Johnson*, 247 Md. at 367, 47 A.3d at 1009 (citing *Matthews v. State*, 424 Md. 503, 512, 36 A.3d 499, 505 (2012)). While no exact formula exists to determine which sentences are inherently illegal, the court explained that Maryland Rule 4-345(a) entitles a defendant to relief if a trial court imposes a sentence upon a criminal defendant where no sentence should have been imposed. *Johnson*, 427 Md. at 368, 47 A.3d at 1009 (citing *Alston v. State*, 425 Md. 326, 339, 40 A.3d 1036 (2012)).

The court found that Johnson did not simply allege a trial court error, but rather claimed that the trial court lacked the power to impose the sentence for a crime not included in the indictment. *Johnson*, 427 Md. at 367-68, 47 A.3d at 1009 (citing *Montgomery v. State*, 405 Md. 67, 74, 950 A.2d 77, 82 (2008)). The court reasoned that Johnson could raise his claim at any time because he attacked the trial court's authority, rather than merely alleging a trial court error. *Johnson*, 427 Md. at 370, 47 A.3d at 1010 (citing *Alston*, 425 Md. at 331-32, 40 A.3d at 1032). The court, in reversing the Court of Special Appeals, held that because Johnson's claim fell within the scope of Maryland Rule 4-345(a), it was

not subject to waiver by consent. *Johnson*, 427 Md. at 371-72, 47 A.3d at 1011 (citing *Chaney*, 397 Md. at 466, 918 A.2d at 509).

The court then addressed the legality of Johnson's conviction and sentence. The court assessed the validity of constructive amendments under Maryland law. *Johnson*, 427 Md. at 371, 47 A.3d at 1012. In Maryland, the State can amend a charging document under Maryland Rule 4-204 if the amendment changes the character of the charged offense. *Id.* The court rejected the Court of Special Appeals' contention, which held constructive amendments do not apply to Maryland Rule 4-204. *Johnson*, 427 Md. at 371, 47 A.3d at 1012 (citing *Johnson*, 199 Md. App. at 349, 22 A.3d at 920). Instead, the court held that the State's proposed amendment prejudiced Johnson in that it added an additional offense, rather than simply altering the character of the offense. *Johnson*, 427 Md. at 376, 47 A.3d at 1014 (citing *Tracy v. State*, 319 Md. 452, 456-57, 573 A.2d 38, 40 (1990)).

The court emphasized that the purpose of an indictment serves to inform the defendant of exactly what crimes he or she must defend. *Johnson*, 427 Md. at 374, 47 A.3d at 1013 (citing *State v. Morton*, 295 Md. 487, 490-91, 456 A.2d 909, 911 (1983)). The Maryland Declaration of Rights requires the court to inform an individual charged with a crime of the accusations against him or her, in order to prevent unfair surprise during trial. *Johnson*, 427 Md. at 375, 47 A.3d at 1013. The court reasoned that by amending the indictment to include assault with intent to murder, Johnson faced unfair prejudice due to his inability to form defenses to the charge. *Id.* at 374, 47 A.3d at 1013.

In *Johnson*, the Court of Appeals of Maryland vacated both Johnson's conviction and his sentence of assault with intent to murder in accordance to Maryland Rule 4-345(a), because the illegality of the sentence stemmed from the illegality of the conviction. *Johnson*, 427 Md. at 380, 47 A.3d at 1016. As a result of this holding, Maryland practitioners should note that the court broadened Maryland Rule 4-345(a) by categorizing a conviction and sentence to a charge not listed on the indictment as an illegal sentence. The court's holding reinforces a fundamental principle of criminal law - that a defendant must have notice of all criminal charges against him or her in order to prepare an adequate defense. Maryland practitioners should be mindful that claims involving convictions and sentences based on charges not included in an indictment can be raised at any time, so long as the motion asserts a trial court's lack of subject matter jurisdiction. Thus, courts and practitioners alike should exercise due diligence in order to avoid situations in which defendants are denied due process because of an oversight. Further, practitioners should review prior cases to ensure that defendants' charges were included on their indictment.