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STATE OF CONNECTICUT *v.* JAMAR BOYD
(AC 43082)

Lavine, Prescott and Cradle, Js.*

Syllabus

The defendant, who had been previously convicted, on a plea of guilty, of assault in the first degree, appealed to this court from the judgment of the trial court denying in part and dismissing in part his motion to correct an illegal sentence. The defendant claimed that the trial court improperly denied that portion of his motion in which he alleged that the sentencing court had imposed his sentence in an illegal manner by relying on inaccurate information. *Held* that the defendant could not prevail on his claim asserted as a matter of law as the motion failed to advance a colorable claim that invoked the jurisdiction of the court: rather than truly attacking the legality of the sentencing proceedings or the sentence itself, the defendant instead challenged the continued validity of his choice to plead to reduced charges under the doctrine enunciated in *North Carolina v. Alford* (400 U.S. 25), and, in order for the court to have granted the defendant the relief he requested in his motion, it would have been required to open the judgment of conviction and vacate the plea agreement that was the actual basis of the challenged sentence, and, because the court lacked any authority to do so as part of the limited jurisdiction afforded under a motion to correct an illegal sentence, the motion, correctly construed, was nothing more than a collateral attack on the plea underlying the defendant's conviction; accordingly, this court concluded that the claim was properly rejected by the trial court but that the form of the judgment was improper with respect to this portion of the defendant's motion, and the case was remanded with direction to render judgment dismissing that portion of the defendant's motion.

Argued November 10, 2020—officially released May 4, 2021

Procedural History

Substitute information charging the defendant with two counts each of the crimes of assault in the first degree and robbery in the first degree, and with one count each of the crimes of larceny in the second degree and carrying a pistol without a permit, brought to the Superior Court in the judicial district of New Haven, where the defendant was presented to the court, *Damiani, J.*, on a plea of guilty to one count of assault in the first degree; judgment of guilty in accordance with the plea; thereafter, the court, *Clifford, J.*, denied in part and dismissed in part the defendant's motion to correct an illegal sentence, and the defendant appealed to this court. *Improper form of judgment; reversed in part; judgment directed.*

Robert T. Rimmer, assigned counsel, for the appellant (defendant).

Ana L. McMonigle, special deputy assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Sean McGuinness*, assistant state's attorney, for the appellee (state).

PRESCOTT, J. The defendant, Jamar Boyd, appeals from the judgment of the trial court denying in part and dismissing in part his amended motion to correct an illegal sentence. Specifically, the defendant claims on appeal that the court improperly denied that portion of his motion in which he alleged that the sentencing court had imposed his sentence in an illegal manner by relying on inaccurate information.¹ We conclude that only the form of the judgment was improper with respect to this portion of the defendant's motion. Accordingly, we reverse the judgment in part and remand the case with direction to render a judgment dismissing this portion of the defendant's motion to correct an illegal sentence. We affirm the judgment of the court in all other respects.

The record reveals the following facts and procedural history. In 2005, following an armed robbery and shooting, the defendant was charged with assault in the first degree in violation of General Statutes § 53a-59 (a) (1) and (5), robbery in the first degree in violation of General Statutes § 53a-134 (a) (2) and (4), larceny in the second degree in violation of General Statutes (Rev. to 2005) § 53a-123, and carrying a pistol without a permit in violation of General Statutes § 29-35. The defendant initially entered pleas of not guilty to these charges. In two other files, the defendant faced additional charges of sexual assault in the second degree in violation of General Statutes (Rev. to 2005) § 53a-71 (a) (1) and a violation of probation. See General Statutes § 53a-32.

On February 24, 2006, three days prior to the start of jury selection in the armed robbery file, the defendant appeared before the court, *Damiani, J.*, in order to change his pleas and accept a long-standing plea agreement offered by the state that resolved all three of his pending files. At the start of the hearing, the defendant informed the court that he wanted it to appoint him new counsel. According to the defendant, he was not getting along with his public defender and was unhappy with how the public defender was handling the case. Among numerous complaints, he asserted that his attorney had failed to obtain a copy of a taped statement purportedly made by Thomas Lopes, a witness to the shooting. The court informed the defendant that no taped statement by Lopes existed. The prosecutor confirmed the court's observation on the record, indicating that the police had interviewed Lopes twice but that those interviews were not taped. After listening to the defendant's arguments, and ensuring there were no outstanding discovery issues, the court stated that the defendant had given it no valid reason to remove his attorney and that the defendant could either accept the state's plea deal, which the state had held open for months, or proceed to trial the following week. The public defender indicated that, given the defendant's stated belief that his case had been mishandled and not adequately investi-

124 gated, he would advise the defendant not to accept the
125 plea agreement and to go to trial. The defendant rejected
126 that advice.

127 Under the terms of the plea agreement, which were
128 stated on the record by the court, the defendant agreed
129 to plead guilty under the *Alford* doctrine² to one count
130 of assault in the first degree in the armed robbery file
131 and one count of risk of injury to a child under a sepa-
132 rate docket number in exchange for a definite sentence
133 of twenty years, five of which were mandatory, and no
134 probation.³ The state agreed that it would nolle the
135 remaining charges. The agreement contained no provi-
136 sion giving the defendant the right to argue for less
137 than the agreed upon twenty years of incarceration or
138 otherwise giving the sentencing court discretion as to
139 the sentence it imposed. After canvassing the defendant
140 regarding both his understanding of the plea agreement
141 and the voluntariness of his plea, the court accepted
142 the defendant's plea and scheduled a sentencing hearing
143 for April 28, 2006. At the sentencing hearing, the court,
144 after hearing from the attorneys, a family member of
145 the shooting victim, and the defendant, sentenced the
146 defendant to the agreed upon effective sentence of
147 twenty years of incarceration. Because the parties had
148 agreed to a sentence with definite terms, the court effec-
149 tively had no sentencing discretion other than to reject
150 the entire plea agreement. The court did not discuss the
151 factual basis for the defendant's plea when it imposed
152 the sentence.

153 Sometime after sentencing, the defendant learned
154 that Lopes, in fact, had given a taped statement, and
155 the defendant obtained a transcript of that statement.
156 The gravamen of Lopes' statement was that he saw the
157 defendant take something from the victim, which led
158 to an argument between the victim and the defendant.
159 When the victim attempted to run away, the defendant
160 chased after the victim, eventually shooting the victim
161 in the chest. The taped statement sets forth facts that
162 arguably differ in minor respects from the factual basis
163 provided by the state during the court's plea canvass.

164 On December 13, 2017, the defendant filed a motion
165 to correct an illegal sentence in which he argued that
166 his sentence was illegal and/or imposed in an illegal
167 manner. The defendant later amended his motion to
168 claim in relevant part that his "sentence was imposed
169 in an illegal manner because [he] was denied [his] right
170 to be sentenced by a judge relying on accurate informa-
171 tion and/or considerations solely within the record."
172 Specifically, the defendant argued that portions of
173 Lopes' taped statement reasonably could be construed
174 as lessening his culpability, the court had accepted his
175 plea with the erroneous belief that no taped statement
176 existed, and, because the sentencing court presumably
177 relied on this inaccurate information as stated on the
178 record at the plea hearing, the defendant was denied

179 “his right to be sentenced by a judge relying on accurate
180 information.”⁴

181 At the hearing on the motion to correct an illegal
182 sentence, the defendant argued with respect to this
183 claim that he believed portions of Lopes’ statement
184 tended to prove that he never had the intent to seriously
185 injure the victim,⁵ and that he would have pleaded guilty
186 only to a lesser crime and received a lesser sentence.
187 He also argued that the state’s failure to disclose the
188 taped statement amounted to a *Brady* violation.⁶

189 The state took the position that this aspect of the
190 defendant’s motion to correct an illegal sentence should
191 be dismissed for lack of subject matter jurisdiction
192 because the defendant was seeking to attack the judg-
193 ment of conviction, claiming “he has reduced culpabil-
194 ity based on this alleged new favorable information
195” The state further argued that, even if the court
196 determined that it had jurisdiction over the motion, it
197 failed on its merits because “there is no evidence that
198 [the sentencing court] relied in any substantial way on
199 the prosecutor’s particular recitation of the facts” and,
200 regardless, the sentence imposed “was an agreed upon
201 disposition that the defendant himself agreed to enter
202 into.”

203 With respect to the jurisdictional question, the court,
204 *Clifford, J.*, concluded that it had jurisdiction because
205 the defendant’s motion was predicated on a claim that
206 the sentencing court had relied on inaccurate informa-
207 tion at the sentencing hearing. Regarding the merits,
208 the court first explained that, to prevail on a motion to
209 correct an illegal sentence on the basis of a sentencing
210 court’s alleged reliance on inaccurate information, the
211 defendant, in addition to showing that some information
212 provided to the court by the state or defense counsel was,
213 in fact, inaccurate, had to show that the sentencing court
214 explicitly referred to the inaccurate information, gave spe-
215 cific attention to it, and relied on it in reaching the imposed
216 sentence.

217 In ruling against the defendant, the court first noted
218 that the sentence the defendant received was not the
219 result of “a wide open sentencing” but, rather, reflected
220 the definite sentence agreed to by the state and the
221 defendant in the plea agreement. The court also dis-
222 agreed with the defendant’s characterization of the
223 import of the Lopes statement or that its discovery after
224 the fact helped the defendant to establish that he was
225 sentenced on the basis of any inaccurate information.
226 The court stated: “First of all, [the sentencing court]
227 hardly said anything when [it] imposed the sentence.
228 [It] didn’t give any specific attention to the state’s facts
229 at all. . . . [It] didn’t talk about . . . a witness’ poten-
230 tial statement, what the victim might have said, nothing.
231 . . . I know that you plead[ed] to this under the *Alford*
232 doctrine; that you agreed to this particular sentence.
233 So . . . I think you’re attacking the whole fairness of

234 the procedure. I really don't think you're attacking
235 whether the sentence was imposed in an illegal manner
236 or that it's inaccurate. I think you're trying to attack
237 the underlying facts but they were not inaccurate facts
238 that the [sentencing court] relied upon at all in the
239 exhibits that you've shown me. So on that basis, I'm
240 denying your motion." This appeal followed.

241 The sole claim raised by the defendant on appeal is
242 that the court improperly denied that portion of his
243 motion to correct an illegal sentence in which he
244 asserted that the sentencing court had relied upon inac-
245 curate information in imposing the agreed upon recom-
246 mendation. In support of this claim, the defendant
247 argues in his brief that "the newly discovered taped
248 statement of [Lopes] demonstrated reckless conduct
249 rather than intentional conduct . . . [and], therefore,
250 that [the defendant] should not have received a twenty
251 year sentence" (Citation omitted.) We conclude
252 that the substance of the defendant's claim does not
253 attack the manner in which the sentence was imposed
254 but is, in fact, a collateral attack on his plea, which
255 falls outside the postsentence jurisdiction of the court.
256 Accordingly, we conclude that the claim was properly
257 rejected by the court but that the form of the judgment
258 rendered was incorrect.

259 "The Superior Court is a constitutional court of gen-
260 eral jurisdiction. . . . In the absence of statutory or
261 constitutional provisions, the limits of its jurisdiction
262 are delineated by the common law. . . . Under the
263 common law, a trial court's jurisdiction over a criminal
264 case terminates once the defendant has begun serving
265 his or her sentence. . . . An exception to this general
266 principle exists, however, that permits a trial court to
267 retain jurisdiction to correct an illegal sentence. . . .
268 This exception is recognized in Practice Book § 43-22,
269 which provides that [t]he judicial authority may at any
270 time correct an illegal sentence or other illegal disposi-
271 tion, or it may correct a sentence imposed in an illegal
272 manner or any other disposition made in an illegal man-
273 ner.

274 "[A]n illegal sentence is essentially one which either
275 exceeds the relevant statutory maximum limits, violates
276 a defendant's right against double jeopardy, is ambigu-
277 ous, or is internally contradictory. By contrast . . .
278 [s]entences imposed in an illegal manner have been
279 defined as being within the relevant statutory limits but
280 . . . imposed in a way which violates [a] defendant's
281 right . . . to be addressed personally at sentencing and
282 to speak in mitigation of punishment . . . or his right
283 to be sentenced by a judge relying on accurate informa-
284 tion or considerations solely in the record, or his right
285 that the government keep its plea agreement promises
286 These definitions are not exhaustive, however,
287 and the parameters of an invalid sentence will evolve
288 . . . as additional rights and procedures affecting sen-

289 tencing are subsequently recognized under state and
290 federal law.

291 “Thus, to invoke the jurisdiction of a trial court to
292 correct an illegal sentence, a defendant must allege
293 that his or her sentence is illegal, or has been illegally
294 imposed, for one of the reasons recognized under our
295 common law. . . . Determining whether a defendant
296 has satisfied this jurisdictional threshold presents a
297 question of law over which our review is plenary.” (Cita-
298 tions omitted; internal quotation marks omitted.) *State*
299 *v. Cruz*, 155 Conn. App. 644, 648–50, 110 A.3d 527 (2015).

300 In *State v. Casiano*, 122 Conn. App. 61, 68, 998 A.2d
301 792, cert. denied, 298 Conn. 931, 5 A.3d 491 (2010), this
302 court held that the trial court did not have jurisdiction
303 over a motion to correct an illegal sentence filed by
304 the defendant because the defendant challenged the
305 validity of his guilty plea on the ground that trial counsel
306 had given erroneous advice prior to entry of the plea.
307 This court explained: “In order for the court to have
308 jurisdiction over a motion to correct an illegal sentence
309 after the sentence has been executed, the sentencing
310 proceeding, and not the [proceedings] leading to the
311 conviction, must be the subject of the attack. . . . The
312 defendant’s claim does not attack the validity of the
313 sentence. Instead, it pertains to . . . alleged flaws in
314 the court’s acceptance of the plea. As such, it does not
315 fit within any of the four categories of claims recognized
316 under Practice Book § 43-22.” (Citation omitted; inter-
317 nal quotation marks omitted.) *Id.*; see also *State v.*
318 *Monge*, 165 Conn. App. 36, 43–44, 138 A.3d 450 (relying
319 on *Casiano* in holding that motion seeking to vacate
320 pleas and to open judgments of conviction fell outside
321 court’s limited postsentencing jurisdiction), cert.
322 denied, 321 Conn. 924, 138 A.3d 284 (2016).

323 In the present case, the motion to correct an illegal
324 sentence nominally challenges the sentencing proceed-
325 ings by asserting that the sentencing court had relied
326 on inaccurate information at the time of sentencing.
327 The court denied the defendant’s motion to correct an
328 illegal sentence, concluding that although the motion
329 invoked the jurisdiction of the court because it facially
330 challenged the manner in which his sentence was imposed,
331 he failed to meet his burden of demonstrating that the
332 court had relied on any inaccurate information in sen-
333 tencing the defendant in accordance with the definite
334 terms agreed to pursuant to the plea agreement. See
335 *State v. Martin M.*, 143 Conn. App. 140, 145, 70 A.3d 135,
336 cert. denied, 309 Conn. 919, 70 A.3d 41 (2013). Neverthe-
337 less, in ruling on the defendant’s motion, the court also
338 made the following observation, which appears to under-
339 mine its finding of jurisdiction: “I really don’t think
340 you’re attacking whether the sentence was imposed in
341 an illegal manner or that it’s inaccurate.”

342 “[F]or the trial court to have jurisdiction over a defen-
343 dant’s motion to correct a sentence that was imposed

344 in an illegal manner, the defendant must put forth a
345 colorable claim that his sentence, in fact, was imposed
346 in an illegal manner. A colorable claim is [a] claim that
347 is legitimate and that may reasonably be asserted, given
348 the facts presented and the current law (or a reasonable
349 and logical extension or modification of the current
350 law). . . . For jurisdictional purposes, to establish a
351 colorable claim, a party must demonstrate that there
352 is a possibility, rather than a certainty, that a factual
353 basis necessary to establish jurisdiction exists”
354 (Citation omitted; internal quotation marks omitted.)
355 *State v. Jason B.*, 176 Conn. App. 236, 244–45, 170 A.3d
356 139 (2017). “For a claim to be colorable, the defendant
357 need not convince the trial court that he necessarily
358 will prevail; he must demonstrate simply that he might
359 prevail.” (Emphasis omitted; internal quotation marks
360 omitted.) *State v. Evans*, 329 Conn. 770, 784, 189 A.3d
361 1184 (2018), cert. denied, 586 U.S. 1213, 139 S. Ct. 1304,
362 203 L. Ed. 2d 425 (2019).

363 Having thoroughly reviewed the record in this case,
364 we conclude that, under the circumstances, the defen-
365 dant could not prevail on the claim asserted as a matter
366 of law and, therefore, the motion failed to advance a col-
367 orable claim that invoked the jurisdiction of the court.
368 Rather than truly attacking the legality of the sentenc-
369 ing proceedings or the sentence itself, the defendant
370 instead challenges the continued validity of his choice
371 to plead to reduced charges under the *Alford* doctrine.
372 By electing to accept the proffered plea deal, the defen-
373 dant received the benefit of a definite twenty year sen-
374 tence with no probation and avoided the real risk posed
375 by going to trial on all charges, including those nolleed
376 by the state, and thus potentially facing a far more sub-
377 stantial sentence if found guilty of all charges, includ-
378 ing potentially having to register as a sex offender if the
379 state prevailed on the sexual assault charge.

380 Here, in order for the court to have granted the defen-
381 dant the relief he requested in his motion—a term of
382 incarceration of less than twenty years—the court
383 would have been required to do more than simply grant
384 a new sentencing hearing. Rather, because the sentence
385 imposed was the result of a plea agreement in which
386 the defendant agreed to accept a definite sentence of
387 twenty years and the state agreed to nolle a substantial
388 number of other charges, the only way the court could
389 have granted the defendant any practical relief on his
390 motion to correct an illegal sentence was by opening the
391 judgment of conviction and vacating the plea agreement
392 that was the actual basis of the challenged sentence.
393 Because the court lacked any authority to do so as part
394 of the limited jurisdiction afforded under a motion to
395 correct an illegal sentence, the motion, correctly con-
396 strued, is nothing more than a collateral attack on the
397 plea underlying the defendant’s conviction rather than
398 a true challenge to the legality of the sentence imposed
399 or to the sentencing proceedings. As such, despite any

400 perceived superficial facial validity, the motion failed
401 to state a colorable claim that his sentence was imposed
402 in an illegal manner, and the court should have dis-
403 missed, rather than denied, the defendant’s motion.

404 The form of the judgment is improper, the judgment
405 is reversed only with respect to the trial court’s denial of
406 that portion of the motion to correct an illegal sentence
407 claiming that the sentence was imposed in an illegal
408 manner due to the sentencing court’s alleged reliance
409 on inaccurate information, and the case is remanded
410 with direction to render judgment dismissing that por-
411 tion of the defendant’s motion to correct an illegal sen-
412 tence; the judgment is affirmed in all other respects.

413 In this opinion the other judges concurred.

415 * The listing of judges reflects their seniority status on this court as of
416 the date of oral argument.

417 ¹ The defendant does not challenge on appeal the court’s dismissal for
418 lack of subject matter jurisdiction that portion of his motion arguing that
419 the sentencing court had failed to account for his youth as a mitigating
420 factor in light of our Supreme Court’s decision in *State v. Williams-Bey*,
421 333 Conn. 468, 473–77, 215 A.3d 711 (2019). The defendant also does not
422 challenge the court’s denial of that portion of his motion arguing that the
423 sentencing court violated his right to allocution, conceding that the transcript
424 of the sentencing hearing demonstrates that the court both provided him
425 with an opportunity to allocute and that he exercised his right of allocution
426 by making a direct statement to the court on his own behalf.

427 ² See *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d
428 162 (1970).

429 ³ The sentence was comprised of a twenty year sentence of imprisonment
430 for the assault charge, five years of which was a mandatory minimum, and
431 a concurrent five year sentence on the risk of injury charge. With respect
432 to the probation violation, the court agreed to resolve that file by vacating
433 the remainder of the defendant’s unserved period of probation at the sentenc-
434 ing hearing.

435 ⁴ The court initially appointed counsel for the defendant pursuant to *State*
436 *v. Casiano*, 282 Conn. 614, 922 A.2d 1065 (2007). Prior to counsel making
437 the requisite “sound basis” determination; *id.*, 627; the defendant elected to
438 proceed as a self-represented party, and the court granted counsel permis-
439 sion to withdraw. The defendant does not challenge the propriety of these
440 procedures on appeal.

441 ⁵ The defendant’s position, as he explained at the hearing on the motion
442 to correct, was that Lopes had indicated in his statement that the victim
443 and the defendant had engaged in an argument, and that it was during this
444 fight that the firearm went off. The defendant explained further: “It wasn’t
445 my intent to run up to the victim to just shoot him, which I’m standing right
446 now convicted under and there’s also evidence within [Lopes’ statement]
447 that said [a third party] had something to do with the actual crime.”

448 ⁶ See *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215
449 (1963).