Circuit Court for Prince George's County
Case No. CT070218A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0043

September Term, 2021

ERIC BROWN

v.

STATE OF MARYLAND

Beachley,
Shaw,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: May 19, 2022

*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.

This appeal involves an oral plea agreement on carjacking charges entered into by Eric Brown, appellant, in the Circuit Court for Prince George's County. He was sentenced to twenty-five years on the first charge with all but seven years suspended with four years' probation, and to a consecutive twenty-five years on the second charge, all of which was suspended with "the same four years' probation."

On May 30, 2014, Mr. Brown, having been found to have violated his probation, was sentenced to twenty-five years to be served consecutively to a fifty-year sentence he had received for a second-degree murder and related weapons convictions. Self-represented, he filed a Motion to Correct Illegal Sentence, which was granted in part.

Mr. Brown presents a single question for our review: Did the circuit court err in denying the Motion to Correct Illegal Sentence?

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Brown entered his plea at a hearing on May 22, 2007. The following colloquy between Mr. Brown's counsel and the court represents the full exposition of the plea agreement:

> [Defense Counsel]: Pursuant to discussions I have had with the State, at this time Mr. Brown wishes to withdraw his previously tendered plea of not guilty, ask Your Honor to accept his plea to count one, [the first carjacking] of the indictment, which is armed carjacking and count ten, [the second carjacking] which is also a separate event, carjacking. It is my understanding that the plea agreement calls for *actual incarceration within the guidelines*. We anticipate the guidelines to be five to ten. *The sentences are to run concurrent*. We came up with the five to ten calculation, Your Honor, based upon both the State's and my understanding that my client has a minor

> record. We assessed a point for the offense score as part of the agreement since my client was not the one who actually had the weapon in his possession. We agreed he would not be assessed two points under the offense score of the guidelines. Actually, *we anticipate the actual incarcerable time is five to ten years*, obviously subject to the presentence investigation.
>
> [The Court]: I am binding myself to the guidelines whatever they come back as.
>
> [Defense Counsel]: Yes, sir.
>
> [The Court]: Mr. Brown, is that what you understand the agreement is?
>
> [Mr. Brown]: Yes, Your Honor.
>
> [The Court]: Is that what you wish to do?
>
> [Mr. Brown]: Yes, sir.

(Emphasis added). At no time in that hearing did the State challenge or comment on defense counsel's representation of the agreement.

At the sentencing hearing on August 7, 2007, defense counsel explained that Mr. Brown and the State had agreed "that the guidelines for this conviction are 4 to 9 years," and that the sentences are "to run concurrently with each other." Counsel asked the court to consider sentencing Mr. Brown on the lower end of the guidelines because of his "somewhat minimal involvement" and his "lack of any prior record." The prosecutor responded that Mr. Brown's involvement was "not minimal," and recommended a 20 year sentence with all but 7 years suspended, with probation at the court's discretion. The court sentenced Mr. Brown to 25 years and suspended "all of but 7 years," with 4 years' supervised probation on the first carjacking, and to a consecutive sentence of 25 years, all of it suspended, "on the same four years' probation" for the second carjacking.

On April 24, 2014, Mr. Brown appeared before the court for a violation of probation hearing based on his convictions for second-degree murder and related weapons charges. On May 30, 2014, he was sentenced to 25 years for the probation violation, to be served consecutive to his sentences of 30 years and 20 years on the murder and weapons convictions, respectively.

Mr. Brown filed his motion to correct an illegal sentence on October 9, 2018. He asserted that he had not agreed to any sentence of more than 4 to 9 years for the two carjackings and that the two sentences should have been concurrent and not consecutive. A hearing on his motion was held on September 9, 2019. The State conceded that the sentences imposed in 2007 for the carjackings were to be concurrent, but contended that the 25 year sentence for the parole violation was not illegal because Mr. Brown had not bargained for "a sentence that include[d] only actual, incarcerable time."

On January 29, 2020, the court corrected the carjacking sentences to run concurrently, but it did not otherwise alter the sentence. This appeal followed.

Contentions

Arguing that the sentence imposed for the carjackings exceeds the terms of the plea agreement, Mr. Brown contends that the circuit court did not fully correct the sentence. More specifically, he asks us to "reverse and direct that the suspended portion of the sentence that was originally imposed be vacated and/or to order a new sentencing hearing

in order to effectuate, *inter alia,* correction of the remaining illegality in relation to the sentence imposed on the violation of probation."

The State contends that the corrected sentence is not illegal. It argues that Mr. Brown's bargain extended only to "actual" prison time and that the court imposed a term of actual prison time within the guidelines. The State further argues that "even if the disputed terms of the plea agreement are ambiguous, . . . a lay defendant in [Mr. Brown's] position would have reasonably understood that the agreement referred to the executed portion of the sentence—i.e., the time that he served in prison—and that he could receive additional suspended time up to the maximum for each offense."

Standard of Review

When a trial court "approves a plea agreement, [it] is required to fulfill the terms of that agreement if the defendant pled guilty in reliance on the court's acceptance." *Cuffley v. State*, 416 Md. 568, 580 (2010). A reviewing court "may correct an illegal sentence at any time." Md. Rule 4-345(a); *see Ridgeway v. State*, 369 Md. 165, 171 (2002). Because sentence illegality is a question of law, we review de novo "[w]hether the trial court has violated the terms of a plea agreement." *Solorzano v. State*, 397 Md. 661, 668 (2007). In addition to contract principles, "[d]ue process concerns for fairness and the adequacy of procedural safeguards guide any interpretation of a court approved plea agreement." *Id.*

In our review, we construe the terms of a plea agreement based on what a reasonable layperson defendant would understand the terms to be. *Id.* at 671. That too is a question

of law that we review de novo. *Baines v. State*, 416 Md. 604, 616 (2010). Any ambiguity in the terms of the plea agreement are resolved in favor of the defendant. *Baines*, 416 Md. at 615.

Analysis

To decide whether a defendant received the sentence bargained for, we must first "determine whether the plain language of the agreement is clear and unambiguous." *Ray v. State*, 454 Md. 563, 577 (2017). If it is, the inquiry ends. *Id.* If it is not, we look then to the record of the plea hearing to "determine what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be, based on the record developed at the plea proceeding." *Id.* And if, after examination of the agreement and the plea hearing record, there remains any ambiguity as to what the "defendant reasonably understood to be the terms of the agreement," we construe the agreement "in favor of the defendant." *Id.* at 577-78.

Arguing that the imposition of the suspended portions of his carjacking sentences after his probation violation was not reflective of the plea agreement, Mr. Brown states that he "was never advised that the sentences included the potential for the imposition of suspended time and probation, let alone the imposition of any time that exceeded the number of years expected under the guidelines." He asserts that he understood the entirety of his carjacking sentences would be "five to ten years" of "actual incarcerable time," and that he was not advised otherwise.

Because the plea agreement was oral, our review begins with the plain language of the oral plea agreement, as explicated at the plea hearing on May 22, 2007. *Solorzano*, 397 Md. at 668. There, defense counsel stated to the court his understanding that the "plea agreement calls for actual incarceration within the guidelines," and that the sentences for the two carjackings were to run concurrently. Defense counsel then stated that he and the prosecution anticipated that "the actual incarcerable time is five to ten years. . . ." The circuit court responded that it would "bind [it]self to the guidelines, whatever they come back as." The prosecutor did not add to or otherwise indicate a different "understanding" of the plea agreement. There was no mention of suspended time and probation until the sentencing hearing on August 7, 2020. What "actual incarceration within the guidelines" and "actual incarcerable time" would mean to the reasonable lay defendant in 2007 based on the plea agreement are the operative questions in this case.[1]

Mr. Brown cites *Cuffley* to support his argument that the plea agreement required him to serve not more than ten years. In that case, the defendant entered a guilty plea to robbery for a sentence between four to eight years' incarceration. 416 Md. at 577. The trial court explained its understanding of the agreement: "The plea agreement, as I understand it, is that I will impose a sentence somewhere within the guidelines. The guidelines in this case are four to eight years. Any conditions of probation are entirely within my discretion." *Id.* at 585. The trial court imposed a sentence of fifteen years, with all but six years

[1] Appellant was 19 years old and had an eleventh grade education at the time.

suspended. The Court of Appeals reversed because the plea agreement called for a sentence between four to eight years. *Id.* at 586. The *Cuffley* Court explained, however, that its decision

> should not be interpreted as foreclosing a binding plea agreement that provides for a so-called 'split sentence' like the sentence imposed in this case, that is, a sentence that exceeds the guidelines, with all of it suspended save for that portion of the sentence that falls 'within the sentencing guidelines.' To the contrary, such plea agreements are entirely permissible, *if*, as we noted in *Solorzano*, 397 Md. at 674 n.2, 919 A.2d at 659 n. 2, either the State or defense counsel makes that term of the agreement *absolutely clear* on the record of the plea proceeding and the term is *fully explained to the defendant on the record before the court accepts the defendant's guilty plea.*

Id.

In explaining its ruling, the Court stated:

> No mention was made at any time during [the plea hearing]—much less before the court agreed to be bound by the agreement and accepted Petitioner's plea—that the four-to-eight year sentence referred to executed time only. Neither counsel nor the court stated that the court could impose a sentence of more than eight years' incarceration that would include no more than eight years of *actual incarceration*, with the remainder suspended.

Id. at 585. Because neither defense counsel, the prosecution, nor the court fully explained to the defendant on the record that the sentence was not limited to the executed portion of the sentence, the Court held that a reasonable layperson defendant would "not understand that the court could impose the sentence it did." *Id.* at 585.

The defendant in *Baines* agreed to "sentencing within the guidelines" on two counts of armed robbery, which was seven to thirteen years. *Baines*, 416 Md. at 607. When the

sentencing court imposed a split sentence and suspended all of the sentence that exceeded the guidelines, the Court of Appeals reversed. *Id.* at 620. The Court held that "the sentence was in breach of the plea agreement, because the record of the plea proceeding reflects that [Baines] reasonably understood that the court would not impose a total sentence exceeding thirteen years, including both non-suspended and suspended time." *Id.* at 607.

Here, as in *Cuffley* and *Baines*, it was not made "*absolutely clear* on the record" that the court could impose a sentence that could result in more than 4 to 9 years of "actual incarcerable time" or "actual incarceration." The *Cuffley* Court explained that a split sentence is allowed so long as the terms of the agreement are "*absolutely clear* on the record of the plea proceeding and the term is fully explained to the defendant." *Id.* at 586. That a split sentence, i.e. a suspended sentence subject to probation,[2] could subject him to a greater term of incarceration was not explained to Mr. Brown at the plea hearing.

The State views *Cuffley*, *Baines*, and *Matthews*, 424 Md. 503 (2012), as falling "to one end of the spectrum" and *Ray v. State*, 454 Md. 563 (2017), falling to "the other end." It argues that *Ray* supports the legality of Mr. Brown's sentence. In *Ray*, the written plea agreement stated the maximum statutory sentence but provided "a cap of four years on any executed incarceration." *Id*. at 568. And the court at the plea hearing expressly stated that "there's a cap of four years on executed incarceration." In addition, a form referred to at

[2] In *Cuffley*, the trial judge's statement that "[a]ny conditions of probation are entirely within my discretion" when the plea was accepted did not change the result. *Cuffley*, 416 Md. at 585.

the plea hearing and signed by Ray indicated that "[t]he maximum penalty for the offense you are offering to plead guilty is: 10 years [and] 6 months." *Id.* at 567. At the sentencing hearing, the court imposed a sentence of ten years with all but four years suspended on a conspiracy charge, to run concurrent with a sentence in an unrelated case, and imposed a sentence of six months on a false statement charge to run concurrent with the sentence on the conspiracy charge. *Id.* at 569. The court then stated: "Upon release, [Ray] will be on a period of probation of four years supervised probation." *Id.* Ray filed a motion to correct illegal sentence. The Court of Appeals held that a "cap of four years on any executed incarceration" was clear and unambiguous in the context of the plea agreement and the potential sentences. *Id.* at 578-79. In addition, "the agreement expressly provided that the sentencing cap was to be imposed on executed time." *Id.* at 579.

Mr. Brown's plea hearing preceded *Cuffley*, *Baines*, *Matthews*, and *Ray*. At the plea hearing there was no discussion that would suggest that "actual incarceration within the guidelines" and "actual incarcerable time" meant anything different than the time to be served. As the State states in its brief, "no reasonable layperson could have understood the term 'actual incarceration' to mean anything other than time in jail." And although the waiver of rights form explained the rights he would be giving up by a guilty plea and included the maximum sentence for the charges he was pleading to, there was no discussion of "executed time" or a "cap" on time. The defendant in *Ray* had a written memorandum that included the maximum sentence and expressly stated a "[c]ap of four years on any executed incarceration." *Ray*, 454 Md. at 567. Mr. Brown's agreement was for four to nine

years of "actual incarceration within the guidelines" or "actual incarcerable time." More in line with the so-called *Cuffley* trilogy, "actual incarceration within the guidelines" and "actual incarcerable time" is effectively a non-specific cap that "leaves open the possibility that the entire sentence (the unsuspended [and suspended] portions alike) is being capped rather than that only the 'hard time' is being capped." *Id.* at 578 (quoting *Ray v. State*, 230 Md. App. 157, 184 (2016)).

More like *Cuffley*, the only words modifying "time" in Mr. Brown's case were "actual incarcerable."[3] And under the plea agreement, that was the only kind of time that he agreed to serve. There was no discussion of a maximum sentence,[4] executed or suspended time, or probation at the plea hearing. At the plea hearing, it was not made absolutely clear to Mr. Brown that a sentence of "actual incarceration" or "actual incarcerable time" within the guidelines could result in a potentially longer incarceration based on suspended time and probation.

In short, we perceive no ambiguity regarding the time to be served by Mr. Brown, but even if we did, we would still be required to construe the agreement in Mr. Brown's

---

[3] Webster's defines "actual" as "existing in fact and reality," and Black's Law Dictionary, defines "actual" as "existing in fact, real." Webster's Desk Dictionary 5 (1996); Black's Law Dictionary 35 (7th ed. 1999).

[4] We recognize that Mr. Brown signed a waiver of rights form that stated a maximum sentence of "30 years," but we are persuaded that a reasonable lay defendant would have understood that that would have been the maximum time they could receive had they not agreed to plead guilty in exchange four to nine years of "actual incarceration within the guidelines." The form did nothing to explain a split sentence.

favor. We hold that sentencing Mr. Brown to a split sentence in the first instance and subsequently sentencing him to the suspended portion of that sentence based on his violation of probation was illegal.

THE DECISION OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND REMANDED WITH INSTRUCITONS TO VACATE THE ILLEGAL SENTENCES IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.