Circuit Court for Baltimore City
Case Nos. 18829404, 18829407

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Consolidated Appeals

No. 1418
September Term, 2022

No. 465
September Term, 2023

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ARTHUR WIGGINS

v.

STATE OF MARYLAND

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Berger,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: January 22, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In February 1989, Arthur Wiggins, appellant, then sixteen years old, pleaded guilty, in the Circuit Court for Baltimore City, to murder in the first degree and rape in the first degree. At that time, the court sentenced Wiggins to two concurrent terms of life imprisonment, with all but forty years suspended, but inadvertently did not impose a term of probation.

In 2022, Wiggins filed motions to correct an illegal sentence and to withdraw his guilty plea. The State also filed a motion to correct an illegal sentence. In November 2022, the circuit court held a hearing on the motions to correct, and it granted the State's motion but denied Wiggins's. The circuit court also denied Wiggins's motions to withdraw his guilty plea. Thereafter, in March 2023, Wiggins filed yet another motion to correct an illegal sentence, which the circuit court denied without a hearing. The circuit court's denial of Wiggins's motions prompted these two interrelated appeals.

In Appeal No. 1418, Wiggins raises the following issues:

> I. Whether the 2022 sentencing court violated Maryland Rule 4-215 when it failed to appoint new counsel after granting Wiggins's request to discharge counsel;
>
> II. Whether the 2022 sentencing court violated Maryland Rule 4-243 and *Cuffley v. State*, 416 Md. 568 (2010), when it resolved ambiguities in the sentencing terms of the 1989 binding plea agreement by looking outside the record established at the plea hearing;
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> III. Whether the 2022 sentencing court violated the prohibition against double jeopardy in reimposing sentence, including a term of probation Wiggins had already served; and
>
> IV. Whether the 2022 sentencing court violated Maryland Rule 4-242(h) in failing to hold a hearing on Wiggins's timely-filed motion to withdraw guilty plea.

In Appeal No. 465, Wiggins raises the following issues (as best we can decipher them):

> I. Whether the 1989 sentencing court violated Maryland Rule 4-243 when it accepted Wiggins's guilty plea, although the terms of the plea agreement were not set forth clearly in open court;
>
> II. Whether the 1989 sentencing court violated Maryland Rule 4-243 by imposing a sentence in excess of that provided under the plea agreement because it imposed separate sentences for first-degree felony murder and the underlying felony, first-degree rape; and
>
> III. Whether in 2023 the circuit court violated Maryland Rule 4-243 by failing to apply *Cuffley v. State*, 416 Md. 568 (2010).

Finding no merit in any of the contentions raised in either appeal, we shall affirm the circuit court's orders, denying Wiggins's motions to correct an illegal sentence and to withdraw his 1989 guilty plea.

## BACKGROUND

In June 1988, shortly before Wiggins's sixteenth birthday, he and three other men raped and murdered an eighteen-year-old girl who lived in the same house as one of the other perpetrators. After raping her, they decided to kill her by asphyxiation because they feared she would identify them. Indictments were issued in the Circuit Court for Baltimore City charging three of the men, including Wiggins, with murder in the first degree, rape in the first degree, and other offenses. Those three co-defendants reached plea agreements with the State, whereby each would plead guilty to first-degree murder and first-degree rape, and, in exchange, the State would nol pros the remaining charges and recommend that the executed portions of their sentences be capped at forty years. A fourth perpetrator,

Jeffrey Saval, reached a separate, more favorable plea agreement with the State and made statements inculpating the others.

**The 1989 Plea and Sentencing Hearing**

In February 1989, the circuit court held a joint hearing to accept the guilty pleas of Wiggins and the other two co-defendants and to impose sentences. The prosecutor summarized the terms of the agreement for the circuit court:

> Upon acceptance of the plea, your Honor, the [S]tate would be recommending a sentence of life, suspend all but forty years concurrent in each of the charging documents. That the Court will recommend a referral to Patuxent Institute for each of the defendants. Upon acceptance of the plea, the [S]tate would be nolle prossing the remaining charges[.]

Counsel for one of the co-defendants then conducted a waiver colloquy of all three defendants. He explained to each of them, including Wiggins, the maximum penalties for both offenses (first-degree murder and first-degree rape) and that, if they were to stand trial and be found guilty of the charges, they potentially could receive a "double life" sentence, that is, two consecutive life sentences. In addition, counsel told the defendants that the plea agreement "calls for life, suspend all but forty years."

The prosecutor thereafter set forth the factual basis for the defendants' pleas:

> The [S]tate would call among other witnesses, Jeffrey Saval (phonetic) who would testify as follows. That on the 30th of June, 1988, sometime in the evening hours, your Honor, he was spending the night at the home of the defendant, Arnold Orwin at [redacted] in Baltimore City, along with the other two defendants in the case, George Duvalea and Arthur Wiggins. At that time, in the house was an eighteen year old girl who would be identified as [victim]. [The victim] had lived in the house with the defendant Orwin and his wife, Mrs. Orwin for some period of time.
>
> At that time, your Honor, after being out and according to various witnesses, according to the statement they eventually made to the police, they

were partying most of the day, including drinking and perhaps other drugs. They were back at the house and George, the defendant, George Duvalea, makes the suggestion, your Honor, that he would like to have sex. At that time, your Honor, they begin a discussion about going out and picking people up. Mr. Duvalea indicates that they can't do that because of [the victim] in the basement. Your Honor, there was a conversation started -- I would correct that to say there was a conversation started about going and picking up women. The conversation further talked about bringing people back to Mr. Orwin's house, where during the course of the conversation it was suggested, your Honor, that they couldn't do that because [the victim] would tell the defendant's wife, defendant Orwin's wife. At that time, your Honor, they then decided they would go down and have sexual intercourse with [the victim]. Prior to going down, there was a discussion about her recognizing them, and as a part of that discussion, your Honor, it was suggested that they wear stocking masks made out of nylon over their faces. Mr. Orwin apparently provided the nylons from his wife's supply. They put them on and during the course of the discussion they decided they looked funny, and decided they would not wear them down the steps.

At that time, your Honor, the four of them proceeded to go down the steps, at which time, your Honor, a pillow -- [the victim] was grabbed by the defendant and a pillow was placed over her face. Her underwear was pulled down, according to Mr. Saval by the defendant Orwin, at which time defendant Wiggins pulled down his pants and had sexual intercourse with her. At that time, your Honor, there was struggling, trying to push him off and as she did so, the other defendants held her down. She attempted to scream, but according to Mr. Saval, could not because the pillow was over her face. When she again attempted to scream, the defendant Wiggins apparently slapped her and she stopped trying to scream. After having sexual intercourse with her, Mr. Saval would testify at that point, he came over and attempted to have intercourse with her. He was told to have intercourse with her, and he went over and laid on top of her. Although he said he was not able to have an erection, have actual intercourse and laid on top of her. At that time, your Honor, the defendant George Duvalea was told to go have sex with her. He said that he would not, but that Saval indicates that during this period, not exactly sure of the exact chronology at this point, Mr. Duvalea attempted to force his penis into the victim's mouth. At that time, your Honor, after this happened, they decided in order to keep her from identifying them, she would have to be killed, and at that time they started to choke her. Again, participation, according to Mr. Saval, by all three of them. The chronology as to who did exactly what is unknown, however, a pillow was used to hold on her face. Apparently, either a sheet or another object, which was rolled up to look like a rope was pulled. Mr. Duvalea pulled apparently

on one end of that. Mr. Orwin at some point pulled on one end. Mr. Wiggins at one point had the pillow and was holding the pillow.

At that point, your Honor, she apparently died. When she died, your Honor, they decided they would take her out of the house. When they did so, your Honor, Mr. Orwin was able to provide some sort of rug, some sort of large cloth to wrap her in, and again there is some dispute between the three of them as to who carried her, but two of them apparently carried her out of the house into the back alley behind [Mr. Orwin's residence] and carried her to an abandoned house located at 2518, I believe is the correct address, your Honor, 2518 E. Fairmont Avenue in Baltimore City. At that time, your Honor, she was placed under a porch at that location, wrapped in a cloth. During the course of time, trash was thrown in front of her, so she could not be seen.

The day after this happened, your Honor, Mr. Orwin made a missing person's report. Mr. Orwin further told people that the victim had run away after a fight with him, and that he did not know where she is, or what had happened to her.

On September 8, 1988, your Honor, a body was found under the porch of 2518 E. Fairmont Avenue by workmen working there rehabbing the house. The police were called and an investigation was begun. Due to threats being made by the defendant, Wiggins and Duvalea to Mr. Saval and other people around there, Mr. Saval was questioned by the police upon hearing about these threats. The police questioned him, and he gave the statements, testifying in front of the Grand Jury, as I have indicated, your Honor.

* * *

Mr. Saval and the other witnesses would positively identify the defendants before you as the people involved in this act. Each defendant, based upon Mr. Saval's testimony, was placed under arrest and advised of their individual rights. All of them, your Honor, indicated they were on the scene at the time, although they denied full participation, as I indicated the [S]tate's witnesses would testify to. I would introduce another exhibit, your Honor, the following items as State's Exhibit 3, statement of Arnold Orwin, which places him on the scene, and indicates some participation. As State's Exhibit 4, transcript with my hand corrections on it being typed now, is a statement made and recorded by Mr. Duvalea, and a statement made by Arthur Wiggins. The defendant Wigg[i]ns, as State's Exhibit 5. All the statements indicate, your Honor, limited participation in this, much less participation than would be testified to by Mr. Saval. All these events

> occurred within the City of Baltimore, the State of Maryland. The statements, your Honor, would corroborate the testimony of Mr. Saval to the extent that they agree with it, and would be supplemented by the testimony of Mr. Saval. All the events occurred in the City of Baltimore and State of Maryland.

When the court asked Wiggins's counsel whether there were "[a]ny additions or corrections[,]" he replied, "On behalf of Arthur Wiggins, I am not going to add, delete or modify."

The court found that each defendant had "knowingly and voluntarily entered" their guilty pleas and that "the statement of facts supports the pleas of guilty to these charges." During allocution, Wiggins declined to speak, and his counsel declared on his behalf that "we would simply ask you to follow the plea bargain."

The court imposed the following sentence:

> With respect to Mr. Wiggins, sentence on the murder charge is life imprisonment, all but forty years suspended. With respect to the rape, life imprisonment, suspend all but forty years. These two are to be served concurrently.

**Release From Custody**

In 2016, Wiggins was granted mandatory release pursuant to Maryland Code (1999, 2008 Repl. Vol.), Correctional Services Article, § 7-501. Less than one year later, however, he violated the conditions of his release and was reincarcerated under a parole retake warrant.[1]

[1] Wiggins was found guilty of sexual child abuse of his biological daughter in the Circuit Court for Anne Arundel County and sentenced to twenty-five years' imprisonment, with all but twenty years suspended, to be followed by five years' supervised probation. *Wiggins v. State*, No. 470, Sept. Term, 2019, slip op. at 1 (filed May 28, 2020). In addition,

(continued…)

**Subsequent Motions**

In 2021, Wiggins filed a motion to correct an illegal sentence, which the circuit court denied. He appealed, but while that appeal (Appeal No. 1693 of the September 2021 Term) was pending, he filed, on February 3, 2022, another pro se motion to correct an illegal sentence, which the circuit court again denied.[2] The State, recognizing that there had been an illegality in Wiggins's 1989 sentence, filed its own motion to correct an illegal sentence, based upon the court's inadvertent imposition of a term-of-years sentence for first-degree murder, and urged the court to impose the maximum five-year period of probation.[3] Then, the Office of the Public Defender entered its appearance on behalf of

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Wiggins entered an *Alford* plea in an unrelated case in the Circuit Court for Baltimore City to assault in the second degree and was sentenced to ten years' imprisonment, all suspended, and five years' probation. *State v. Wiggins*, Case No. 117031034.

[2] The 2021 motion is not in the record before us. The February 2022 motion relies upon the circuit court's failure, in 1989, to impose a term of probation for first-degree murder.

[3] The State's motion relied upon *Greco v. State*, 427 Md. 477 (2012). To understand the holding in *Greco*, we first must consider *Cathcart v. State*, 397 Md. 320 (2007). In *Cathcart*, the Supreme Court of Maryland held that, where a court attempts to impose a split sentence but fails to impose a term of probation, "the effect of the omission is to limit the period of incarceration to the unsuspended part of the sentence[.]" *Id.* at 330. In *Greco*, the court attempted to impose a split sentence for murder in the first degree but inadvertently failed to impose a term of probation. 427 Md. at 486. A straight application of *Cathcart* would have resulted in a term-of-years sentence, whereas the statute (Criminal Law Article, § 2-201) mandates a sentence of life imprisonment for that offense. *Greco*, 427 Md. at 507. The Supreme Court of Maryland therefore modified the holding in *Cathcart* because its direct application in *Greco* would have resulted in an illegal sentence. *Greco*, 427 Md. at 507. In that circumstance, the Supreme Court held that the court should correct that illegality by imposing a term of probation. *Id.* at 513. *See also State v. Crawley*, 455 Md. 52, 55 (2017) (holding that *Greco* applies to a sentence imposed under a binding plea agreement).

Wiggins and filed yet another motion to correct an illegal sentence, asking the court to impose a lesser period of probation and to recognize that the sentence for first-degree rape must be converted, by operation of law, into a flat forty-year sentence. The following day, the circuit court rescinded its previous order, which had summarily denied Wiggins's February 3rd pro se motion, and set the matter for a hearing.

In April 2022, Wiggins, with the assistance of counsel, filed the first of several motions to withdraw his 1989 guilty plea. In that motion, Wiggins claimed that the court's failure, in 1989, to apprise him of the nature of the charges to which he was pleading guilty or to ensure that he understood the nature of those charges supported the conclusion that his plea was neither knowing nor voluntary, and that it should therefore be vacated. The State filed a response, pointing out that a motion to withdraw a guilty plea must be filed within ten days after imposition of sentence but that Wiggins had entered his guilty plea in 1989, more than thirty years ago.[4] On May 12, 2022, the circuit court entered an order, denying Wiggins's motion to withdraw his guilty plea because it "was not filed timely per [Maryland Rule 4-242.]"

**Wiggins's Motion to Discharge Counsel**

In August 2022, while the motions to correct an illegal sentence were pending, Wiggins filed a motion to discharge counsel. A few weeks later, he supplemented that motion, explaining the reasons for his request. According to Wiggins, his appointed

[4] The current provision is Maryland Rule 4-242(h), but the version of the rule in effect when Wiggins entered his guilty plea, Rule 4-242(f) (1989), is substantially similar in all relevant respects.

counsel exhibited a "failure to know the record[.]" In addition, because, according to Wiggins, he had never requested the appointment of counsel, her filing of a motion on his behalf violated his Sixth Amendment right to self-representation.

On October 11, 2022, the circuit court held a virtual hearing on Wiggins's motion to discharge counsel and granted it. The same day, Wiggins filed a notice of appeal from that ruling, asserting that the circuit court had found his reasons for wishing to discharge counsel "meritorious" but had failed to appoint replacement counsel, "as required by Md. Rule 4-215."

**The 2022 Sentencing Hearing**

On November 7, 2022, the circuit court held a virtual hearing on the motions to correct an illegal sentence. The court recognized that, during the 1989 sentencing hearing, it had committed a *Cathcart*/*Greco*-type error in imposing sentence for first-degree murder. Accordingly, it vacated the 1989 sentence and resentenced Wiggins to life imprisonment, all but forty years suspended, for first-degree murder, and a concurrent term of forty years for first-degree rape, followed by five years' probation, with the same starting date as the prior sentence.[5] Wiggins then noted a timely appeal, docketed in this Court as Appeal No. 1418.

[5] Proceedings in Appeal No. 1693 had been stayed pending the circuit court's resolution of the motions to correct an illegal sentence. Following the circuit court's November 2022 ruling, we granted the State's motion to dismiss Appeal No. 1693 as moot.

**Wiggins's Motion to Withdraw His Guilty Plea**

Eight days after the circuit court resentenced Wiggins, he filed a motion to withdraw his guilty plea, which the court summarily denied on the ground that he had filed the same motion previously, the court had denied the previous motion, and it would "not revisit the ruling." Wiggins then noted a timely appeal, included in this Court with Appeal No. 1418.

**Subsequent Motion to Correct an Illegal Sentence**

In March 2023, while Appeal No. 1418 was pending in this Court, Wiggins filed another motion to correct an illegal sentence. In that motion, Wiggins claimed, among other things, that the record of the 1989 plea hearing was ambiguous; that he had been found guilty of first-degree felony murder (not premeditated murder) and first-degree rape and that, therefore, the rape should have merged into the murder; that he had not entered his plea knowingly and voluntarily; and that the imposition, in November 2022, of a term of probation violated double jeopardy. He therefore requested that the 1989 "plea agreement be withdrawn and voided." After the State filed an opposition, the circuit court denied Wiggins's motion without a hearing. Wiggins then noted a timely appeal, docketed as Appeal No. 465.

**Order to Consolidate**

Having noted the substantial overlap of the issues raised in Appeals No. 1418 and 465 and that they involve the same parties, we, on our own motion, ordered that they be consolidated.

## DISCUSSION

## Appeal No. 1418

### *I. Compliance with Maryland Rule 4-215*

### *Parties' Contentions*

Wiggins contends that the circuit court violated Rule 4-215 when it denied his request for appointed counsel during his resentencing hearing.

The State counters that Rule 4-215 does not apply to resentencing hearings. Thus, although Wiggins had a right to counsel at that hearing, Rule 4-215 did not apply to his request to discharge counsel and his ensuing request for appointment of replacement counsel. According to the State, the circuit court, having found that Wiggins's reason for discharging counsel was non-meritorious, properly acted within its discretion in refusing to appoint replacement counsel.

### *Analysis*

In *Smallwood v. State*, 237 Md. App. 389 (2018), we held that, "for largely the same reasons that an initial sentencing is a critical stage of a criminal proceeding at which a defendant is entitled to counsel, a resentencing after the grant of a motion to correct an illegal sentence is also a critical stage at which a defendant is entitled to counsel." *Id.* at 410. That does not mean, however, that the prophylactic procedures of Maryland Rule 4-215, governing waiver of counsel prior to trial, have any application to such a belated resentencing hearing.

In *State v. Brown*, 342 Md. 404 (1996), the Supreme Court of Maryland held that Rule 4-215 "is inapposite once trial is underway." *Id.* at 412. In *Catala v. State*, 168 Md.

App. 438, *cert. denied*, 396 Md. 14 (2006), we held, applying *Brown*, that a circuit court, during a sentencing hearing, is not required "to comply with the strict requirements of Rule 4-215." *Id.* at 469.

Although *Brown* and *Catala* teach that a sentencing court is not obligated to follow Rule 4-215 when a defendant seeks to discharge counsel, those cases nonetheless hold that a "'court must still adhere to constitutional standards.'" *Catala*, 168 Md. App. at 468 (quoting *Brown*, 342 Md. at 426). Wiggins, however, does not claim that the circuit court failed to adhere to constitutional standards, and we need not further consider this claim.[6]

*II. Compliance with Maryland Rule 4-243*

*Parties' Contentions*

Wiggins contends that the circuit court, during the 2022 resentencing hearing, violated Rule 4-243 and *Cuffley v. State*, 416 Md. 568 (2010), when it resolved ambiguities in the sentencing terms of the 1989 binding plea agreement by looking outside the record established at the plea hearing.

The State counters that Wiggins fails in his brief to point to any ambiguity in the transcript of the 1989 sentencing proceeding and that the sentence the court imposed in

[6] The State asserts, in its brief, that the "basis for [Wiggins's] discharge request appears to have been a disagreement over strategy with respect to filing a motion to correct illegal sentence." Quoting *Cousins v. State*, 231 Md. App. 417, 443 (2017), the State points out that a '"disagreement regarding legal strategy is not, however, a meritorious reason to discharge counsel.'" Had Wiggins raised a claim that the circuit court failed to follow constitutional standards in declining his request to appoint replacement counsel, we would reject it because he bears the burden to show that the court erred in doing so, and he has failed to create a record adequate to resolve such a claim, as there is no transcript in the record of the October 11th hearing on the motion to discharge counsel.

2022 fully complied with and indeed was below the maximum permitted by the plea agreement.

*Analysis*

We assume for the sake of argument that the 1989 plea agreement was a binding one. This assumption, however, avails Wiggins nothing because the sentencing terms of that agreement were unambiguous. During the original sentencing hearing, in 1989, the prosecutor set forth the sentences the parties had agreed upon:

> Upon acceptance of the plea, your Honor, the [S]tate would be recommending a sentence of life, suspend all but forty years concurrent in each of the charging documents. That the Court will recommend a referral to Patuxent Institute for each of the defendants. Upon acceptance of the plea, the [S]tate would be nolle prossing the remaining charges[.]

The sentencing terms of Wiggins's plea agreement are unambiguous. We have no difficulty in concluding, solely from the transcript of the 1989 plea hearing, that a reasonable lay person, not versed in "the niceties of sentencing law[,]" would have understood that the plea agreement in this case provided for a life sentence and that there was a forty-year cap on the term of active incarceration. *Cuffley*, 416 Md. at 582. The corrected sentences, which Wiggins claims are illegal, are life, all but forty years suspended, for first-degree murder, followed by five years' probation, and a concurrent flat forty-year sentence for first-degree rape. The term of probation is required under *Greco* and *Crawley*, and the sentences otherwise are less than the maximum provided by the unambiguous terms of the plea agreement. Wiggins's corrected sentences are legal and fully compliant with his 1989 plea agreement.

### *III. Double Jeopardy Claim*

*Parties' Contentions*

Wiggins contends that the circuit court violated the prohibition against double jeopardy when it resentenced him because "it reimposed a sentence with a probationary period he had [already] served[.]" Distinguishing his case from *Greco* and *Crawley*, he maintains that he already had been placed on mandatory release prior to the correction of his 1989 sentence and that the court's subsequent imposition of a term of probation effectively imposed a double punishment for the same offense.

The State counters that Wiggins's claim "appears to be based on a factual error — that he had 'served' a 'probationary period.'" The State points out that, prior to the 2022 resentencing, Wiggins had never been subjected to probation, nor did his resentencing "cause him to be punished twice for the same conduct."

*Analysis*

Wiggins is simply wrong in contending that double jeopardy barred the circuit court from resentencing him in 2022. Under *Greco* and *Crawley*, the circuit court was *required* to correct his sentence, and it did so. Prior to the resentencing, Wiggins had never been subject to a term of probation, and his claim that he was charged with violating his "probation without having a period of probation" is factually incorrect.

### *IV. Compliance with Maryland Rule 4-242*

*Parties' Contentions*

Wiggins contends that the circuit court failed to comply with Rule 4-242(h) when, in 2022, it denied his November 15th motion to withdraw his 1989 guilty plea without a

hearing. According to Wiggins, that motion was timely because it was filed within ten days after the November 7th resentencing, and, under the terms of the rule, the circuit court was required to hold a hearing on his motion.

The State counters that we should reject Wiggins's interpretation of Rule 4-242(h) and that "the evident meaning of 'the imposition of sentence' [in the rule] is the original sentencing, not a correction of an illegal sentence decades later." In the alternative, the State asserts that, even were we to assume "that Rule 4-242(h) applies to a resentencing pursuant to a motion to correct an illegal sentence," the court properly denied Wiggins's motion to withdraw his guilty plea because he failed to show either a violation of Rule 4-242(c) or a violation of the plea agreement.

<u>*Analysis*</u>

This claim requires us to interpret a Maryland Rule. We interpret a rule "using the same canons of construction" used to interpret a statute. *Satterfield v. State*, 483 Md. 452, 474 (2023) (citation and quotation marks omitted). We "begin with the text of the rule and give the relevant words their ordinary meaning in the context of the rule as a whole and the larger set of rules of which that rule is part." *Id.* (cleaned up). "If the rule's plain language is unambiguous and clearly consistent with the rule's apparent purpose," we apply "the rule's plain language," unless doing so produces "an absurd result." *Id.* at 475 (cleaned up).

Maryland Rule 4-242(h) provides:

> At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves the interest of justice. After the imposition of

> sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c), (d), or (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere.

According to Wiggins, his November 15th motion to withdraw his guilty plea was timely because it was filed within ten days after the court corrected his sentence, even though his original sentence had been imposed in 1989, at the time the circuit court accepted his guilty plea. That is a manifestly unreasonable interpretation of the rule. It would be tantamount to carving out an exception to Rule 4-242(h), applicable to all cases where a court imposes an illegal sentence, because Wiggins's interpretation conflates a resentencing (when required under Rule 4-345(a)) with the original imposition of sentence. In any such case, Wiggins's interpretation of Rule 4-242(h) would permit a defendant to withdraw his guilty plea "at any time."[7] That cannot have been the intention of the Supreme Court of Maryland, and we reject that interpretation.[8]

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[7] This follows because a "court may correct an illegal sentence at any time." Md. Rule 4-345(a).

[8] We recognize that, in other contexts, a resentencing is a "sentencing." *Jones v. State*, 414 Md. 686, 694 (2010). Thus, for example, if a court grants a motion for modification of sentence "and reduces the sentence, this subsequent sentence then becomes the effective sentence[,]" and, furthermore, "a reimposition of sentence in these circumstances is the equivalent of an 'imposition' [of] sentence under" what is now Rule 4-345(e). *Greco v. State*, 347 Md. 423, 433 (1997). Modification of a sentence, however, is a far cry from permitting a defendant to withdraw his guilty plea more than thirty years after entering it; to permit a defendant to do so would, in most cases, render it impossible to place the parties in the status quo ante (the ostensible purpose of permitting a defendant

(continued…)

Because Wiggins does not explain in his brief how or whether the circuit court, in 1989, violated Rule 4-242(c) or that it violated the plea agreement in imposing sentence, we shall not address the State's alternative contention that the court properly denied Wiggins's motion to withdraw on its merits. *See* Md. Rule 8-504(a)(6) (requiring that a brief contain "[a]rgument in support of the party's position on each issue").

**Appeal No. 465**

*I & II. Compliance with Maryland Rule 4-243 in 1989*

*Parties' Contentions*

Wiggins contends that, during the 1989 plea hearing, the terms of the plea agreement were not presented to the court "in an expressed and clearly agreed upon manner" prior to the court's acceptance of his guilty plea. He further asserts that, because co-defendant's counsel, during the 1989 hearing, declared that the plea agreement "calls for life, suspend all but forty years[,]" the record of the 1989 plea hearing was "ambiguous" and "out of reach of" his understanding. Finally, Wiggins maintains that a reasonable defendant in his position would have understood the plea agreement as providing that he was pleading guilty to felony murder, not first-degree premeditated murder, and that therefore, his sentence for first-degree rape was illegal under *Newton v. State*, 280 Md. 260 (1977) (requiring that the underlying felony merge into a sentence for felony murder).

The State counters that the prosecutor's declaration that he was calling the counts of murder in the first degree and (from separate charging documents) rape in the first

to withdraw a guilty plea) because of the practical impossibility of bringing such a stale case to trial.

degree, together with his declaration that "the [S]tate would be recommending a sentence of life, suspend all but forty years concurrent in each of the charging documents[,]" removed any possible ambiguity.[9] The State further points out that the "proposed sentence" and the "imposed sentence" were "identical." Moreover, according to the State, the statement of facts entered into the record during the 1989 plea hearing "[f]urther undercut[] any suggestion that the State was proceeding on a felony-murder theory against Wiggins[.]"

*Analysis*

We agree with the State that there was no ambiguity in the transcript of the 1989 plea hearing and that the sentence imposed precisely matched the sentence recommended by the State and agreed to by the circuit court. Moreover, there was no mention whatsoever during that hearing about felony murder, and the statement of facts amply supported the State's theory that the murder was committed after the rapes had been completed and that the reason for the murder was to prevent the victim "from identifying them[.]" In other words, Wiggins's theory that the rape was committed as an element of the murder finds no support in the record.

[9] In addition, the State points out that an alleged violation of Maryland Rule 4-243, other than a failure to impose a sentence mandated by a binding plea agreement, is not cognizable in a motion to correct an illegal sentence. We agree with that contention and confine our analysis to Wiggins's allegations that the sentences imposed were inherently illegal.

### *III. Compliance with Maryland Rule 4-243 in 2023*

#### Parties' Contentions

Wiggins contends that the circuit court failed to comply with Rule 4-243 when, in 2023, it denied his motion to correct an illegal sentence without a hearing.

#### Analysis

Wiggins asserts, without support in the record, that the circuit court's summary denial of his 2023 motion to correct an illegal sentence meant that the court failed to apply *Cuffley* in resolving his claim. To the contrary, we presume that "trial judges know the law and apply it properly[.]" *State v. Chaney*, 375 Md. 168, 181 (2003). Here, Wiggins has failed to rebut that presumption. *Id.* at 183-84.

**ORDERS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN BOTH APPEALS. COSTS ASSESSED TO APPELLANT.**