Circuit Court for Montgomery County
Case No. 138464-C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 905

September Term, 2022

OSCAR ROMERO-LARA

v.

STATE OF MARYLAND

Wells, C.J.,
Nazarian,
Beachley,

JJ.

Opinion by Nazarian, J.

Filed: October 10, 2023

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

Oscar Romero-Lara was convicted by a jury in the Circuit Court for Montgomery County of one count of sex abuse of a minor, three counts of second-degree sex offense, and thirteen counts of third-degree sex offense. He was sentenced to 160 years imprisonment. In this appeal, Mr. Romero-Lara argues that the trial court erred when it responded to a jury note with a supplemental jury instruction on the level of corroboration necessary to convict, that his sentence violates the Eighth Amendment to the United States Constitution, and that his defense counsel provided ineffective assistance by failing to file a motion to suppress his confession. We find no error on this record and affirm.

I. BACKGROUND

This appeal involves the sexual abuse of L,[1] who alleged that she was abused by her stepfather, Mr. Romero-Lara, in the late nineties to early 2000s when she was roughly between the ages of five and thirteen. In 2019, motivated by concern for a young family member who had recently moved in with Mr. Romero-Lara, L confronted Mr. Romero-Lara and recorded the confrontation, during which he denied the allegations. L then reported the abuse to the Montgomery County Police Department.

An investigation ensued, and Detective Courtney Maines of the Montgomery County Police Department interviewed Mr. Romero-Lara with a Spanish translator present; the interview was videotaped. Mr. Romero-Lara, who speaks only Spanish and is unable to read and write, was read the "Advice of *Miranda* Rights" form in its entirety. He agreed to be interviewed and the interview lasted four hours. During the interview, Mr. Romero-

[1] For the sake of privacy, we've chosen a random initial to represent the victim.

Lara admitted to putting his penis in L's mouth "but it was just that" and he insisted "nothing else happened." He was arrested and charged with twenty-one counts.

A. Trial.

A two-day jury trial was held in the Circuit Court for Montgomery County on June 13–14, 2022. The State introduced fourteen exhibits, including the videos referenced above.

L, who was in her late twenties at the time of trial, testified and described the abuse in detail. She stated that Mr. Romero-Lara molested her multiple times over several years, beginning when she was five or six years old. She stated that the abuse always occurred on Saturday mornings when her mother was at work and her older sister was asleep. Mr. Romero-Lara would force her out of bed, down the stairs, and "would start touching [her]." She described how "he would tell me to put his penis in my mouth and made me give him oral until he ejaculated" and "would grab my hair or not let me move my head." She stated that by the time she was nine or ten, she and her sister moved residences and had separate bedrooms, and Mr. Romero-Lara would molest her in her own bedroom. The abuse would occur almost "every Saturday." The abuse finally stopped when she was twelve or thirteen when she "started defending [her]self," but Mr. Romero-Lara told her that "he was going to cut [her] tongue off if [she] told [her] mom," a threat that she believed. She testified to other physical abuse at the hands of Mr. Romero-Lara, like being "beat with a belt," that she received and her sister didn't. When L turned eighteen, she moved out of the house and "decided to separate [her]self from the family."

L stated that on May 4, 2019, shortly after learning that a young family member had moved in with Mr. Romero-Lara, she reported the abuse, explaining, "I felt that if I wasn't there to protect her, that the abuse would continue on with her." On cross-examination, L conceded that she never reported the abuse to her sister, mother, any friend, school counselors, or medical professionals.

Detective Maines testified about the circumstances of her interview with Mr. Romero-Lara:

> He arrived in my office with his wife. He arrived voluntarily of his own accord. When he did arrive prior to the start of the interview he was advised of his rights in Spanish. Because he was not capable of reading the form himself, Officer Gomez read the form in its entirety to him. Once he agreed that he understood the form, once he agreed that he wanted to have a conversation with us, that's when the interview proceeded forward.

Detective Maines confirmed that the interview lasted four hours and that Mr. Romero-Lara could neither read nor write. Defense counsel, on cross-examination, elicited the Detective's opinion that the interview was voluntary:

> [COUNSEL FOR MR. ROMERO-LARA:] Do you believe that Mr. Romero-Lara understood his rights as they were explained to him?
>
> [DETECTIVE MAINES:] I believe he did.

With respect to the length of the interview, Detective Maines stated that "[a]t no point did he ever say that he wanted the interview to stop. So, as long as someone is still willing to talk to me and doesn't tell me that they want a lawyer, to leave the room, I'll talk to them as long as they're willing to talk." She added that "[h]e did not seem to be bothered by any

of the conversation, at times he was even laughing and mocking things." Detective Maines also stated that she didn't have any concerns that L had waited years to disclose the abuse because "that's common in these types of investigations. . . . Sometimes in these cases I interview people that are in their 50s that don't disclose things that happen to them when they were 10 years old. Everyone discloses at different points in their lives."

Detective Daniel Gomez, the translator during the police interview, also testified. On cross-examination, defense counsel elicited the fact that the interview took place on a Friday night around 7:00 p.m. "after a full week of work." Detective Gomez read Mr. Romero-Lara his rights in Spanish, clarifying that he was trained not to explain *Miranda* rights in layman's terms, that it's "the best practice for us not to get off the script." Nevertheless, Detective Gomez also believed that after verbal confirmation from Mr. Romero-Lara, Mr. Romero-Lara understood his rights.

L's older sister testified as a defense witness. She confirmed that she had no memory of L being abused, and that L never disclosed the abuse to her, but she also corroborated certain aspects of L's story: that the two shared a room, that their mother worked on Saturdays, that both women believed that their parents favored L's sister over L, and that L disclosed the abuse when she learned the young family member had moved in with Mr. Romero-Lara.

B. Jury Instructions & Closing Arguments.

During its initial instructions, the trial court informed the jury that the State "has the burden of proving beyond a reasonable doubt each and every element of the crimes

charged," that they "are the sole judge of whether a witness should be believed," and that "the weight of the evidence does not depend upon the number of witnesses called on either side." The court instructed the jury that it was to decide "whether [Mr. Romero-Lara] made a statement" and whether "the State has proven beyond a reasonable doubt that the statement was voluntarily made" and to "give it such weight as you believe it deserves."

The State argued in closing that L's testimony was sufficient by itself to convict Mr. Romero-Lara:

> The Judge instructed you on testimony as evidence and it's powerful evidence. And it's direct evidence because [L] was there and she experienced it. That's the most powerful evidence you can have. I mean, that evidence alone, just the testimony alone, is sufficient. It's legally sufficient evidence and it's compelling evidence to convict. Based on her testimony alone you should convict this defendant of all the crimes he's charged with.

In response, counsel for Mr. Romero-Lara argued in closing that there should have been corroborating evidence "from school teachers or doctors" or L's sister:

> [L's sister] certainly would be the best person to corroborate the claim. The police didn't even go talk to [L's sister]. Don't you think as an investigator with the police, who's living in the home? Who can figure out what's going on here? Okay.
>
> I know I'm going to take [L]'s statement seriously. And that's what I was supposed doing under the law, and she should, but I need to find some corroboration. And not to even go talk to [L's sister], talk about the upbringing, talking about if what [L's sister] saw or didn't see or something to at least further that corroboration of [L's] sister's statement, nothing.

In addition to emphasizing the lack of corroboration, defense counsel also raised the possibility that L was abused by her grandfather and was accusing Mr. Romero-Lara out

of "anger" that "he covered it up and perhaps he enabled it." Defense counsel added that "we have another potential individual who may have caused this or may not have caused this. That is a person that should be considered."

Defense counsel added two more times in closing that the State's evidence lacked corroboration sufficient for the jury to find Mr. Romero-Lara guilty beyond a reasonable doubt:

> And let me also make an important point here. Under the law I'm not arguing did this happen or did it not happen? I'm not saying that. What we're arguing about and what we're talking about is are you convinced beyond a reasonable doubt that this happened? . . .
>
> [P]eople get charged and people get arrested, but when we come to a court of law we had to have this. We had to have a corroboration. And it's such an important element.
>
> * * *
>
> So when you go back and you look at all the evidence, and you're going to have an opportunity to do that . . . [Y]es, there was an allegation. Was it corroborated beyond a reasonable doubt, it was not. Open mind, I'm trying to be put in your position as a juror, trying to say forget about this paperwork I got from the State. I want to put myself and find— can I find beyond a reasonable doubt that this actually happened under the law? Is there sufficient corroboration, there is not.

On rebuttal, the State argued that "[w]hat [L] told you on that witness stand is the proof. And that's why even the defense would agree [the] direct evidence is uncontroverted."

C. The Jury Note & Supplemental Jury Instruction.

Just over an hour into deliberations, the jury sent out a note asking "[w]hat level of corroboration is needed beyond one witness's testimony?" The State asked the court to "answer[] the question directly" and instruct the jury that "the evidence is not dependent

on the number of witnesses, it's whether you believe the State's proven the elements beyond a reasonable doubt" because "one witness . . . if believed beyond a reasonable doubt could be sufficient." Counsel for Mr. Romero-Lara asked the court to tell jurors to "refer to the jury instructions" because going "beyond what's given to them" already "may cause more confusion . . . ." The court responded that "the actual answer to the [jury's] question is *none* if the jury believes the eyewitness beyond a reasonable doubt together with all the other evidence presented, but that's not the way we should answer the question." (Emphasis added.) The court thought that clarification was necessary, adding that "I also think we need to tell them something that will allow them to proceed and advance."

The court wanted to give a modified identification instruction, noting that a new aspect of the case "based upon [the defense's] closing arguments is the fact that the jury was pointed in the direction of well, maybe it was the defendant's father who did this and maybe the victim was mistaken" raising the issue of whether L "identified the right person." The court added that "I don't want to write an answer back saying none is required because the question is really whether or not they believe the eyewitness beyond a reasonable doubt":

> So I think it might be helpful to direct them to certain instructions that include the reasonable doubt instruction which is 2.02, what constitutes evidence which is 3.00, direct and circumstantial evidence, 3.01, credibility of witnesses, 3.10, and then read then *a modified version of [Maryland Criminal Pattern Jury Instruction] 3.30* which is essentially the last two paragraphs.
>
> The identification of the defendant by a single eyewitness as a

> person who committed the crime, if you believe beyond a reasonable doubt can be enough evidence to convict the defendant. However, you should examine the identification of the defendant with great care. Finally, you should consider any other factors affecting the reliability of the witness's identification, including the witness's credibility or lack of credibility. It is for you to determine the reliability of any identification and give it the weight you believe it deserves.
>
> And then at the end remind them or indicate to them that the question to be decided is whether the State has produced sufficient evidence, whether direct or circumstantial, that convinces you beyond a reasonable doubt that the defendant is guilty of a particular charge.
>
> So whatever you call it, whether you call it direct, circumstantial, corroborative, whatever term you apply to it, the question is when you look at the evidence as a whole that's presented are you convinced beyond a reasonable doubt that he's committed this offense. *So I think by pointing to those instructions, giving them these two paragraphs of 3.30, and then giving them this last instruction it will head them in the direction of what they need to review or put together to decide whether the State has proven the case or not.*

(Emphasis added.) Mr. Romero-Lara objected, "disagree[ing] with the two paragraphs" of pattern jury instruction 3.30.

The trial court overruled the objection and gave the clarifying instruction to the jury:

> All right. Members of the jury, welcome back. I read your question. What level of corroboration is needed beyond one witness's testimony? So that took me about five seconds to read and it would take about four days to answer. So I'm going to . . . try to give you a way of looking at this that hopefully will be helpful for you to make progress.
>
> So we've given you instructions already I think that are important to what you've asked in that particularly dealing with the presumption of innocence and reasonable doubt, what that means, and then what constitutes evidence, what you can consider as evidence, direct and circumstantial evidence, and credibility of witnesses. Now, in addition to that, there's two

> paragraphs that I'm going to read you here that I haven't given you before that are related to what you're talking about, but I want to read these all together so that you look at them together instead of focusing on one versus another.
>
> So I've pointed out those four [instructions] that you should look at again, but also related into your question *the identification of the defendant by a single eyewitness as the person who committed the crime if believed beyond a reasonable doubt can be enough evidence to convict the defendant. However, you should examine the identification of the defendant with great care*. Finally, you should consider any other factors affecting the reliability of the witness's identification including the witness's reliability or lack of credibility.
>
> And now on that point, 3.10 talks about the factors you'd look at in determining the credibility of witnesses. *It is for you to determine the reliability of any identification and give it the weight you believe it deserves.* And then I'm going to add this to what I've just said. The question that you need to decide is whether or not the State has produced sufficient evidence, either direct or circumstantial, that convinces you beyond a reasonable doubt that the defendant is guilty of a particular crime.
>
> So whether you call the evidence direct, circumstantial, corroborative, indirect, or whatever term you give it you need to look at the evidence in its totality and decide whether or not the State has provided enough evidence to you that convinces you beyond a reasonable doubt that the defendant committed an offense.

(Emphasis added.) Shortly after, the jury came back with a guilty verdict.

Mr. Romero-Lara filed a Motion for New Trial Pursuant to Maryland Rule 4-331. He asserted that the additional instruction was an abuse of discretion and that "[t]his case was not a 'who done it.' It was about whether the Jury could believe the single uncontroverted testimony of one witness. This was covered by the Jury instructions given

at the close of evidence." At sentencing, the court denied Mr. Romero's motion and explained its rationale behind the modified instruction:

> [T]his was a case in which the victim testified about a series of abuses that had occurred over a lengthy period of time when she was a young child. And one of the major arguments the Defense made . . . at the close of the case was the State has failed to prove its case beyond a reasonable doubt and there was no corroboration presented by the State to corroborate the testimony of this then-child witness and so as soon as the jury question came out about what amount of corroboration was required, it was obvious that they had picked up on the defense argument, which inferred that corroboration was required.
>
> * * *
>
> So that was the context in which the pattern instruction was given to the jury because they were asking the Court for direction on essentially in addition to the victim's testimony, what additional evidence is required. So the answer could have been none but that obviously would have been too coercive and too directive so at that point I decided that it would be appropriate to simply tell them . . . the pattern instruction on identification of the defendant. And although defense argues this is not a whodunit case, every criminal case is a whodunit case in that the State has to prove beyond a reasonable doubt what crimes were committed and who committed them.

D. Sentencing.

Mr. Romero-Lara was found guilty on sixteen different counts: one count of sex abuse of a minor in violation of Maryland Code (2002, 2021 Repl. Vol.), § 3-602(b) of the Criminal Law Article ("CL"), five counts of second-degree sex offense in violation of Maryland Code (2002, 2012 Repl. Vol., Supp. 2016), CL § 3-306,[2] and ten counts of third-

[2] Because the crimes occurred before October 1, 2017, Mr. Romero-Lara was convicted under CL § 3-306. CL § 3-306 since has been repealed and the prohibited conduct incorporated into CL § 3-304 (eff. Oct. 1, 2017).

degree sex offense in violation of Maryland Code (2002, 2021 Repl. Vol.), CL § 3-307. The court sentenced Mr. Romero-Lara to 160 years of imprisonment: twenty years for sex abuse of a minor, four counts each of fifteen years for second-degree sex offense, to run consecutive, one count of ten years for second-degree sex offense, to run consecutive, ten counts of seven years for third-degree sex offense, all to run consecutive.

The Maryland Sentencing Guidelines range was sixty-five years to 148 years, and the State requested the statutory maximum of 225 years. The circuit court departed upward from the guidelines, it said, because this was "a very extraordinary case":

> Before I impose sentence, I'll just make a few comments. So this is a case in which I presided over the trial and listened to the testimony that was presented about what happened to [L] in this case and it was clear to me and it was clear to the jury that she suffered greatly for quite a long time from an early age . . . until she was a young teenager . . . at the hand of a person that was the father figure in her life. . . .
>
> * * *
>
> I would say that based on what I heard, this is a very extraordinary case in the fact that not only did this abuse occur, it occurred repeatedly over years and there was a lot of manipulation that was involved in this case and that [Mr. Romero-Lara] threatened [L] and terrorized her and threatened her about what would happen to her in the event that she came forward and the fact that as a girl, as a child she was able to deal with that on her own level and somehow survive that and be a successful human being in and of itself says a lot about her. It's an amazing accomplishment.
>
> So I think that in looking at this case, it's clear that unfortunately [L] suffered at the hand of this defendant many, many instances of abuse over a lengthy period of time and the fact that she has been diagnosed with severe post-traumatic stress disorder with the other disorders she mentioned would be expected by me and as indicated by the State, unfortunately the trauma that's sustained in these kinds of cases can endure

> for a long time, if not a lifetime. . . .
>
> So with that I would say that I agree that this case is one of the more severe cases I've seen, and that I guess the only mitigating factor that I see in this case is [Mr. Romero-Lara]'s age in that he's 62 years old. So I'm going to impose a lengthy sentence in this case, which I think is appropriate, to punish [Mr. Romero-Lara] appropriately for what he did and to also indicate to the community as a general deterrence that this is the kind of conduct that is not tolerated in our community.

Mr. Romero-Lara timely appealed. We consider additional facts as necessary below.

II. DISCUSSION

Mr. Romero-Lara presents three questions for our review, which we've reworded:[3]

[3] Mr. Romero-Lara briefed his Questions Presented as follows:

> 1. WHETHER THE TRIAL COURT ERRED BY IMPROPERLY ADDING A DIFFERENT JURY INSTRUCTION IN RESPONSE TO THE JURY'S QUESTION?
>
> 2. WHETHER THE TRIAL COURT ERRED BY IMPOSING 160 YEARS OF IMPRISONMENT TO THE APPELLANT WITHOUT JUSTIFICATION?
>
> 3. DID DEFENSE COUNSEL PROVID[E] I[]NEFFEC[]TIVE ASSISTANCE BY FAILING TO FILE A MOTION TO SUPPRESS EVIDENCE, AND REQUEST A HEARING TO DETERMINE IF APPELLANT'S CONFESSION WAS VOLUNTARY?

The State briefed the Questions Presented as follows:

> 1. Did the trial court soundly exercise its discretion in formulating its response to a jury note asking what level of corroboration is necessary to sustain a conviction?
>
> 2. To the extent addressed, did the trial court impose a lawful sentence?
>
> 3. Should this Court decline to review, on direct appeal,

Continued . . .

first, whether the trial court abused its discretion in responding to the jury note with the supplemental instruction; *second*, whether the trial court imposed a lawful sentence; and *third*, whether defense counsel rendered ineffective assistance of counsel in failing to challenge the voluntariness of Mr. Romero-Lara's confession.

A. The Trial Court Exercised Its Discretion In Providing The Supplemental Jury Instruction Soundly.

During deliberations, when the jury asked, "[w]hat level of corroboration is needed beyond one witness's testimony?" the trial court responded with a modified identification instruction. Mr. Romero-Lara contends that "the judge's own jury instruction was not a correct statement of the law," that it was "confusing and not responsive to the jury's question," and that it was "prejudicial" to him because the jury returned its verdict shortly after the supplemental instruction was given. The State counters that the trial court exercised its discretion properly because it "clarified that no particular level of corroboration was required with respect to the testimony of a single witness, while emphasizing that the ultimate question is whether the State produced sufficient evidence to convince the jury of [Mr.] Romero-Lara's guilt beyond reasonable doubt." We agree with the State that the court did not abuse its discretion.

The purpose of a jury instruction is "to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct

> Romero-Lara's claim that counsel rendered ineffective assistance by not filing a motion to suppress his pre-trial statement?

verdict." *Appraicio v. State*, 431 Md. 42, 51 (2019). "'Supplemental instructions can include an instruction given in response to a jury question. When the jury asks such a question, courts *must* respond with a clarifying instruction when presented with a question involving an issue central to the case.'" *State v. Bircher*, 466 Md. 458, 462 (2016) (emphasis added) (*quoting Appraicio*, 431 Md. at 51). On appellate review, jury instructions "'[m]ust be read together, and if, taken as a whole, they correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate.'" *Cost v. State*, 417 Md. 360, 369 (2010) (*quoting Fleming v. State*, 373 Md. 426, 433 (2003)). We give considerable deference to the trial court's discretion to instruct the jury, and reverse only on a clear showing that discretion was abused. *Mitchell v. State*, 338 Md. 536, 540 (1995); *Bircher*, 466 Md. at 463.

Mr. Romero-Lara points out in his brief that "the term *corroboration* was used by the State and the Defense over thirty (30) times" during trial. And he concedes that "there was no instruction on corroboration in the instructions already given to the Jury" when it was sent back to deliberate. And yet he contends that the trial court abused its discretion by giving an instruction clarifying that the testimony of a single witness can be sufficient to support a conviction:

> *[T]he identification of the defendant by a single eyewitness as the person who committed the crime if believed beyond a reasonable doubt can be enough evidence to convict the defendant. However, you should examine the identification of the defendant with great care*. Finally, you should consider any other factors affecting the reliability of the witness's

> identification including the witness's reliability or lack of credibility. . . . And now on that point, 3.10 talks about the factors you'd look at in determining the credibility of witnesses. *It is for you to determine the reliability of any identification and give it the weight you believe it deserves.*

(Emphasis added.) These reflect the last two paragraphs of the Maryland Criminal Pattern Jury Instruction on identification of defendants. MPJI-Cr 3:30.[4] And "[w]hen uncorroborated eyewitness testimony is a critical element of the State's case and doubts have been raised about the reliability of that testimony, a request for an eyewitness identification instruction should be given careful consideration." *Gunning v. State*, 347 Md. 332, 354 (1997) (reversing when trial court abused discretion in failing to give an identification instruction).

Mr. Romero-Lara hasn't cited any cases where a similar instruction has been found inappropriate and he doesn't actually articulate how the trial court's instruction misstates the law. He concedes that corroboration was a central issue in the case and that the original set of jury instructions didn't cover whether corroboration for L's testimony was a legal requirement. The jury asked whether corroborating evidence to L's testimony was necessary for a conviction. The short answer was "No." Instead, in an effort to avoid being "too coercive and too directive," the trial court gave a detailed explanation of the jury's duty to judge the credibility of witnesses and the State's burden to prove its case beyond a reasonable doubt. In light of defense counsel's closing argument that implied that

[4] The court omitted portions of the instruction outlining "circumstances surrounding the identification" that were irrelevant to the facts of this case. MPJI-Cr 3:30(1)–(7).

corroborating evidence was required and that L misidentified Mr. Romero-Lara as her abuser, the supplemental instruction was appropriate and within the sound discretion of the trial court to give the jury in response to its question.

B. Mr. Romero-Lara's Sentence Is Lawful.

Next, Mr. Romero-Lara argues that his consecutive sentences violate his right under the Eighth Amendment to the United States Constitution to be free of cruel and unusual punishment because "the trial court sentenced [Mr. Romero-Lara] to 160 years without setting forth the basis for the upward departure of the sentence." Mr. Romero-Lara was convicted of one count of sexual abuse of a minor, which carries a maximum penalty of twenty-five years, CL § 3-602(c); five counts of second-degree sex offense with a maximum statutory penalty of twenty years, CL § 3-306(c)(1) (2016 version); and ten counts of third-degree sexual offense with a maximum penalty of ten years, CL § 3-307(b). All told, Mr. Romero-Lara's maximum sentence was 225 years, and that was the sentence that the State requested. The court imposed 160 years, twelve years above the Maryland Sentencing Guidelines range, but seventy-five years less than the statutory maximum. Mr. Romero-Lara argues that the upward departure was unwarranted because "there was only one (1) victim[,] . . . the alleged criminal acts occurred over a decade ago," and Mr. Romero Lara "did not have any prior criminal history." He contends that the sentencing court "failed to outline its reason as to the 160-year sentence" and its deviation from the guidelines. We disagree.

"Appellate review of sentences is extremely limited in Maryland . . . ." *Teasley v. State*, 298 Md. 364, 370 (1984). There are three limited grounds for appellate review and sentencing guidelines are not mandatory:

> (1) the sentence may not constitute cruel and unusual punishment or otherwise violate constitutional requirements; (2) the sentencing judge may not be motivated by ill-will, prejudice or other impermissible considerations; and (3) the sentence must be within the statutory limitations. Nothing in the law requires that Guidelines sentences or principles be applied; they complement rather than replace the exercise of discretion by the trial judge. Consecutive sentences do not *per se* constitute cruel and unusual punishment. Nor is it an impermissible consideration, within the contemplation of our cases, for a trial judge not to apply the Guidelines, or to apply them improperly. The sentences in this case were lawfully imposed within statutory limits and constituted the end result of a good faith exercise of the trial judge's discretion.

Id. at 370–71 (citations omitted). Here, Mr. Romero-Lara doesn't contend the trial court was biased or based his sentences on impermissible considerations, or that his sentences fell outside statutory limits. He asserts in essence that the trial judge was "powerless to run the sentences consecutively" under constitutional requirements. *Kaylor v. State*, 285 Md. 66, 69 (1979).

The Eighth Amendment prohibits "cruel and unusual punishments," which includes "'grossly disproportionate sentences.'" *State v. Stewart*, 368 Md. 26, 31 (2002) (*quoting Harmelin v. Michigan*, 501 U.S. 957, 997 (1991) (Kennedy, J., concurring)). But "successful challenges to the proportionality of a particular sentence are exceedingly rare." *Id.* Mr. Romero-Lara doesn't cite any case law or legal precedent in support of his sentencing challenge, and in general, "consecutive sentences do not constitute cruel and

unusual punishment where the length of each sentence is within the limits prescribed by statute." *Kaylor*, 285 Md. at 69; *see also Teasley*, 298 Md. at 370.

And indeed, Maryland courts have affirmed much longer sentences than this. In *Malee v. State*, 147 Md. App. 320 (2002), for example, the defendant committed repeated sexual offenses against the seven- and three-year-old sons of his live-in girlfriend over the course of a six-month period. *Id.* at 323. He was convicted of thirty-one separate charges for various second-degree and third-degree sexual offenses, *id*., and punished with consecutive sentences totaling 450 years. *Id.* at 333. Mr. Malee appealed, arguing his "sentence was so 'excessive' as to be in violation of the Eighth Amendment's prohibition of 'cruel and unusual' punishment." *Id.* We rejected his constitutional challenge, holding that his 450-year prison sentence was a proper exercise of the trial court's discretion, which includes imposing consecutive sentences for distinct violations of the law. *Id.* at 335.

Malee v. State is distinguishable in one way—Mr. Malee's sentence fell within the Maryland sentencing guidelines. *Id.* at 334. Here, Mr. Romero-Lara's sentence exceeded the sentencing guidelines by twelve years. But again, the Maryland Sentencing Guidelines are not binding on judges:

> As stated in the preface to the revised Guidelines, the Guidelines are not mandatory; instead they complement rather than replace the judicial decision-making process or the proper exercise of judicial discretion. Judges, therefore, may sentence outside the range suggested by the Guidelines, either more or less severely, but in doing so they are requested to state reasons in writing for departing from the range of sentences recommended by the Guidelines.

Teasley, 298 Md. at 367 (internal quotation omitted). And notwithstanding the fact that Mr. Romero-Lara never made any request for the court to "state reasons in writing for departing from the range," *id.*, his contention that the trial court failed to justify the upward departure in sentence is simply incorrect. The court explained at sentencing that "this is one of the more severe cases" that it had seen and that it would "impose a lengthy sentence in this case," which it thought was "appropriate[] to punish [Mr. Romero-Lara] appropriately for what he did and to also indicate to the community as a general deterrence that this is the kind of conduct that is not tolerated in our community." We find no error in Mr. Romero-Lara's sentence.

C. We Decline To Address The Claim That Mr. Romero-Lara's Counsel Rendered Ineffective Assistance On Direct Appeal.

Finally, Mr. Romero-Lara argues his convictions should be reversed because his counsel rendered ineffective assistance when they failed to file a motion to suppress his confession. At trial, Detective Maines testified that she interviewed Mr. Romero-Lara on video with a Spanish translator present. Mr. Romero-Lara, who speaks only Spanish and is unable to read and write, was advised of his *Miranda* rights, and agreed to be interviewed. During the interview, Mr. Romero-Lara admitted to putting his penis in L's mouth "but it was just that" and he insisted "nothing else happened."

At a pretrial hearing, Mr. Romero-Lara's counsel stated that he and the prosecutor "spoke about the statement," referencing the confession. Counsel "agree[d] that [Mr. Romero-Lara] was Mirandized and that there was no police misconduct; however, we both agree that a jury instruction on voluntariness was in order due to some of the facts and

circumstances . . . .” Defense counsel explained that “I don’t think there’s really an element of coercion,” but disputed that Mr. Romero-Lara, based on his “very minimal education,” understood “what was going on.” It appears that the defense thought a motion to suppress would have been futile and a waste of time and resources, and decided instead to attack the voluntariness of the statement at trial. On appeal, Mr. Romero-Lara argues that the confession was coerced and that his counsel rendered constitutionally ineffective assistance by not moving to suppress his statement. We agree with the State, however, that ineffective assistance review on direct appeal is inappropriate in this case.

“The Sixth Amendment to the United States Constitution, applicable through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights guarantee criminal defendants the right to the assistance of counsel at critical stages of the proceedings.” *Mosley v. State*, 378 Md. 548, 556 (2003) (footnotes omitted). This includes “the right to effective assistance of counsel,” *id.* at 557, which, when denied, compromises “the integrity of the adversarial process . . . .” *Id.* To prove ineffective assistance of counsel, a defendant has the burden to prove (1) “counsel’s performance was deficient,” and (2) “that the deficiency prejudiced the defense.” *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (*citing Strickland v. Washington*, 466 U.S. 668, 687 (1984)). There is a presumption that counsel acted reasonably and we “must thus assume, until proven otherwise, that counsels’ conduct fell within a broad range of reasonable professional judgment, and that counsels’ conduct derived not from error but from trial strategy.” *Mosley*, 328 Md. at 558. Post-conviction evidentiary proceedings are therefore “the most appropriate way to raise

the claim of ineffective assistance of counsel." *Id.* at 558–59 (*citing* Md. Code, 2001, § 7-102 of the Criminal Procedure Article). And claims of ineffective assistance of counsel may be raised on direct appeal "only when the facts found in the trial record are sufficiently developed to clearly reveal ineffective assistance of counsel and that counsel's performance adversely prejudiced the defendant." *Id.* at 567.

This case does not present an appropriate opportunity for direct review of Mr. Romero-Lara's ineffective assistance claim. Although the record does, in part, disclose Mr. Romero-Lara's counsel's rationale for foregoing a motion to suppress, it sounds in reasonable professional judgment, and doesn't "clearly reveal ineffective assistance of counsel . . . ." *Id.* In addition, it is also unclear on this record whether Mr. Romero-Lara was prejudiced anyway. The jury's note (implying that L's testimony was uncorroborated) indicates that the jury did *not* consider the Mr. Romero's confession to be voluntary. But we are not in a position on appeal to resolve whether Mr. Romero-Lara's statement was coerced and whether the admission of the statement adversely prejudiced him, nor to evaluate his efforts to rebut the presumption that trial counsel acted reasonably. Because we don't find that "the record is sufficiently developed to permit a fair evaluation of the claim[,]" *Testerman v. State*, 170 Md. App. 324, 335 (2006), we decline to consider Mr. Romero-Lara's ineffective assistance of counsel claim at this time.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.