Circuit Court for Anne Arundel County
Case No. C-02-CR-21-000532

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1053

September Term, 2023

DEANDRE MARQUIS ALLEN

v.

STATE OF MARYLAND

Shaw,
Albright,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: July 3, 2024

This appeal arises from Appellant Deandre Marquis Allen's attempt to withdraw his guilty plea according to his plea agreement. Mr. Allen was charged with homicide after allegedly stabbing a fellow inmate with a sharpened fan blade while incarcerated. At a hearing, Mr. Allen agreed to plead guilty to first-degree murder in return for a life sentence, with all suspended but 15 to 30 years.

At his sentencing hearing, Mr. Allen attempted to withdraw his plea, claiming that the terms of the agreement gave him the opportunity to withdraw it. However, the court rejected Mr. Allen's request, stating that the agreement only allowed him the opportunity to withdraw his plea if the court sentenced him outside the agreed-upon range of 15 to 30 years. The court proceeded to sentence Mr. Allen to life, with all suspended but 25 years.

Mr. Allen filed for leave to appeal, which we granted. He then filed this appeal. He presents the following question:

> Did the trial court err by not allowing Mr. Allen to withdraw his guilty plea?

For the reasons below, we answer this question "yes." Accordingly, we vacate the circuit court's judgment and remand for further proceedings.

BACKGROUND

I. Facts of the Alleged Crime[1]

On the night of December 14, 2020, the victim, an inmate at Dorsey Run Correctional Institute, was asleep in his bunk when he was stabbed repeatedly with a

[1] The following facts are summarized from the State's proffer at the plea hearing.

sharpened fan blade. Mr. Allen reported to the correctional officers on duty that an inmate was bleeding. The correctional officers called the nurse and an ambulance. The victim was unconscious and unresponsive when medical staff arrived. The victim eventually died from his injuries.

An autopsy revealed that the victim had 30 stab wounds and 10 cuts all over his body, including his face, neck, back, and scalp. Of those stab wounds, five were fatal, with one puncturing his brain and four puncturing his lungs. He also had blunt force trauma.

An investigation pointed to Mr. Allen. Surveillance video depicted Mr. Allen entering the victim's bunk, attacking him, and leaving. During the investigation, inmates also revealed they had observed Mr. Allen attacking the victim. Further, they stated that after the incident, Mr. Allen wrote a note and passed it around to the other inmates, explaining that the victim had been sexually abusing Mr. Allen and the murder was in retaliation for that abuse.

Mr. Allen was indicted on four counts. Count One included first-degree murder, second-degree murder, and manslaughter. The remaining counts were possession of a weapon while in a place of confinement, possession of contraband within a place of confinement, and wear and carry of a dangerous weapon with intent to injure.

II. Procedural History

A. 5/4/2022 "Plea Hearing"

The court held a hearing on May 4, 2022. After addressing some preliminary matters,[2] the court began a discussion of a possible plea. The discussion began during a bench conference although a large part of that exchange was inaudible and thus not recorded in the transcript. During the bench conference, the court said,

> Tell him that for murder, I will not give him less than 15, and I will not give him more than, active time is what I'm talking about. I will not give him more than 40.[3] So that's his ballpark.

(footnote added). After the bench conference concluded, defense counsel conferred with Mr. Allen. Then, she said on the record,

> [J]ust so that we all operate from the same set of facts, I represented to Mr. Allen, or I conveyed to Mr. Allen, the Court's indication. He asked me to come back to you, for the specific sentence of life, suspend all but 15.

After conferring with defense counsel again, Mr. Allen interjected, and the following exchange occurred:

> MR. ALLEN: I would take—I will take the life, all suspended but 15.

[2] The court found the defendant competent to stand trial, pursuant to an evaluation done prior to the hearing. The court also inquired as to Mr. Allen's intentions regarding his representation by counsel because Mr. Allen had sent the court a letter stating he had some concerns about his representation and wanted to discharge his counsel. Upon inquiry, Mr. Allen stated that he had reconsidered and no longer wanted to discharge counsel. The court treated the letter as a motion to discharge counsel and denied it.

[3] Somewhere between the bench conference and the next exchange on the record, the ceiling apparently changed from 40 years to 30 years.

THE COURT: Say it again, sir.

MR. ALLEN: I would plead to life, all suspended but 15, if that's what you going to give me. I mean, from what she explained, I ain't really understand it. But it's basically, like, if I pleaded life, all suspended but 15, then, I can get anywhere from 15 to 30. And that's like—that's random. That's a whole nother 15 years. And I don't even know what's going to happen. I don't even understand all of that. I'm just trying to take the plea, and be out of everybody hair, so I could go about my business—

THE COURT: Well . . . with all due respect, I'm—I gave counsel an indication of a range that I thought the sentence would fall in. I'm not going to negotiate that. Because I think that would be—now, I'm negotiating against myself, and against the people of Anne Arundel County. But any sentence that I would give you, within that range, would be fair. I don't know if your lawyer explained this to you, and I'm sure she did, **but if I was to sentence you outside that range, I would allow you to withdraw your guilty plea and have a trial.**

MR. ALLEN: So that means that, if I plead guilty to life, all suspended but 15, then I could possibly not get 15. I could get more than that.

THE COURT: Yes, I told you—I think she conveyed to you the range that I gave, right? And the range was between 15 and 30.

[DEFENSE COUNSEL]: Correct. I did communicate that. And I also indicated to Mr. Allen that the Court would have to hear from the State, from Defense. And it's my understanding the Court intends to also consider the results of a presentencing evaluation in arriving at its decision. But the Court was clear that the floor would be 15, and the ceiling, active, would be 30. **And that, if the Court could not do—or the Court would also give Mr. Allen the opportunity to withdraw his plea.** That is what I communicated to Mr. Allen.

(Emphasis added).

The State then clarified that if the case went to a jury trial, it would seek life without the possibility of parole. After more discussion, defense counsel asked Mr. Allen,

[A]re you—you're rejecting the offer? Is that what you're—

MR. ALLEN: No, I'm taking it. But I want to talk to you.

[DEFENSE COUNSEL]: Okay. Well, pause. When you say you're taking it, you're taking what?

MR. ALLEN: Life, all suspended but 15.

[DEFENSE COUNSEL]: Well, the Court—that's . . . the floor. The ceiling is 30. So it's between 15 and 30, active. **But the Court will allow you to withdraw your plea, if the Court is not able to accommodate the floor.**

MR. ALLEN: Can I ask one question?

THE COURT: Sure.

MR. ALLEN: Can I ask why the fluctuation, between 15 and 30? And why not just something direct?

THE COURT: Because, at a sentencing hearing . . . the State puts on evidence. We call it aggravating evidence, right? So I . . . hear from the victims, I hear about your prior criminal history, I hear all kinds of stuff I don't know. And [defense counsel] will put on what we call mitigating evidence. Judge, he did what he did, but he did it for this reason, or, you know, all the things that a lawyer would say about her client, in mitigation. And then, I have to struggle with that and decide what I'm going to do.

So that's why I don't want to commit myself to a number today, right? Because I – there's evidence that I haven't heard in this case. So I want to be fair to you. I also want to be fair to the people of Anne Arundel County. That's my job. So that's why I'm not committing myself to a rock solid, black and white number, today. I gave you a range. I think it's a pretty fair range. You don't lose a whole lot, whether I hit the floor or hit the ceiling, in that range. But I'm not trying to twist your arm. That's not my job. Okay. I hope that's a—I hope that's an acceptable answer to the question.

Do you need to talk to [defense counsel] further?

[DEFENSE COUNSEL]: Yes, please.

(Emphasis added).

The court then took a recess for almost four hours while Mr. Allen spoke with defense counsel. When the parties returned from the recess, the State stated the plea agreement for the record, and defense counsel supplemented with her understanding of the plea:

> [THE STATE]: Your Honor, it's my understanding that the Defendant is prepared to enter a plea of guilty to murder in the first degree. I'm showing that as Count I. Upon Your Honor's acceptance of that plea, and a finding of guilt, the State would then, at sentencing, enter a nolle prosequi to the remaining charges. Pursuant to the plea agreement, the State would withdraw, at sentencing, its notice of—its notice to seek life without the possibility of parole, which was filed appropriately in this matter. We would be asking for a presentence investigation, which, I believe, would take some time, and also ask for the victims to be able to be—the victim[']s representatives to be available to provide any victim impact statements.
>
> THE COURT: Is that correct, [defense counsel]?
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> [DEFENSE COUNSEL]: It's my understanding Mr. Allen is going to proceed by way of a plea to first degree murder. It's also my understanding that, based on conversations and discussions, the Court has indicated that, as to that count, upon a finding of guilt, it's inclined to do life, suspend all but a floor of 15, and a ceiling up to 30 years. So at a minimum 15, and, a maximum 30, active, or somewhere in between.
>
> **The Court has also indicated a willingness to allow Mr. Allen to withdraw the plea and proceed to trial, if that is his election.** And, with that, it's my understanding Mr. Allen will proceed.

(Emphasis added).

Defense counsel then proceeded to qualify Mr. Allen. Once he was qualified, the State proffered the facts of the crime, including what evidence the State would have produced had the matter proceeded to trial. After the State's proffer, defense counsel added that Mr. Allen was being sexually assaulted and was afraid for his life. The court then found Mr. Allen guilty of first-degree murder, and the hearing concluded.

B. 11/16/2022 Sentencing Hearing

The court conducted the sentencing hearing six months later. When the sentencing hearing began, Mr. Allen asked the court if he could withdraw his guilty plea. The following exchange occurred:

> MR. ALLEN: All right. When I took this plea, I was told by [defense counsel], and you, that, once we come to the sentencing today, if we couldn't come into a agreement that you gave me a binding agreement, that I can withdraw my plea so –
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> THE COURT: Your plea was accepted, months ago, sir.
>
> MR. ALLEN: Yeah, but you said that I can withdraw it, at sentencing.
>
> THE COURT: I said, if I didn't stay within the agreed range. But I'm going to stay within the agreed range.
>
> MR. ALLEN: That's not what she said. That's not what she told me. That's the only reason I took the plea. Because she said that the only way that you would take 15 is if I plead to life. So I plead to life, all suspended but 15. And you put a cap on 30. And I told her I didn't want it. And she said, either way, it's in my best interest, because, at sentencing, I can withdraw my plea. So that's the only reason I took my plea.
>
> THE COURT: You can only—
>
> MR. ALLEN: I have paperwork where it says—

THE COURT: Hang on a second. Do you want to withdraw your plea?

MR. ALLEN: Yeah.

The court then explained that the plea agreement was that Mr. Allen could withdraw his guilty plea if the court sentenced him outside the 15- to 30-year range, which it said it would not do. The court, the State, and defense counsel agreed that during the plea hearing, defense counsel had conveyed to Mr. Allen that he could only withdraw his plea if the court sentenced him outside the agreed-upon range. However, the court did not have a transcript of the plea hearing. Mr. Allen argued that defense counsel had told him that he can withdraw his plea if he did not like the sentence the court ordered. He also argued that he only took the plea agreement because he had the opportunity to withdraw it, and he would not have taken it if he knew he could only withdraw it if the court went outside the agreed-upon sentencing range.

After more argument, the court denied Mr. Allen's request to withdraw his plea.[4] It then proceeded with the sentencing hearing. The court sentenced Mr. Allen to life, with all but 25 years suspended. Upon release, the court said Mr. Allen would be on a period of probation for five years.

Mr. Allen timely filed an application for leave to appeal, which was granted.

[4] We treat Mr. Allen's request as a motion to withdraw his plea, and the court's denial as a denial of that motion.

DISCUSSION

I. Standard of Review

We examine "[w]hether a trial court has violated the terms of a plea agreement [a]s a question of law[.]" *Cuffley v. State*, 416 Md. 568, 581 (2010). Further, we review the "question of whether the agreement's language is ambiguous" as a question of law. *Ray v. State*, 454 Md. 563, 573 (2017). Therefore, we construe Mr. Allen's plea agreement under a *de novo* standard of review.

II. Parties' Contentions

On appeal, Mr. Allen argues that the plea agreement promised him the ability to withdraw his plea, and thus, the circuit court erred in denying his motion to withdraw it. He argues that the circuit court failed to examine the plea hearing transcript in interpreting the terms of the plea agreement. He then contends that under the standard established in *Cuffley*, a reasonable layperson would have understood the agreement as Mr. Allen did and would have believed it allowed him to withdraw his plea at his election. 416 Md. at 582. He argues that the ability to withdraw his plea was a promise that induced him to agree to the plea in the first place, and therefore, it should be enforced. Finally, he contends that even if the promise to withdraw was ambiguous, the ambiguity should be resolved in his favor.

Conversely, the State argues that the circuit court adhered to the terms of the plea agreement. First, it contends that any error in the court not examining the plea hearing transcript to interpret the plea agreement was unpreserved; further, it argues that any such

error is immaterial because appellate courts review the issue *de novo*. It next contends that a reasonable layperson would have understood that the plea agreement, when viewed holistically, only allowed withdrawal of the plea if the court sentenced Mr. Allen outside the 15- to 30-year range. Thus, it argues that, in denying Mr. Allen's motion to withdraw his plea, the circuit court adhered to the terms of the agreement as a reasonable layperson would have understood them because it sentenced him within the established range.

III. Analysis

Our Supreme Court has said that "contract principles should generally guide the determination of the proper remedy of a broken plea agreement." *Cuffley*, 416 Md. at 579 (cleaned up). However, 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.* at 580 (quoting *Solorzano v. State*, 397 Md. 661, 668 (2007)); *see also Ray v. State*, 454 Md. 563, 576 (2017). Thus, fairness and equity must govern our analysis as well. *See Cuffley*, 416 Md. at 580 ("'[T]he standard to be applied to plea negotiations is one of fair play and equity under the facts and circumstances of the case, which, although entailing certain contract concepts, is to be distinguished from . . . the strict application of the common law principles of contracts.'" (quoting *State v. Brockman*, 277 Md. 687, 697 (1976))).

In construing a plea agreement, we look solely to the record established at the plea hearing and interpret the agreement according to how a reasonable, non-lawyer defendant in that position would understand the agreement. *Id.* at 582. "'[W]hen a plea rests in any

significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.'" *Brockman*, 277 Md. at 694 (quoting *Santobello v. New York*, 404 U.S. 257, 262 (1971)). Our Supreme Court has thus set forth a three-step test to interpret a plea agreement. "First, we must determine whether the plain language of the agreement is clear and unambiguous as a matter of law." *Ray*, 454 Md. at 577. Second, if the plain language is ambiguous, then "we must 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.* Third, if there is still ambiguity after examining the plea agreement and the proceeding, the ambiguity must be resolved in favor of the defendant. *Id.* at 577–78; *see also Matthews v. State*, 424 Md. 503, 523 (2012) (finding, based on the record of the plea hearing, that the plea agreement was ambiguous, and that ambiguity must be resolved in defendant's favor).

Here, Mr. Allen's plea agreement was ambiguous as a matter of law as to the conditions under which Mr. Allen would be allowed to withdraw his plea. The court, State, and defense counsel all explained the agreement differently to Mr. Allen. Even though the court first said it would allow Mr. Allen to withdraw his guilty plea if the court was to sentence Mr. Allen outside the agreed-upon range, defense counsel then said the court would allow Mr. Allen to withdraw his plea "if the Court is not able to accommodate the floor." Defense counsel's statement suggests that the court would allow Mr. Allen to withdraw his sentence if it sentenced him to more than the floor of 15 years

of active incarceration. The court's statement and the defense counsel's statement thus do not line up with each other. Further, in reiterating the plea agreement for the record, defense counsel said the court would allow Mr. Allen to withdraw his plea agreement "if that [wa]s his election." This statement adds a third view: that Mr. Allen would be able to withdraw his plea if he wished, suggesting he could do so at any time. Therefore, the plea agreement is ambiguous because the record does not establish one clear condition under which Mr. Allen could withdraw his plea.

The record before us is in contrast to that in *Ray v. State*, where we held the plea agreement was clear and unambiguous. 454 Md. at 578. In *Ray*, the plea agreement established a "[c]ap of four years on any executed incarceration." *Id.* The circuit court sentenced the defendant to ten years with all but four years suspended, plus a period of four years of probation. *Id.* at 569–70. The defendant attempted to argue that a reasonable layperson would understand his agreement to mean that the cap of four years covered suspended time and probation. *Id.* However, our Supreme Court held that the terms of the agreement were unambiguous that the four-year cap did not apply to suspended time and probation because the agreement explicitly applied the cap only to "executed incarceration." *Id.* at 578. Thus, the court upheld the circuit court's sentence as complying with the unambiguous terms of the plea agreement. *Id.* at 580–81.

Here, unlike in *Ray*, the record of Mr. Allen's plea hearing does not reveal one unambiguous provision concerning when Mr. Allen could withdraw his plea. Rather, the record reveals multiple statements that conflict with each other concerning the

circumstances under which Mr. Allen could withdraw his plea. In the face of this ambiguity, we must move to the second and third step of the analysis to interpret Mr. Allen's plea agreement.

To a reasonable layperson, the terms of Mr. Allen's plea agreement would be at least ambiguous. Again, the court, State, and defense counsel all repeated different versions of the plea agreement, including statements that would suggest Mr. Allen could only withdraw his plea if the court sentenced him outside the agreed-upon range, or that he could withdraw his plea if the court sentenced him to more than 15 years of active incarceration, or that he could withdraw his plea whenever he wished.

In fact, a reasonable layperson likely would have understood the agreement as Mr. Allen did: that he could decide to withdraw his plea until he was sentenced, and at that point, he could still withdraw his plea if the court did not sentence him to 15 years of active incarceration. The court began by telling Mr. Allen that he could withdraw his plea if the court sentenced him outside the agreed-upon range. However, Mr. Allen said he did not understand, and defense counsel continued to explain the plea agreement by saying that he would have the opportunity to withdraw his plea at "his election" and "if the Court [were] not able to accommodate the floor." What defense counsel said when restating the agreement immediately before qualifying Mr. Allen—that he could withdraw his plea if that was "his election"—is especially important because to a reasonable defendant, that would appear to be the final version of the agreement. While Mr. Allen may have heard different versions throughout the hearing and said he did not

understand certain aspects, at that point, defense counsel had repeatedly stated that Mr. Allen could withdraw his plea if he wanted to. Therefore, a reasonable layperson would likely interpret the agreement the same way Mr. Allen did, but if not, the agreement would be at least ambiguous to a reasonable layperson.

That the court, State, and defense counsel all understood the agreement to mean that Mr. Allen could only withdraw his plea if the court sentenced him outside the agreed-upon range does not change this conclusion. Even if the court, State, and defense counsel all understood the agreement, we look to how a reasonable layperson "unaware of the niceties of sentencing law" would understand the agreement. *Cuffley*, 416 Md. at 582. The test is an objective one that focuses on a layperson's interpretation, as the court, State, and defense counsel may all understand some nuance or habit of sentencing law that they do not convey to the defendant. *Id.* That that nuance is obvious to them does not mean it is to the defendant, with whom the agreement is made. *See id.* at 583 ("[A] plea 'constitutes a waiver of substantial constitutional rights requiring that the defendant be adequately warned of the consequences of the plea.'" (quoting *United States v. Jefferies*, 908 F.2d 1520, 1523 (11th Cir. 1990))). While the court, State, and defense counsel may have automatically understood that Mr. Allen's ability to withdraw his plea was contingent on the court sentencing him outside the agreed-upon range, they did not adequately explain that contingency to Mr. Allen.

Because we conclude that a reasonable layperson would have interpreted the plea agreement as Mr. Allen did, or would at least have found it ambiguous, we resolve the

ambiguity in favor of Mr. Allen in order to give him the benefit of his bargain. *See id.* ("Ambiguity in plea agreement is resolved against the government because of the government's advantage in bargaining power." (cleaned up)). Mr. Allen's interpretation of the plea agreement was that he would be able to withdraw his plea at his election or if the court sentenced him to more than 15 years of active incarceration. Since Mr. Allen asked to withdraw his plea before being sentenced and the court sentenced him to 25 years of active incarceration, the benefit of his bargain would have allowed him to withdraw his plea. Thus, we conclude that the circuit court erred in failing to grant Mr. Allen's motion to withdraw his plea. As such, we vacate Mr. Allen's conviction and remand for further proceedings not inconsistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS VACATED; CASE IS REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.