UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0467

September Term, 2013

ANTHONY ALLEN CRAWLEY

v.

STATE OF MARYLAND

Woodward,
Nazarian,
Reed,

JJ.

Opinion by Reed, J.
Dissenting Opinion by Woodward, J.

Filed: August 8, 2016

This is an appeal from a corrected sentence issued by the Circuit Court for Prince George's County after it determined that the original suspended life sentence that Anthony Allen Crawley ("appellant") received for pleading guilty to felony murder was illegal because it lacked a probationary term. The court added a term of four years supervised probation and imposed various conditions. The appellant noted a single issue[1] on appeal, which we rephrase:

> Is the new sentence imposed by the circuit court invalid because it violates the terms of the plea agreement by adding four years of probation?

We answer this question in the affirmative. Therefore, we vacate the modified sentence imposed by the circuit court and remand the case for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts regarding the appellant's involvement in the 1997 murder of an off duty D.C. police officer are not in dispute.

In the early morning of February 26, 1997, two men by the names of Antwan Brown and Donovan Strickland asked the appellant if he wanted to assist them in a robbery. The appellant agreed. Thereafter, the appellant, Brown, and Strickland observed their soon-to-be victim putting gas in his car at a Mobil gas station. The victim was Oliver Smith, Jr., an

[1] The appellant worded the issue as follows:

> Did adding four years supervised probation to Crawley's sentence violate his plea agreement, rendering the sentence illegal?

off-duty D.C. police officer. The three men followed the victim back to his house, where they ordered him to the ground at gunpoint after he parked his car. Strickland continued to hold the gun out while he and the appellant searched the victim. They removed from the victim's pocket both a wallet and a gun. Strickland, who was now holding the victim's gun as well as his own, opened up the wallet and observed a police badge inside. He then informed the appellant and Brown that their victim was a police officer, and upon hearing this, Brown took the victim's gun from Strickland, pressed it up against the victim's head, and shot him there three times.

In return for his testimony against Brown and Strickland, the State offered the appellant a plea deal of a life sentence with all but thirty-five years suspended. The plea agreement, which was an ABA binding plea agreement, read in pertinent part:

> The State, the Court, and the Defendant agree that the Defendant shall be sentenced after the conclusion of the trials of codefendants Anthony[2] Brown and Donovan Strickland, to life suspend all but 35 years for the aforesaid felony murder charge. The underlying charge of robbery with a deadly weapon will merge, by operation of law, with the felony murder charge at sentencing.

Neither the terms of the plea agreement nor the record of the plea hearing include any specific mention of probation following the life sentence suspend all but thirty-five years of imprisonment. The Court, however, did engage in the following colloquy with the appellant to determine whether he sufficiently understood the consequences of his plea:

> THE COURT: Now, do you understand that the remaining sentence that was not, that was suspended, that could be held

[2] The co-defendant's name is Antwan Brown.

over your head, so-to-speak, whether it is eight months or whether it is a year or three years, whatever the amount of time is, in light of your plea of guilty today that could be reinstated?

Do you understand that?

[The appellant]: Yes, sir, I understand.

THE COURT: That is the important reason I'm asking these questions, to make sure you know all the consequences where you plead guilty.

Do you understand that?

[The appellant]: Yes, sir.

THE COURT: And that is separate and apart from the plea agreement that you entered into. And that means to say myself, [defense counsel] Mr. Trainor or [the State's Attorney] Mr. Manico have no control over what the Parole Board may do. They may reinstate with just an administrative hearing. They don't have to bring you into a courtroom to reinstate your original sentence.

Do you understand that?

[The appellant]: Yes, sir.

. . . .

THE COURT: . . . Mr. Crawley, for the record, I believe [defense counsel] Mr. Trainor has at your request not only talked to you, obviously in great detail about this, but he's also communicated with members of your family to discuss this matter.

Is that correct, Mr. Trainor?

MR. TRAINOR: Yes. Actually, we talked to his sister today. . . . And she is a parole officer in the District of Columbia who Mr. Crawley relies on a great deal for advice.

THE COURT: Is that correct, Mr. Crawley?

> [The appellant]: Yes, sir, Your Honor.
>
> THE COURT: All right. Okay. Let the record reflect again that the Court is satisfied Mr. Crawley has knowingly, intelligently and voluntarily signed this plea agreement and I will accept the same.

The court held a sentencing hearing on October 16, 1998, and sentenced the appellant to that which was agreed upon in the plea agreement, which was articulated by the court as follows:

> The sentence of this Court is, as to Count One, first degree felony murder, that you be sentenced to life in prison. Pursuant to the plea agreement, all but 35 years is suspended, and that sentence is to commence as of February 27th, 1997.
>
> As to Count Two, robbery with a deadly weapon, the sentence is that the Court rules that no sentence can be imposed because under felony murder robbery with a deadly weapon merges with Count Number One.

Fourteen years later, due to changes in the state of the law, the State adopted the appellant's motion to correct an illegal sentence because the Department of Corrections brought to their attention the fact that the appellant's suspended life sentence did not include probation as required[3] for felony murder convictions. The circuit court held a hearing on the motion on February 8, 2013, and determined that a new sentence was

[3] *See* Maryland Code, Criminal Law Article ("C.L.") § 2-201(b) (Note: A different version of this law, Maryland Code, Article 27, § 412(b) (1996), was in place at the time the appellant entered his plea agreement, but the minimum sentence for felony murder was still life imprisonment).

necessary to correct the illegality.[4] Therefore, a resentencing hearing took place on April 26, 2013, at the conclusion of which the court gave the appellant a new sentence, with the only material change being the addition of four years of probation to follow the life sentence of imprisonment with all but thirty-five years suspended.[5] Furthermore, the court placed conditions on the appellant's probation that he undergo random urinalysis testing, as well as any drug or alcohol treatment suggested by the supervising agent[6], and that he cannot contact certain members of Officer Smith's family.[7] The appellant filed an appeal challenging the validity of the new sentence in light of the fact that a probationary term was not part of the 1997 plea agreement.

[4] As discussed below in the Applicable Law section, the illegality found by the circuit court stems from the combination of C.L. § 2-201(b) (which states that the minimum penalty for felony murder is a life sentence) and the Court of Appeals' holding in *Greco v. State*, 427 Md. 477 (2012), that a suspended life sentence without a probationary term is to be treated as a term of years sentence rather than a life sentence.

[5] The resentencing Court stated that "I can go up to five years [of probation,] [b]ut in recognition that you have done extremely well [the last sixteen years in prison], while balancing the interest of society at the same time, the Court will place you on a period of four years probation . . . . "

[6] The Court deemed this necessary because the appellant himself admitted in a *pro se* Petition for Civil Commitment to the Department of Health and Mental Hygiene for Drug and/or Alcohol Treatment, that he has "a dependency of 15 years or more on cocaine and alcohol . . . which in every instance of . . . [his] involvement with the criminal justice system has been the major contributing factor to [his] actions."

[7] Generally, courts have broad authority to impose probationary conditions pursuant to Md. Rule 4-346.

DISCUSSION

A. Parties' Contentions

The appellant submits that we should first determine the terms of his sentence based on what a reasonable person in his position would have understood his sentence to be at the time of its imposition, citing *Cuffley v. State*, 416 Md. 568, 582 (2010), and then determine whether the circuit court "[failed] to fulfill the terms of that agreement" by adding the four years of probation. *Solorzano v. State*, 397 Md. 661, 669-70 (2007). The appellant asserts that if the probationary term is in fact outside the scope of what a reasonable person in his position would have understood his sentence to be, then the new sentence is "illegal" under Md. Rule 4-345(a) pursuant to *Matthews v. State*, 424 Md. 503, 506 (2012) (holding that "Rule 4-345(a) is an appropriate vehicle for challenging a sentence that is imposed in violation of a plea agreement to which the sentencing court bound itself . . . [and] that the sentence Petitioner is serving is illegal because it exceeds the sentencing 'cap' to which the Circuit Court agreed to be bound."). Because his new sentence, like the sentence in *Matthews*, exceeds the sentence term specified in his plea agreement, the appellant believes that we have an obligation to, as Rule 4-345(a) states, "correct an illegal sentence at any time." The appellant asserts that this obligation is amplified by the Court of Appeals' reiteration in *Dotson v. State*, 321 Md. 515, 523 (1991), that the Maryland Rules have the force of law.

The appellant also raises concerns that allowing his sentence to be amended with the addition of a probationary term will upset the overall goals of the plea bargaining process in the future. He submits that defendants who plead guilty are not the only ones

who benefit from plea agreements. Rather, the appellant highlights that plea agreements also benefit the State as well as society on the whole by promoting justice through the elicitation of testimony that would otherwise be unavailable against other wrongdoers. The appellant believes that amending his sentence with terms that were mentioned neither in the plea agreement itself nor during his plea hearing will make future defendants wary of pleading guilty, which will thus deprive everyone of the aforementioned benefits. Furthermore, the appellant asserts that probation was clearly not intended to be a part of his plea; however, if we believe that his plea was ambiguous regarding probation, then he urges us to resolve such ambiguity in his favor in accordance with the articulated result in *Baines v. State*, 416 Md. 604, 615 (2010).

Additionally, the appellant acknowledges the Court of Appeals' holding in *Greco v. State*, 427 Md. 477, 513 (2012), that a sentence for first-degree murder is illegal without a period of probation; he believes, however, that his case can be distinguished from *Greco* because the defendant in *Greco* did not plead guilty, but rather, was sentenced by way of a jury verdict. *Id.* at 482. But in the alternative, *i.e.*, if we believe that *Greco* applies in the instant case, the appellant urges us to determine that any illegality arising under *Greco* is secondary to the illegality that resulted from the circuit court amending his sentence after fourteen years to include terms that were beyond the scope of his plea agreement. For this reason, the appellant believes that we should strike the probationary term from his sentence, or, in the alternative, amend the probationary term to be as short as possible so as to reflect what he believes was intended by the plea agreement.

Co-appellees, the State of Maryland and the victim's representative, raised various similar arguments in their separately filed briefs. Appellees argue that we should affirm the lower court's decision to add a four-year probationary term to the end of the non-suspended portion of the appellant's life sentence because doing so would be essentially the same as what the Court of Appeals did in *Greco*. In that case, the defendant was found guilty by a jury before being sentenced to a suspended life sentence without probation. *Id.* at 485, 505. For us to do otherwise—*i.e.*, to erase the probationary term added by the lower court—would be to acclaim that term-of-year sentences are acceptable as punishment for felony murder, even though C.L. § 2-201(b) requires a minimum life sentence. *See Cathcart v. State*, 397 Md. 320, 329 (2007).

Co-appellees assert that the appellant actually agreed to more than just thirty-five years of imprisonment when he entered his guilty plea. They assert that the appellant specifically pled guilty to *life imprisonment* when he accepted the plea agreement that included the words "life, suspend all but thirty-five years, for the . . . felony murder charge." Appellees believe that a probationary term is implied in that and any similarly-worded plea agreement, especially considering this Court's holding in *Rankin v. State*, 174 Md. App. 404 (2007), *cert. denied*, 400 Md. 649 (2007), that "the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence." *Id.* at 411-12.

Appellees argue that the Criminal Law Article should prevail whenever a conflict such as this arises. They assert that Maryland courts may, pursuant to *Carlini v. State*, 215

Md. App. 415 (2013), use the power vested in them by Rule 4-345(a)[8] whenever "the sentence is not a permitted one for the conviction upon which it was imposed." *Id.* at 426. And in response to the appellant's argument that *Matthews* controls this case because it involves the legality of a plea agreement rather than a jury verdict as in *Greco*, appellees draw our attention to *Holmes v. State*, 362 Md. 190 (2000), in which the Court of Appeals explained that "[a] defendant cannot consent to an illegal sentence." *Id.* at 196.

Appellees also believe that the Court of Appeals' holding in *Cuffley*, 416 Md. at 582, that "any question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort solely to the record established at the . . . plea proceeding," and this Court's holding in *Rankin v. State*, 174 Md. App. 404, 409 (2007), *cert. denied*, 400 Md. 649 (2007), that "in determining a defendant's reasonable understanding of the agreement at the time he entered into it, '[this Court] consider[s] terms implied by the plea agreement as well as those expressly provided[,]'" support the affirmation of the four-year probationary term added by the lower court in light of the record of the 1998 plea hearing. The State concedes that there was no discussion of probation at the plea and sentencing hearings or within the plea agreement. Therefore, the State relies on our holding in *Rankin* that probation is an implied element of any suspended life sentence. The victim's representative, however, does not agree that there was no mention of probation at the plea hearing. Specifically, the victim's representative draws our attention to the following question by the plea hearing court and the appellant's answer:

[8] Rule 4-345(a) grants courts express authority to "correct an illegal sentence at any time."

> THE COURT: Now, do you understand that the remaining sentence that was not, that was suspended, that could be held over your head, so-to-speak, whether it is eight months or whether it is a year or three years, whatever the amount of time is, in light of your plea of guilty today that could be reinstated?
>
> Do you understand that?
>
> [The appellant]: Yes, sir, I understand.

In addition to this statement, the victim's representative also points to how the record indicates that the appellant spoke to his attorney, and consulted with his sister, who at the time was a D.C. parole officer, regarding his plea agreement on the same day as the plea hearing. In the opinion of the victim's representative, both of these statements from the plea hearing record are sufficient for us to conclude that the appellant reasonably understood probation to be part of his plea at the time he entered into the agreement.

Lastly, appellees argue that this case is distinguishable from *Matthews*, which the appellant asks us to apply, because the record of the plea hearing in that case was far more ambiguous than the record of the appellant's plea hearing. *See Matthews*, 424 Md. at 525. In *Matthews*, the record was unclear regarding whether the sentencing cap to which the parties agreed applied only to the executed portion of the sentence, or whether it applied to the executed portion plus any suspended portion. *Id.* at 523-24. The State in particular argues that even if *Matthews* applied, the appellant is still undeserving of the benefit of a resolution of this issue in his favor due to the fact that, based on the record of his plea hearing, a reasonable person in his position would have understood probation to be a part of his sentence.

For the aforementioned reasons, appellees urge us to affirm the probationary term added by the lower court.[9] In their opinion, a determination that we cannot add any period of probation whatsoever following the thirty-five years of imprisonment would effectively impose an illegal sentence where "the fairest remedy is to rescind the entire plea agreement, including the guilty plea." *Rojas v. State*, 52 Md. App. 440, 446 (1982). Such an outcome, appellees assert, is almost certainly undesirable to multiple parties involved.

B. Standard of Review

Whether the plea agreement is illegal pursuant to *Greco* because it lacks a term of probation is a question of law that we review under a *de novo* standard. *See Schisler v. State*, 394 Md. 519, 535 (2006) (citations omitted) (explaining that trial court's legal conclusions are reviewed *de novo*). This is because "where an order [of the trial court] involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review." *Id.*

Furthermore, if we determine that the application of *Greco* renders the appellant's plea agreement illegal, thus requiring a new sentence that includes a probationary term, then we must determine whether the length of the probation and the conditions imposed on it by the lower court were allowable. In doing so, our standard of review is whether the

[9] Appellees believe that at least *some* probationary term is necessary to correct the illegality; but they also believe the probationary term imposed by the lower court was a proper use of that court's authority because the judge noted on the record that he was imposing less than the five years maximum of probation due to the appellant's prison record being free from any infractions.

judge imposing probation abused his discretion by "fashioning conditions" that we find "to be unduly restrictive and unreasonable." *Sheppard v. State*, 344 Md. 143, 145 (1996). Otherwise, we must defer to the determination of the trial judge because "[a] judge has very broad discretion when imposing conditions of probation 'and may make such orders and impose such terms as to . . . conduct . . . as may be deemed proper. . . .'" *Id.* (alteration in original) (quoting Md. Code (1957, 1996 Repl. Vol.) Art. 27, § 639(a)).

C. Analysis

The facts of this case call for an analysis of two legal frameworks, each supported by strong public policy considerations and framed within statutes and case law. On one hand is the idea that we, as a society, desire to incentivize plea agreements whenever they can bring about a greater degree of justice. For that reason, it is not desirable to go back years down the road and punish individuals who plead guilty by imposing on them a sentence that goes beyond the scope of what they had foreseen when they entered their plea.

On the other hand, however, is the idea that felony murder is a very serious crime and that the minimum standards of punishment set forth by the legislature for such a crime should be strictly adhered to. In most cases these two ideas (the binding nature of plea agreements and the required level of punishment for committing felony murder) work hand-in-hand, but in this case we are called to resolve a set of facts involving a plea agreement that appears to contain a lesser sentence than that required by law.

Quite simply, Rule 4-345(a) vests the judiciary with the power to "correct an illegal sentence at any time." The Court of Appeals has made clear that "Rule 4-345(a) is an

appropriate vehicle for challenging a sentence that is imposed in violation of a plea agreement to which the sentencing court bound itself." *Matthews*, 424 Md. at 506. Furthermore, "sentences [are] inherently 'illegal' pursuant to Rule 4-345(a) when the sentences exceed[] the limits imposed by law, be it statute or rule." *Id.* at 514. The reason for this, *i.e.*, the reason why the Court of Appeals determined that a sentence can be deemed illegal for exceeding the limits imposed by statute *or rule*, is because "[o]ur [Maryland] rules have the force of law." *Dotson*, 321 Md. at 523 (citations omitted). Therefore, the following dictate of the Maryland Rules is more than a mere suggestion—it is backed by the force of law:

> If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.

Md. Rule 4-243(c)(3).

Under *Matthews* and *Dotson*, courts are required to use their authority under Rule 4-345(a) to correct sentences that lack legality by virtue of their failure to embody the sentence agreed to between the parties to the plea agreement.

But aside from the judiciary's obligation to correct sentences that inadequately reflect the intentions of plea agreements, Maryland courts also have a duty to ensure that minimum sentencing standards set by the legislature are met. The minimum sentencing requirement for the crime to which the appellant pled guilty is as follows:

> (b)(1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:

> (i) imprisonment for life without the possibility of parole; or
>
> (ii) imprisonment for life.

C.L. § 2-201(b). In *Cathcart*, the Court of Appeals determined that a suspended sentence that is not followed by a period of probation operates under law as a term-of-years sentence:

> No matter what the defendant may thereafter do, he or she could never be incarcerated, under that sentence, for a longer period of time than provided for by the unsuspended part . . . . [This] precludes [the sentence] from having the status of a split sentence . . . [Accordingly,] the unsuspended part of the sentence . . . becomes, in law, the effective sentence.

397 Md. at 329-30.

Five years after determining that suspended sentences lacking probation collapse into sentences of as many years as the unsuspended portion, the Court of Appeals in *Greco* took up the issue of what happens when a defendant receives a suspended sentence without probation after a jury found him guilty of first-degree murder. 427 Md. at 502-03.

To summarize the facts of *Greco*, the defendant was convicted by a jury in Baltimore County of, among other things, first-degree felony murder. *Id.* at 482. After a series of appeals and remands, the defendant was ultimately sentenced to life imprisonment with all but fifty years suspended, and no probation. *Id.* at 486. The Court noted that

> [w]e explained [in *Cathcart*] that a split sentence approach may be used in connection with a life sentence, but that, "[i]f a court chooses to use that approach, . . . it must comply with the requirements of [CP § 6-222], one of which is that there must be a period of probation attached to the suspended part of the sentence."

Id. at 504-05 (quoting *Cathcart*, 397 Md. at 327) (alterations in original) (internal quotation marks omitted). Therefore, the Court of Appeals determined that "[defendant's] previously imposed sentence for first degree premeditated murder of life, suspend all but fifty years, was converted by operation of law into a term-of-years sentence of fifty years imprisonment. . . . [which] was not authorized by statute; therefore, it was illegal." *Greco*, 427 Md. at 513. To remedy the illegality, the Court stated that "the Circuit Court must impose a sentence of life imprisonment, all but fifty years suspended, to be followed by some period of probation." *Id.* The Court explained, citing ***Hoile v. State***, 404 Md. 591 (2008) for support, that increasing the defendant's sentence by tacking on a period of probation to his fifty year unsuspended sentence was not an abuse of their Rule 4-345(a) power:

> We . . . discussed the distinction between the court's revisory power pursuant to Rule 4-345(a), to correct illegal sentences, and other subsections of that rule, stating that "under [Rule 4-345(a)] a court may increase a sentence" while "under [the other subsections] a court may not."

Greco, 427 Md. at 508 (quoting *Hoile*, 404 Md. at 626) (alterations in original). This judicial authority to increase illegal sentences goes along with the notion that, quite simply, "[a] defendant cannot consent to an illegal sentence." *Holmes*, 362 Md. at 196 (citing *White v. State*, 322 Md. 738, 749 (1991)). Allowing previously-imposed sentences to be increased only if they weren't properly consented to in the first instance is what gives this standard constitutional legitimacy. Although the case before us now and *Greco* are very similar, we must now decide if it is legal, as it is pursuant to *Greco* with respect to sentences

handed down by a jury, to increase a seemingly illegal sentence that was the result of a plea agreement. *See Greco*, 427 Md. at 513.

i. Amended sentence

Once again, the appellant asserts that *Matthews*, which governs the legality of a sentence based on what a reasonable person in the defendants' shoes understood the plea agreement to mean, controls the present case rather than *Greco*, which governs the legality of sentences for felony-murder that fall short of that which is required by law under C.L. § 2-201(b). *Matthews* stands for the proposition that "a sentence imposed in violation of the maximum sentence identified in a binding plea agreement and thereby 'fixed' by that agreement as 'the maximum sentence allowable by law,' is . . . an inherently illegal sentence." 424 Md. at 519 (quoting *Dotson*, 321 Md. at 524). We recognize that

> "[t]he test for determining what the defendant reasonably understood at the time of the plea is an objective one," dependent "not on what the defendant actually understood the agreement to mean, but rather, on what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding[.]"

Matthews, 424 Md. at 521 (quoting *Cuffley*, 416 Md. at 582). Nevertheless, we decline to proceed that far in the *Matthews* analysis because, in order for "what the defendant reasonably understood" his plea agreement to mean to have any legal significance, the plea agreement must itself be legally valid. In other words, in order for what a defendant understood regarding his or her plea agreement to matter, there must be, first and foremost, a valid plea agreement. Therefore, given the Court of Appeals' holding in *Holmes* that a

defendant cannot consent to an invalid plea agreement, we hold that *Matthews* does not control the present case. *Holmes*, 362 Md. at 196 (citation omitted).

Assuming *arguendo* that *Matthews* did apply to this case, we agree with the State and the victim's representative that it is distinguishable. In *Matthews*, the defendant "entered a plea of guilty to charges of attempted first-degree murder, two counts of first-degree assault, and unlawful use of a handgun in the commission of a felony or crime of violence." *Matthews,* 424 Md. at 506-07. The difference between the sentence that was ultimately given and what the defendant reasonably understood that it would be resulted from the fact that

> the Assistant State's Attorney had said at the plea proceeding that he would recommend "forty-three years," but then, at sentencing, breached that term of the agreement by recommending "life imprisonment, suspend all but forty-three years." [This led] the post-conviction court [to] conclude[] that Petitioner was deprived of the benefit of his bargain.

Id. at 508.

In *Matthews*, unlike in this case, the only problem with the sentence was that it was beyond the scope of what a reasonable person in the defendant's position would have understood it to be when he entered into the plea agreement. *Id.* It was not the case in *Matthews*, as it is here, that the plea agreement itself was invalid because the sentence was illegal for other reasons, *i.e.*, for reasons other than the sentence being beyond that which was contemplated by the parties to the plea agreement, and therefore, it was an agreement to which appellant could not consent to. Thus, we decline to apply *Matthews* to this case.

ii. Beyond Greco

Having determined that *Matthews* does not apply to the present case, we now turn to *Greco*. We summarize here the relevant part of *Greco* as the Court of Appeals did in its original opinion:

> In sum, Petitioner's previously imposed sentence for first degree premeditated murder of life, suspend all but fifty years, was converted by operation of law into a term-of-years sentence of fifty years imprisonment. That converted sentence was not authorized by statute; therefore, it was illegal. On remand, the Circuit Court is limited by the maximum legal sentence that could have been imposed, with the illegality removed. That is, the Circuit Court must impose a sentence of life imprisonment, all but fifty years suspended, to be followed by some period of probation.

Greco, 427 Md. at 513. The *Greco* court also explained that "when the Circuit Court imposes a more severe sentence than the previously illegal sentence on remand, it is because this Court has directed it to do so, given that the Circuit Court had no authority to impose the original illegal sentence in the first instance." *Id.*

The Court of Appeals in *Greco* based its holding in large part on *Cathcart*, which unequivocally held that suspended sentences that lack a probationary term change into mere term-of-year sentences in the amount of the unsuspended term of imprisonment. 397 Md. at 329-30. The Court in *Cathcart* made no distinction between sentences resulting from jury verdicts and those resulting from plea agreements. *See id.* Therefore, as a matter of law, the appellant's sentence of life imprisonment with all but thirty-five years suspended and no probation changes into a mere thirty-five year sentence, which is statutorily illegal. *See* C.L. § 2-201(b). We must now determine whether the sentencing

court in the case at bar had the power to correct the illegality in the appellant's sentence by following *Greco* and adding a period of probation unilaterally, or whether the circumstances surrounding the entry of the appellant's guilty plea entitle him to some other form of remedy.

In order to determine the effect of being sentenced pursuant to a plea agreement—as opposed to being sentenced upon conviction—we turn to *Rankin*, *supra*. In 1999, Rankin pled guilty to conspiracy to commit a second degree sex offense. 174 Md. App. at 406. He was subsequently sentenced pursuant to his plea agreement to "twenty years, with all but three years suspended, followed by a period of five years' probation." *Id.* at 407. Rankin served the unsuspended portion of his sentence and proceeded to violate the terms of his probation by committing a new offense. *Id.* As a result, he was "sentenced to serve ten years of the suspended sentence to run consecutive to the . . . sentence [he received for the new offense]." Rankin appealed, arguing that probation went beyond the terms of his 1999 plea agreement. *Id.* at 408.

We ultimately concluded that "a probationary term was implicit in the terms of [Rankin's] plea agreement," that "a reasonable person in [Rankin]'s position would interpret the plea agreement to include probation," and that "the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence." *Id.* at 410-12. However, even in holding that "the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence," *id.* at 411-12, we acknowledged that, as a prerequisite, there must be evidence that "demonstrate[s] both an

understanding [of] and an agreement to the imposition of a probationary period" on the part of the defendant. *Id.* at 414.

In his case, Rankin "not only indicated to the court his understanding that he would be placed on probation, but failed to object to the probationary period or its conditions." *Id.* The circumstances surrounding the entry of the appellant's guilty plea and subsequent sentencing of the appellant, however, are quite different. The record in the present case indicates that the appellant's attorney affirmed that he had spoken to the appellant about his plea, and that they had discussed it with the appellant's sister, who was a parole officer. Aside from that, the only other evidence that could show that the appellant understood and agreed to probation is the following colloquy:

> THE COURT: Now, do you understand that the remaining sentence that was not, that was suspended, that could be held over your head, so-to-speak, whether it is eight months or whether it is a year or three years, whatever the amount of time is, in light of your guilty plea today[,] that could be reinstated?
>
> . . . .
>
> [The appellant]: Yes, sir, I understand.

We hold that this evidence, even when viewed collectively, is insufficient to demonstrate that the appellant contemplated probation when he entered into his guilty plea. It is not clear whether the appellant's attorney discussed probation with him, and probation was never expressly mentioned by the court. Therefore, although the general rule is that "the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence," the present case falls under the exception where a defendant enters into a plea agreement without contemplating probation. Because "[p]lea agreements are

contracts between the defendant and the State," it would be unfair to increase the appellant's sentence by adding a previously uncontemplated probationary term without his consent. *Falero v. State*, 212 Md. App. 572, 585 (2013) (citing *Ridenour v. State*, 142 Md. App. 1, 5 (2001)). Accordingly, we vacate the increased sentence imposed by the circuit court.

The fact that the circuit court improperly modified that appellant's sentence does not change its illegality. The appellant's sentence remains illegal, and "[a] defendant cannot consent to an illegal sentence." *Holmes*, 362 Md. at 196. Therefore, his sentence requires correction. However, because he was sentenced pursuant to a plea agreement, and because the evidence is insufficient to demonstrate that he contemplated probation, his current sentence cannot be corrected without his consent. In *Greco*, the Court of Appeals held that "the Circuit Court *must* impose a sentence of life imprisonment, [with the same number of years as originally suspended], to be followed by some period of probation." 427 Md. at 477. Greco, however, was sentenced upon conviction. The appellant was sentenced pursuant to a plea agreement that, unlike the one in *Rankin*, did not contemplate probation. Thus, in order that the sentence might be corrected in accordance with *Greco* and *Rankin*, we remand for a new hearing. At said hearing, the appellant shall be afforded the opportunity to negotiate with the State regarding probation. If he reaches agreement with the State and consents to some period of probation not to exceed five years, then the

appellant must be resentenced to life imprisonment, with all but thirty-five years suspended and to be followed by the agreed-to probationary term.[10]

However, if the appellant does not agree with the State to a probationary term, then he shall have the right to withdraw his guilty plea in favor of a new trial. *See State v. Parker*, 334 Md. 576, 599 (1994) (noting that "in general, the proper remedy for a plea bargain based on an illegal sentence is to allow the defendant the opportunity to withdraw the guilty plea."). If the appellant elects a new trial, then the sentence he is eligible to receive upon conviction at his new trial will not be capped by the terms of his 1998 guilty plea.[11]

iii. Probation Period

Because we are vacating the modified sentence imposed by the lower court, we need not determine whether that court abused its discretion by imposing a four-year period of probation rather than something lesser. However, because we are remanding for a hearing to be held during which the appellant shall have the option of consenting to some period of probation being added to the thirty-five years of executable time previously imposed, we shall briefly address the issue of length of probation.

The long-standing rule has been that "[t]he court may impose a sentence for a specified period and provide that a lesser period be served in confinement, suspend the

[10] Pursuant to *Greco*, if his sentence is to be corrected by way of consent at the new hearing, then the number of years of executable time *must* remain the same as in the original sentence. 427 Md. at 513.

[11] If the appellant withdraws his guilty plea and the State decides to retry him, then it is also a possibility that the State and the appellant will enter into a new plea agreement prior to the commencement of the new trial.

remainder of the sentence and grant probation for a period longer than the sentence but not in excess of five years." *Laurie v. State*, 29 Md. App. 609, 612 (1976), *cert. denied*, 277 Md. 738 (1976). We acknowledge that "a judge has virtually boundless discretion in sentencing and may impose any sentence not in violation of constitutional requirements or statutory limits, or motivated by ill-will, prejudice, or other impermissible considerations." *Trimble v. State*, 90 Md. App. 705, 709 (1992) (citations omitted). If, with the appellant's consent, his sentence is corrected by the addition of a probationary term of anywhere up to five years, there will be no "violation of constitutional requirements or statutory limits." *Id. See Greco*, 427 Md. at 513; *see also* Md. Code Ann., Crim. Proc. ("CP") § 6-222.[12] Furthermore, because the appellant will have consented to the imposition of a probationary term, there is no risk of "ill-will, prejudice, or other impermissible considerations" on the

[12] CP § 6-222 (the codification of Md. Code, Art. 27 § 641A, which was effective at the time of the appellant's conviction) provides, in relevant part:

> (a) A circuit court or the District Court may:
>
> (1) impose a sentence for a specified time and provide that a lesser time be served in confinement;
>
> (2) suspend the remainder of the sentence; and
>
> (3)(i) order probation for a time longer than the sentence but, subject to subsections (b) and (c) of this section, not longer than:
>
> 1. 5 years if the probation is ordered by a circuit court; or
>
> 2. 3 years if the probation is ordered by the District Court[.]

part of the judge presiding over the contemplation-of-probation hearing on remand. *Trimble*, 90 Md. App. at 709. Accordingly, any consented-to probationary term "not in excess of five years" would be legally permissible. *Laurie*, 29 Md. App. at 612.

Finally, in light of the particular facts and circumstances of this case, we hold that none of the other conditions on the appellant's probation, *e.g.*, that he not contact certain members of the victim's family and that he undergo random urinalysis, were "unduly restrictive and unreasonable." *Sheppard*, 344 Md. at 145. Therefore, should the appellant consent to a probationary term to follow the thirty-five years of executable time from his original sentence, the court may, in the exercise of its "very broad discretion when imposing conditions of probation," re-impose these very same conditions. *Id.* To do so would not constitute an abuse of discretion by the re-sentencing court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED FOR ADDITIONAL PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0467

September Term, 2013

ANTHONY ALLEN CRAWLEY

v.

STATE OF MARYLAND

Woodward,
Nazarian,
Reed,

JJ.

Dissenting Opinion by Woodward, J.

Filed: August 8, 2016

I respectfully dissent. Although I agree with appellant that we must determine what are the terms of his plea agreement, I diverge from the views of appellant and the majority as to exactly what are those terms. The relevant part of the plea agreement was that appellant would enter a plea of guilty to first degree felony murder and receive a sentence of "life suspend all but 35 years for the aforesaid felony murder charge." There was no specific mention of probation in the agreement or in the plea colloquy between the trial court and appellant.

In *Rankin v. State*, this Court stated that "we consider terms implied by the plea agreement as well as those expressly provided." 174 Md. App. 404, 409 (citations and internal quotation marks omitted), *cert. denied*, 400 Md. 649 (2007). We then held that,

> because a period of probation must be attached to a suspended sentence, . . . the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence. If we were to hold otherwise, the imposition of a suspended sentence would be meaningless.

Id. at 411-412 (footnote omitted).

Applying the holding of *Rankin* to the instant case leads me to the conclusion that a period of probation is an implied term of appellant's plea agreement to a split sentence of life imprisonment suspend all but thirty-five years. Such conclusion is reinforced by the fact that, without a period of probation as an implied term, the plea agreement would be for an illegal sentence, and "[a] defendant cannot consent to an illegal sentence." *Holmes v. State*, 362 Md. 190, 196 (2000). As the majority correctly points out, Section 2-201(b) of the Criminal Law Article requires a life sentence for a first degree felony murder conviction, and, under *Cathcart v. State*, a suspended sentence that lacks a probationary

term changes into a mere term-of-years sentence in the amount of the unsuspended term of imprisonment. *See* 397 Md. 320, 330 (2007); Md. Code (2002, 2012 Repl. Vol.), § 2-201(b) of the Criminal Law (I) Article. Thus the lack of a probationary term converts appellant's sentence into a sentence of thirty-five years of incarceration, which is illegal. *See Greco v. State*, 427 Md. 477, 513 (2012) (holding that "Petitioner's previously imposed sentence for first degree premeditated murder of life, suspend all but fifty years, was converted by operation of law into a term-of-years sentence of fifty years imprisonment. That converted sentence was not authorized by statute; therefore, it was illegal").

Nevertheless, the majority, relying on *Rankin*, states that, for a period of probation to be implied in the plea agreement, "there must be evidence that 'demonstrate[s] both an understanding [of] and an agreement to the imposition of a probationary period' on the part of the defendant." Maj. Op., slip op. at 19-20 (alterations in original) (quoting *Rankin*, 174 Md. App. at 414). The majority then holds that the evidence in the instant case "is insufficient to demonstrate that the appellant contemplated probation when he entered into his guilty plea." Slip op. at 20. The majority concludes: "Therefore, although the general rule is that 'the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence,' the present case falls under the exception where a defendant enters into a plea agreement without contemplating probation." *Id*.

In essence, the majority's holding is that the parties in this case entered into a plea agreement for an illegal sentence. Such holding is not supported by *Rankin*, nor any of the cases relied upon by appellant, for the simple reason that in none of these cases does the appellant argue, or the court hold, that the parties entered into a plea agreement for an

illegal sentence. *See Matthews v. State*, 424 Md. 503 (2012); *Baines v. State*, 416 Md. 604 (2010); *Cuffley v. State*, 416 Md. 568 (2010); *Tweedy v. State*, 380 Md. 475 (2004); *Dotson v. State*, 321 Md. 515 (1991). In my view, to uphold a plea agreement for an illegal sentence would be contrary to Maryland law. *See Holmes*, 362 Md. at 196.

In sum, under *Rankin*, the general rule is that a period of probation is an implied term in any plea agreement for a suspended or split sentence. 174 Md. App. at 411-12. The general rule must apply as a matter of law where, as here, the lack of probationary term would result in a plea agreement for an illegal sentence. Accordingly, I would uphold the trial court's sentence, which includes four years of supervised probation with conditions, as compliant with the terms of appellant's plea agreement.

Finally, even assuming that the majority is correct, the remedy afforded to appellant is broader than what is required by the majority's holding and the circumstances of the case *sub judice*. At the new sentencing hearing, the majority provides the trial court with the following instructions:

> At said hearing, the appellant shall be afforded the opportunity to negotiate with the State regarding probation. If he reaches agreement with the State and consents to some period of probation not to exceed five years, then the appellant must be resentenced to life imprisonment, with all but thirty-five years suspended and to be followed by the agreed-to probationary term.
>
> However, if the appellant does not agree with the State to a probationary term, then he shall have the right to withdraw his guilty plea in favor of a new trial. If the appellant elects a new trial, then the sentence he is eligible to receive upon conviction at his new trial will not be capped by the terms of his 1998 guilty plea.

Slip op. at 21-22 (citation and footnotes omitted).

Nowhere in these instructions is appellant required to agree to any period of probation, supervised or unsupervised. Appellant is just given "the opportunity to negotiate with the State." *Id.* at 21. The majority overlooks appellant's representation to the trial court that, "if the [c]ourt has to impose a period of probation, that in imposing that period of probation, that the [c]ourt should keep it fairly minimal. It may be [that] the most appropriate thing to do would be to impose it as an unsupervised period of probation." Similarly, in this Court, appellant requests that we, "in the alternative, [impose] an extremely short period of unsupervised probation." Given these representations, I would not give appellant the option to not consent to a period of probation.

In addition, the above representations make it unnecessary to grant appellant the right to withdraw his guilty plea and require the State to retry appellant decades after the crime was committed. It is unclear from the record whether the State would be able to successfully retry appellant for felony first degree murder and related offenses. If not, the practical consequence of the majority opinion would be to hand appellant the proverbial keys to the jailhouse door, after serving only about nineteen years of a thirty-five-year sentence.

For the above reasons, I would affirm the judgment of the circuit court.