UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0191

September Term, 2015

AARON A. LEE

v.

STATE OF MARYLAND

Wright,
Nazarian,
Wilner, Alan M.
(Retired, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: January 19, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Appellant had the misfortune of being a passenger in a car that was stopped by a Harford County deputy sheriff because of a shattered windshield. As a result of that event, appellant ended up being arrested on an outstanding warrant for failure to pay child support, searched incident to the arrest, found to be in possession of 29 grams of crack cocaine with a street value of $2,900 and $1,123 in cash, and indicted for and convicted of possession of cocaine in sufficient quantity to indicate an intent to distribute the substance.

After losing a motion to suppress the incriminating evidence, he entered a plea of not guilty to the possession with intent to distribute charge but agreed to proceed on a statement of agreed facts as recited by the prosecutor. That resulted in his being sentenced, according to the State and the docket entries, to 20 years in prison, all but 12 years suspended, followed by four years of supervised probation. In this appeal, appellant complains about (1) the denial of his motion to suppress the cocaine and cash, and (2) the sentence, which he asserts was ambiguous and, if not ambiguous, illegal.

THE SUPPRESSION HEARING

There was no challenge to the validity of the stop, which was effected by Deputy Hamann. The dispute concerned alleged conversations between appellant and Deputy Hamann and his backup, Deputy Gerres. Hamann said that, when he asked appellant for his name and identification, appellant gave his name as Aaron Alexander Turner but stated that he had no identification with him. He gave his date of birth as December 6, 1981. Hamann testified that he put that information into his computer and the name

Ronald Nathaniel Turner came back[1], that he returned to the car and again asked appellant for his name, to which appellant gave the name of Ronald Nathaniel Turner with the same date of birth, but the description of that person did not match that of appellant.

At that point, Deputy Gerres arrived. Hamann told him that appellant was possibly lying about his name. He left Gerres with the stopped car and returned to his vehicle to write a repair order for the driver. Gerres entered Aaron Alexander Turner into his computer hookup with the Motor Vehicle Administration and was advised that MVA had no record of anyone of that name. Gerres then asked appellant to check his wallet to see if he had any identification, and, as appellant was checking, an "Independence Card" appeared on his lap. Gerres was able to see with his flashlight that it contained the name Aaron Lee. Gerres entered that name along with the birth date previously given and was advised that a child support warrant was outstanding for an individual by that name. A description of that individual matched that of appellant.

Gerres then arrested appellant, took the Independence Card, reentered the name Aaron Lee and got the same information. The challenged search then followed. About 15 minutes elapsed between the time of the stop and the time appellant's true name was discovered. Deputy Hamann was still in his vehicle writing out the repair order.

[1] On direct examination, Hamann said that no information came back for that name. On cross examination, he said that the name Ronald Nathaniel Turner came back.

In his testimony at the suppression hearing, appellant acknowledged that he first gave Deputy Hamann the name of Aaron Alexander Turner with a birth date of December 6, 1981 and said that he had no identification. He said that he also gave Deputy Gerres that name. Both of those communications were admittedly false. The only areas of material dispute came from appellant's testimony that Hamann never came back and asked for a different name, that appellant never gave a different name to Hamann, and that appellant never removed the Independence Card from his wallet but that Gerres simply took his wallet and went through it. The court credited the deputies' testimony and found the stop, the arrest, and the search to be valid.

Appellant acknowledges that his claim that the search was invalid rests on the court accepting his version of the event. His sole argument regarding the search is that the court should have believed his story and not the testimony of the officers. We find no merit whatever in that argument. Credibility is for the trial judge to determine. *In re Timothy F.*, 343 Md. 371, 379 (1996); *In re Melvin M.*, 195 Md. App. 477, 481 (2010).

<u>THE SENTENCE</u>

The transcript of the "trial" indicates (1) that appellant and the State had reached an agreement that, in exchange for appellant's entering a plea of not guilty to Count One of the four-count indictment – possession with intent to distribute cocaine -- and proceeding on an agreed statement of facts with respect to that count, the State would argue for a sentence not to exceed 12 years and appellant could argue for less, and (2) the

court was aware of that agreement.[2] The court noted that the sentencing guidelines called for a sentencing range of 12 to 20 years, that, if appellant was convicted, the court would "not exceed the cap in this case," and that upon release from "any sentence served," appellant would be placed on four years of supervised probation.

At that point, the focus shifted as appellant moved for a new suppression hearing. After some discussion, that motion was denied, and the court returned to ensure that appellant's decision to proceed on an agreed statement of facts was knowing and voluntary. The court advised appellant of what he would be giving up by proceeding in that manner. In the course of that advisement, the court repeated that, if appellant were to be found guilty, "the State is asking that the Court not exceed the 12-year cap, but . . . you are free to argue for less time, but the decision is mine to make as to the sentence that I impose in this case, and you should be aware that I could exceed the 12 years. I can impose a sentence between 12 and 20 years." The court continued, "[s]o it's not up to either side to tell the Court what type of sentence to impose, particularly where you're going forward on a Not Guilty Statement of Facts. And there is no agreement that the two sides have reached as to what sentence they believe is that the Court should impose." Appellant responded that he understood that and had no questions.

After further questioning by the court to assure appellant's competence, the prosecutor recited what had occurred after the stop – the cocaine and cash found on

[2] At the outset of the proceeding, the court thought that appellant would be pleading guilty but was immediately corrected that the plea would be one of not guilty. That momentary misimpression never resurfaced.

appellant – and that, if called to testify, an expert would state that the amount and the packaging of the cocaine would indicate to a reasonable certainty that appellant possessed the drug with an intent to distribute it. The court found the evidence sufficient and denied a motion for acquittal. Defense counsel then argued for a sentence of less than 12 years. The prosecutor, noting that this was appellant's tenth criminal conviction and second felony drug conviction, recommended a sentence of 12 years. The court did not agree with either recommendation. It announced:

> "In this case, I am going to impose a sentence of 20 years. I won't exceed the bottom of the guidelines, but I am going to impose the 12 years. You'll get credit for the time that you have already served. That will reduce your sentence slightly. When you are released from the Division of Correction, you're going to be placed on four years of probation."

The docket entries, in two places, show the sentence to be 20 years, all but twelve years suspended, with four years of probation to follow. The docket also reveals that appellant filed an application for review of sentence and that a three-judge panel was appointed to conduct that review, but it does not reveal any ruling from the panel.

Appellant complains that the court's reference to imposing a sentence of 20 years and 12 years made the sentence ambiguous, and, relying largely on *Cuffley v. State*, 416 Md. 568 (2010) and *Matthews v.* State, 424 Md. 503 (2012), insists that, under the doctrine of "fundamental fairness," the sentence must be construed as one of 12 years with no period of probation.

There is no ambiguity at all in the sentence actually imposed, as shown on the court docket. It is 20 years, with all but 12 years suspended, to be followed by four years

of supervised probation that would attach to the eight-year part of the sentence as to which execution was suspended. Nor is there any ambiguity in what appellant was told, prior to announcement of the sentence, as to what the sentence could be. The judge was quite clear that she was not bound by any agreement appellant and the State had made, that the sentencing range was 12 to 20 years, and that she could impose the full 20 years.

If there is an ambiguity, it would lie in the judge's announcement of what the sentence would be. The announcement certainly could have been more clearly worded, but it is not inconsistent with the sentence actually imposed or with what the judge had told appellant might happen. She obviously wanted appellant to serve 12 years – the bottom of the guideline range and what the State had recommended (less available credits) – but she also wanted a substantial probation period thereafter, which required that execution of some part of the overall sentence be suspended. She made that clear – that, upon release from "any sentence served," appellant would be placed on four years of supervised probation. The judge's reference to 20 and 12 years and a probation period meshes well in that context.

As an alternative argument, appellant asserts that, if the sentence is not ambiguous, it is illegal because "it exceeded the agreement that was entered into by the parties and accepted by the court." There was no such agreement. The transcript is unmistakably clear in that regard. The only agreement between the parties concerned what they would argue; there was no agreement as to any actual sentence. Moreover, the court made abundantly clear that it was not bound by any agreement between the parties

and that it could impose the maximum allowable sentence of 20 years, and appellant stated without reservation that he understood that to be the case.

Any possible confusion regarding the use of the word "cap" in the discussion is dispelled when considering the context of its use. The sentencing cap was 20 years; that was the maximum sentence allowed for the offense. There was a separate cap for the State; it had agreed not to argue for more than 12 years. When the judge explained that "the State is asking that the Court not exceed the 12-year cap," she necessarily was using the word in the context of the State's argument, not the maximum permissible sentence, which was 20 years, not 12.

Neither *Cuffley* nor *Matthews* requires a different conclusion. *Cuffley* involved a plea agreement under which, in return for a guilty plea, the court agreed to impose a sentence "within the guidelines," which provided a sentencing range of four to eight years. At sentencing, which occurred several months later, the court instead imposed a sentence of 15 years, with all but six years suspended, followed by a five-year period of probation. No objection was made to the sentence, but four-and-a-half years later, Cuffley moved to correct what he regarded as an illegal sentence. The trial court denied the motion, but the Court of Appeals reversed. The issue was whether the contemplated sentence, to which the court had agreed, referred to the full sentence to be imposed or only the unsuspended part of it – the time Cuffley was actually to serve.

The Court noted that, under Rule 4-243, which governs agreements for a plea of guilty or nolo contendere, if the judge accepts and approves a plea agreement which

mandates a particular sentence or sentence range, the judge must embody the agreed-upon sentence in the judgment and that the terms of the agreement are to be construed according to the reasonable understanding of the defendant when entering the plea (of guilty or nolo contendere). In that regard, the Court held that, under the facts of that case, the defendant, in entering his plea of guilty, reasonably understood that the court would impose a sentence of no more than eight years total, part of which may be suspended – that the agreed sentence was a total of eight years, not that it could be more with all but eight years suspended.

Matthews also involved a guilty plea, to attempted murder, first degree assault, and handgun charges, in return for the dismissal of other charges and the State's agreement to argue for a sentence of 43 years, which was at the top of the guideline range. The court agreed to "cap any sentence." At sentencing, several months later, the State argued for a sentence of life imprisonment, with all but 43 years suspended, believing that that was what it had agreed to do. The court imposed a life sentence, with all but 30 years suspended. In a post-conviction proceeding, the post-conviction court agreed that the State had violated the plea agreement and ordered a new sentencing. Unfortunately, that proceeding was held before the same judge who had imposed the initial sentence, who proceeded to impose the same sentence of life, with all but 30 years suspended, declaring that that was the sentence he intended to impose from the beginning. The defendant appealed from what he regarded as an illegal sentence. Relying in large part on *Cuffley*, the Court of Appeals agreed that the sentence was illegal

within the meaning of Rule 4-345 – as in *Cuffley*, Matthews could reasonably have understood that the sentence agreed to by the court called for a term of 43 years total, not a longer sentence with all but 43 years suspended.

The facts here are quite different. For one thing, there was no plea of guilty or nolo contendere in this case, nor the functional equivalent of either, so the proceeding was not governed by Rule 4-243. More important, the court made abundantly clear, and appellant said he understood, that the court could impose up to 20 years and was not bound by any agreement between appellant and the State. The agreement dealt only with what the parties would argue. That agreement had been reached before the court said a word, and it was not violated by the State. The State did exactly what it agreed to do – argue for a sentence of 12 years, and the court did what it said it could do, impose a sentence of 20 years, with all but 12 years suspended.

In summary, we do not believe that the sentence imposed was ambiguous, and we do not believe that it constituted an illegal sentence.

JUDGMENT AFFIRMED;
APPELLANT TO PAY THE COSTS.