UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1110

September Term, 2015

GERALD KENT BYROADE, JR.

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: September 15, 2016

In 2013, Gerald Byroade pleaded guilty to one count of second-degree burglary and one count of fourth-degree burglary.[1] Mr. Byroade was sentenced to a term of 15 years' imprisonment, with all but five years suspended, for second-degree burglary, a concurrent term of three years' imprisonment (suspended) for fourth-degree burglary, and $5,400 restitution. Two years later, he filed a motion to correct an illegal sentence, which was denied by the Circuit Court for Howard County. In this appeal, Mr. Byroade presents two questions for our review, which we rephrase and consolidate:[2]

> Did the circuit court[3] err in denying Mr. Byroade's motion to correct an illegal sentence?

DISCUSSION

Mr. Byroade argues that the sentencing court's order of restitution in the amount of $5,400 was erroneous because: 1) the court failed to hold a restitution determination

[1] Appellant's convictions stem from his involvement in the burglary of six townhomes in Howard County.

[2] Appellant phrased the questions as:

1. Was the Circuit Court's decision to deny the appellant's motion for restitution determination hearing per Md. Rule 11-603 and Md. Rule 11-615…legally correct?

2. Did the sentencing court breach the plea agreement by failing to inform the appellant in trial court or on record in any capacity of his guidelines and not supplying him with a copy of Md. sentencing guidelines matrix worksheet?

[3] In this opinion, we will use the term "circuit court" to refer to the court that denied Mr. Byroade's Motion to Correct and Illegal Sentence. We will use the term "sentencing court" to refer to the court that accepted Mr. Byroade's guilty plea and imposed his sentence.

hearing, despite Mr. Byroade's request for such a hearing; 2) the amount of restitution was "unsupported by competent evidence" and "contrary to the evidence;" and 3) Mr. Byroade was ordered to pay restitution for losses sustained as a result of burglaries for which he was not convicted. Mr. Byroade also contends that the sentencing court erred in imposing a 15-year prison sentence. Mr. Byroade maintains that he "was never informed of his guidelines on record," "did not fully understand the plea offer," and "was not afforded any chance to defend." As a result of these alleged errors, Mr. Byroade avers that both sentences are illegal.

The State argues that Mr. Byroade's claim should be dismissed because he has "failed to include a transcript of his December 17, 2013 plea hearing." Maryland Rules 8-411 and 8-413 make clear that Mr. Byroade is responsible for providing a transcript as part of the record, which he did not. *Id.* Without the transcript of the plea proceeding, we are unable to ascertain what, exactly, the terms of the plea agreement were or whether the sentencing court actually breached these terms. *See Matthews v. State,* 424 Md. 503, 519 (2012). As the Court of Appeals explained in *Cuffley v. State,* 416 Md. 568 (2010):

> [A]ny 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 Rule 4-243 plea proceeding. The record of that proceeding must be examined to ascertain precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement, to determine what the defendant reasonably understood to be the sentence the parties negotiated and the court agreed to impose. The test…is an objective one…based on the record developed at the plea proceeding.

Id. at 582 (emphasis in original).

We are aware that Mr. Byroade is a self-represented litigant. That notwithstanding, he was given ample notice regarding his responsibility to provide the necessary transcript and the consequences that would result if he failed to provide it. Following Mr. Byroade's September 2015 request for a waiver of costs filed in conjunction with the instant appeal, this Court waived the prepaid appellate costs but made clear that the waiver did not "constitute a waiver of Mr. Byroade's obligation to comply with Maryland Rule 8-411, including the obligation to pay for whatever transcripts are necessary for the appeal[.]" Likewise, after Mr. Byroade's December 2015 request to rely on the record transmitted by the clerk of the circuit court which did not include a transcript), this Court granted the request subject to dismissal of the appeal "if the Court later determines that a transcript is necessary for the decision in this case."

Nevertheless, the record as presented is adequate to reach the merits of Appellant's claims. First, Appellant does not allege that the sentencing court's imposition of a 15-year prison sentence was a breach of the plea agreement; instead, Mr. Byroade asserts that the sentencing court erred by not informing him of the sentencing guidelines prior to his acceptance of the plea agreement. Likewise, he does not claim that the restitution amount of $5,400 was beyond the agreed-upon amount, but instead claims other procedural and substantive errors. In fact, Mr. Byroade conceded in his motion to correct an illegal sentence that he agreed to the amount of restitution ordered by the court. In short, the terms of the plea agreement – a 15-year prison sentence and $5,400 in restitution – do not appear to be in dispute.

Defense counsel all but confirmed this fact in a letter she wrote to the Attorney Grievance Commission in September of 2015. Although this letter was not part of the record established at the plea proceeding, Mr. Byroade has included the letter as an exhibit to his appellate brief, in which he cites to the letter as proof of one of his claims.[4] In the letter, defense counsel states that Mr. Byroade "entered a plea agreement…for a sentence agreement of, I believe, 15 years suspend all but five years with credit for time served." The letter also indicates that the decision to accept the restitution of $5,400 was strategic and that "at the time of the plea, [Mr. Byroade] agreed to those strategic decisions."[5]

In light of the uncontested evidence, we hold both sentences to be legal. Mr. Byroade agreed, as part of his plea agreement, to pay $5,400 in restitution and to forego a

[4] Appellant cites language in the letter in support of his argument that he was ordered to pay restitution for burglaries for which he was not convicted.

[5] In the letter, defense counsel explained the strategy as follows:

> I recall that [Appellant] was very concerned about the amount of restitution sought by the State[.]…At the time of the plea, the amount of restitution was set by the Court as part of the plea agreement. I do not believe I requested a hearing to determine the amount of restitution. I recommended to [Appellant] that we not challenge the amount of restitution because I was concerned that we would weaken our position in seeking drug treatment if we challenged the alleged victims about their losses[.]…[Appellant] and I discussed this strategy and also discussed how to handle restitution payments while on probation[.]…We also discussed the likelihood that the amount of restitution would likely stay the same even with a hearing since the State had documentation of the losses.

restitution hearing.[6] Therefore, whether the amount was "contrary to the evidence" or based on losses resulting from burglaries for which he was not convicted is irrelevant. Appellant had a right, which he exercised, to enter into an agreement to pay such an amount. *See Lee v. State,* 65 Md. App. 149, 154 (1985) ("[W]here a defendant either in a plea agreement or by some other method acknowledges a specific obligation to make restitution beyond the amount involved in the crime of which he is convicted, the trial court may order restitution of that amount."). As we explained in *Lee*, to hold otherwise would allow defendants to "state a desire to make restitution in plea negotiations in order to bargain away some counts, and then later attack the restitution for the unconvicted counts as being illegal sentences." *Id. See also State v. Stachowski*, 440 Md. 504, 522 (2014) (A sentencing court has the authority to condition probation on the defendant's promise to pay restitution to victims of crimes unrelated to the offense giving rise to the guilty plea.).

Turning to Mr. Byroade's final contention, we find nothing inherently illegal in the sentencing court's imposition of a 15-year prison term. *See e.g. Bonilla v. State,* 443 Md. 1, 6 (2015) ("For a sentence to be illegal within the meaning of Rule 4-345(a), 'the illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding.'") (internal citations omitted). The statutory maximum for burglary in the second degree is 15 years. Md. Code, Criminal Law § 6-203(c)(1). The

[6] Although Appellant claims that he requested a restitution hearing, said request was not made until after the trial court accepted the plea agreement and Appellant had begun serving his sentence.

sentencing court, as part of Appellant's plea agreement, imposed a sentence within this statutory maximum. That the trial court allegedly failed to inform Appellant of the sentencing guidelines is immaterial. *See Meyer v. State,* 445 Md. 648, 682 (2015) ("The purpose of Rule 4-345(a) is to provide a vehicle to correct an illegal sentence where the illegality inheres in the sentence itself, not for re-examination of trial court errors during sentencing.").

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.