

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 265

September Term, 2016

JONATHAN H. SHARP

v.

STATE OF MARYLAND

Berger
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: March 31, 2017

*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.

In 2013, Jonathan Sharp, appellant, pleaded guilty in the Circuit Court for Anne Arundel County to first-degree assault. Appellant was sentenced to a term of 15 years' imprisonment, with all but 8 years suspended. In 2016, appellant filed a motion to correct an illegal sentence, which was denied. In this appeal, appellant presents the following question for our review:

Did the circuit court err in denying appellant's motion to correct an illegal sentence?

For reasons to follow, we answer appellant's question in the negative and affirm the judgment of the circuit court.

BACKGROUND

On December 17, 2012, appellant and his wife, Jennifer Sharp, were in the office of Susan Khron, a parent coordinator, to discuss the couple's divorce matter and other issues pertaining to custody of their minor children. During the meeting, appellant "flew into a rage" and threw a wooden dollhouse through one of the office's windows. Appellant then picked up "a 15-inch ceramic cat and began beating [Ms. Sharp] all over her face and head relentlessly." Following the assault, Ms. Sharp was taken to the hospital for treatment for her injuries, which included a fractured skull, contusions, and lacerations. Appellant was arrested and charged with attempted second-degree murder (Count 1), first-degree assault (Count 2), second-degree assault (Count 3), reckless endangerment (Count 4), wearing and carrying a dangerous weapon with intent to injure (Count 5), and malicious destruction of property (Count 6).

On April 26, 2013, the trial court held a hearing on a pretrial motion filed by appellant.¹ At the start of the hearing, the State informed the trial court that appellant was “willing to withdraw his motion for today and ask the Court instead to hear a Status Conference during which he would like to enter a guilty plea to Count 2 of his charging document, which is first degree assault.” Defense counsel confirmed appellant’s desires and informed the trial court that the parties wished to delay disposition:

I believe the State and I, when we spoke yesterday, were in agreement if this matter were to be resolved by a plea, to reset for a disposition. The State seeks to present evidence and the defense seeks to present evidence so I would expect it would be an hour to a two-hour, possibly, disposition.

The trial court then stated: “Okay. Would you like to qualify your client?” Defense counsel agreed, and appellant was placed under oath. Defense counsel then informed appellant that she was “going to go through a series of questions to make sure that the record reflects, as well as Her Honor is comfortable with, that you are freely, knowingly, and intelligently entering this plea.”

During the subsequent qualification, defense counsel questioned appellant regarding various factors that may have affected his ability to enter a knowing and voluntary plea, such as whether he was coerced into entering the plea, whether he was under the influence of drugs or alcohol, and whether he was sufficiently educated. Defense counsel also questioned appellant about the charges and potential penalty:

[DEFENSE]: The lead count in this was attempted murder, the [second] count in this, which you’re pleading to is first degree assault. The State would have to prove, focusing on the first degree assault, that you caused serious

¹ The substance of the motion is irrelevant to the instant appeal.

bodily injury that resulted in disfigurement, bleeding, use of an object or [sic] even can be your fists, but serious bodily injury to another person and placed them in fear of that. Do you understand?

[APPELLANT]: Yes.

[DEFENSE]: Maximum penalty is 25 years [sic] incarceration. Do you understand that?

[APPELLANT]: Yes.

Defense counsel also informed appellant about the various rights he would be foregoing by pleading guilty, including the right to a jury trial, the right to present witnesses, and the right to testify. Defense counsel then explained that, by pleading guilty, appellant was giving up his right to an automatic appeal:

[DEFENSE]: Had this matter gone to a jury trial or a court trial, you would have an absolute right to an appeal to the Court of Special Appeals....However, by proceeding in this way you give up your right to an automatic appeal. You understand that you can only file what's called Leave for Application to Appeal?...[I]t's extremely rare and you can only do it on four grounds.

The first ground is jurisdiction....The second ground is whether or not you received an illegal sentence. The State and I have discussed that this is something within the guidelines. I'm going to argue for below the guidelines.

The State's Attorney has said the cap of the guidelines are eight. And you understand the maximum penalty is 25 years?

[APPELLANT]: Yes.

[DEFENSE]: So therefore assuming that the Judge sentences [sic] appropriately, there would not be grounds for an illegal sentence.

At the end of appellant's qualification, the trial court found that appellant "knowingly and voluntarily" entered his plea of guilty. The State then read a statement of facts, after which the trial court found that there was "a factual basis for the plea" and that appellant was "guilty of first degree assault." The trial court then stated: "It's my understanding we're going to do a deferred disposition." The parties agreed, and after some discussion regarding scheduling, the sentencing hearing was set for June 21, 2013.

At said sentencing hearing, the State began by reminding the court of the facts of the assault. After doing so, the State indicated that it wanted the court to sentence appellant to "the absolute maximum on the guidelines," and that Ms. Sharp wanted the court "to give him 25 years." The State concluded its opening remarks by asking the court to impose "that period of incarceration" and "that particular sentence." Finally, after presenting several witnesses and other evidence on appellant's behalf, defense counsel discussed sentencing:

Your Honor, I'm asking the Court to sentence within the guidelines. I'm asking for the bottom of the guidelines. And my first statement to you, actually, Your Honor, would be that I would ask this Court to consider completely suspended sentence. He's been incarcerated. But the guidelines are what they are and the bottom of the guidelines in this case is three years, and I would ask this Court to consider something of suspended with a period of probation.

* * *

Your Honor, I – I know that the State, that Ms. Sharp would want the statutory maximum. The State would want the top of the guidelines.

The sentencing court eventually sentenced appellant to a term of 15 years' imprisonment, with all but eight years suspended. Following the court's pronouncement

of the sentence, the State informed the court that it “would enter a nolle prosequi to the balance of the charges.”

In August of 2015, appellant filed a Motion to Correct an Illegal Sentence, and hearing on the motion was held in March of 2016. During the hearing, appellant argued that he and the State entered into a plea agreement that included “a binding cap of three to eight years,” which the sentencing court violated when it sentenced appellant to a total of 15 years’ imprisonment. Appellant also argued that “the cap was miscalculated” because “the instrument used in the assault was not a weapon as that is so defined under the Maryland sentencing guidelines.” The circuit court ultimately denied the motion, finding that the trial court never bound itself to the plea agreement. The circuit court also found that the guidelines were correctly calculated because “the ceramic cat could and was used as a weapon.”

STANDARD OF REVIEW

Maryland Rule 4-345(a) allows a trial court to “correct an illegal sentence at any time.” *Id.* A sentence is considered “illegal” if the sentence itself is not permitted by law, such as when “there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed[.]” *Chaney v. State*, 397 Md. 460, 466 (2007). The Court of Appeals has held that a sentence is illegal when it “is imposed in violation of a plea agreement to which the sentencing court bound itself.” *Matthews v. State*, 424 Md. 503, 506 (2012). “Whether a trial court has violated the terms of a plea agreement is a question of law which we review *de novo.*” *Solorzano v. State*, 397 Md. 661, 668 (2007).

DISCUSSION

A.

Appellant argues that the circuit court erred in denying his motion to correct an illegal sentence. Appellant maintains that “the parties and the court entered into a binding plea agreement which called for a sentence which did not exceed a cap of the guidelines, which were eight years.” Appellant contends, therefore, that his sentence of 15 years’ imprisonment is illegal, as it “exceeds the terms of the binding plea agreement.”

The State contends that appellant’s motion to correct an illegal sentence was properly denied. According to the State, appellant’s claim that there was a binding plea agreement is erroneous, as “there was no suggestion of a set plea agreement with the prosecutor, much less of a plea agreement encompassing a limitation of the sentence to be imposed by the plea court.” As a result, the sentence actually imposed by the sentencing court was legal because “the plea judge...was not offered a binding plea agreement, and did not make a commitment to a particular disposition.”

Maryland Rule 4-243(a)(1)(E) provides that a defendant “may enter into an agreement with the State’s Attorney for a plea of guilty or nolo contendere on any proper condition, including...[t]hat the State’s Attorney will recommend, not oppose, or make no comment to the court with respect to a particular sentence, disposition, or other judicial action[.]” *Id.* In such instances, any recommendation by the State with respect to a particular sentence, disposition, or other action “is not binding on the court.” Md. Rule 4-243(b). In addition, the court “shall advise the defendant at or before the time the State’s Attorney makes a recommendation that the court is not bound by the recommendation, that

it may impose the maximum penalties provided by law for the offense to which the defendant pleads guilty, and that imposition of a penalty more severe than the one recommended by the State’s Attorney will not be grounds for withdrawal of the plea.” *Id.*

Maryland Rule 4-243(a)(1)(F) separately provides that a defendant may plead guilty on the condition that “the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.” *Id.* In these instances, “the defense counsel and the State’s Attorney shall advise the judge of the terms of the agreement when the defendant pleads.” Md. Rule 4-243(c)(1). The judge may accept or reject the plea, and any agreement “relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.” Md. Rule 4-243(c)(2). If, however, the plea agreement is approved, “the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement[.]” Md. Rule 4-243(c)(3).

In short, the Maryland Rules offer two enumerated conditions that are directly related to sentencing and under which a defendant may plead guilty. Under the first condition, the defendant may plead guilty in exchange for a sentencing recommendation from the State. Under the second condition, the defendant may plead guilty after jointly presenting the terms of the agreement, including the proposed sentence, to the court for approval. Regardless of the condition, any proposed sentence, whether it be recommended by the State under Rule 4-243(a)(1)(E) or particularized in an agreement under Rule 4-243(a)(1)(F), is non-binding on the court. In the latter instance, however, the sentence

becomes binding once the court accepts the plea. Conversely, if a plea is accepted pursuant to Maryland Rule 4-243(a)(1)(E), the binding guarantee does not include any particular sentence; that is, the bargained-for exchange is “the mere gesture that the State would recommend that the judge impose the sentence suggested by the plea agreement with perhaps illusory hope that the sentencing judge would do so.” *State v. Smith*, 230 Md. App. 214, 223 (2016), *cert. granted by Smith v. State*, No. 457, Sept. Term 2016 (filed January 9, 2017).

The Maryland Rules also permit a defendant to plead guilty without ever entering into an agreement with the State. *See* Maryland Rule 4-242(b)(1) (“A defendant may plead guilty...personally on the record in open court[.]”). When this happens, a court may not accept the guilty plea until it determines that: (1) the plea is voluntary; (2) the defendant understands the charges and consequences of the plea; (3) there is a factual basis for the plea; and (4) the defendant understands that there are certain “collateral consequences” to pleading guilty, *i.e.*, the potential for deportation if the defendant is not a United States citizen. Md. Rules 4-242(c) and (f). Nowhere in the Rule does it state that a defendant cannot plead guilty without first entering into a plea agreement with the State.

Appellant contends that the parties submitted to the court a binding plea agreement, pursuant to Maryland Rule 4-243(a)(1)(F), which the court implicitly agreed to enforce upon accepting appellant’s plea. The State counters that the court was not offered a binding plea agreement, as “no proposal as to a particular sentence was presented to the plea court,” so “there was nothing for the plea court to accept or reject.” The State contends, rather, that appellant simply pleaded guilty pursuant to Maryland Rule 4-242.

The problem with both positions is that there is scant evidence in support of either. The only “evidence” in support of appellant’s position came during appellant’s qualification, in which defense counsel stated that she and the State “discussed that this is something within the guidelines” and that “the State’s Attorney has said the cap of the guidelines are eight.” Nowhere in these comments does defense counsel state, or even suggest, that the State was proposing a particular sentence or that such “terms” were part of a plea agreement. Rather, defense counsel’s comments suggest, at most, that the State would be *recommending* a sentence within the guidelines and that, in response, she was “going to argue for below the guidelines.” In short, there is no indication that the parties were presenting a binding plea agreement to the court pursuant to Rule 4-243(a)(1)(F).

Moreover, the court neither acknowledged the existence of a plea agreement nor indicated that it was binding itself to a particular sentence. We find this significant given that in all of the cases cited by appellant there was some affirmative acknowledgment by the plea court that it was agreeing to a particular sentence. *See, e.g., Matthews*, 424 Md. at 523 (where the plea court stated: “The Court has agreed to cap any sentence[.]”); *Cuffley v. State*, 416 Md. 568, 585 (2010) (where the plea court stated: “The plea agreement, as I understand it, is that I will impose a sentence somewhere within the guidelines.”); *Baines v. State*, 416 Md. 604, 609 (2010) (where the plea court stated that it “would sentence [Petitioner] within the Guidelines.”); *Solorzano*, 397 Md. at 672 (where the plea court “made statements from which the defendant could reasonably have believed a commitment had been made to impose [the agreed-upon sentence].”).

On the other hand, appellant did plead guilty, and defense counsel did inform the court that, if the matter were to be resolved by a plea, the parties had agreed to “reset for disposition” so they could present evidence related to sentencing. In conjunction with defense counsel’s allusions to her conversations with the State regarding sentencing, this suggests that there were prior plea negotiations that resulted in *some* agreement between appellant and the State. In other words, although the record does not necessarily support a finding that the State proposed any particular sentence, this does not mean that there was *nothing* for the court to accept or reject; at the very least, the State appeared to be offering a sentencing recommendation and, as a result, appellant was entitled to the benefit of the bargain. *See Solorzano*, 397 Md. at 667 (“[T]he rule is that ‘when 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.’”) (internal citation omitted). At a minimum, the court should have informed appellant, pursuant to Maryland Rule 4-243(b), that it was not bound by the State’s recommendation. Regrettably, the court made no statements about the binding nature of the plea or its terms.²

In the end, we cannot say with any certainty that the parties submitted a binding plea agreement, as argued by appellant, because no “agreement” was put forth, or even mentioned, at the plea hearing and, even so, no discernible effort was made by the parties

² Appellant does not allege that the court erred in failing to comply with Maryland Rule 4-243(b). Regardless, any failure on the part of the court to comply with this procedural rule would not have rendered appellant’s sentence illegal. *See Tshiwala v. State*, 424 Md. 612, 619 (2012) (“[W]here the sentence imposed is not inherently illegal, and where the matter complained of is a procedural error, the complaint does not concern an illegal sentence for purposes of Rule 4-345(a).”)

to advise the court of the agreement’s terms as required by Rule 4-234(c). On the other hand, defense counsel did engage in plea negotiations with the State just prior to appellant’s guilty plea, and it is clear that the parties discussed potential sentences. Thus, common sense dictates that appellant pleaded guilty as a result of these negotiations, not simply because he was entitled to under Rule 4-242, as suggested by the State.

Fortunately, the legality of appellant’s sentence does not hinge upon either of these precarious positions, for even if we accept appellant’s contention that there was a sentencing term to which the court agreed to be bound, appellant’s sentence would still be legal. The test for construing the sentencing term of a binding plea agreement was explained by the Court of Appeals in *Cuffley, supra*:

[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 for determining what the defendant reasonably understood at the time of the plea is an objective one. It depends 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....If examination of the record leaves ambiguous the sentence agreed upon by the parties, then the ambiguity must be resolved in the defendant’s favor.

Cuffley, 416 Md. at 582-83 (footnote and citation omitted) (emphasis in original).

Here, appellant was informed that defense counsel had a conversation with the State regarding “the guidelines” and that the State told defense counsel that “the cap of the guidelines are eight.” Immediately thereafter, appellant was told that “the maximum

penalty is 25 years.” In addition, appellant had previously acknowledged that, by pleading guilty to first-degree assault, he was facing a “maximum penalty” of “25 years’ incarceration.” In short, appellant was told, in no uncertain terms, that he could be sentenced to a maximum penalty of 25 years’ imprisonment.

In light of these facts, a reasonable person in appellant’s position would have understood that, despite defense counsel’s vague reference to something the prosecution told her regarding the sentencing guidelines, the terms of the plea agreement included a total possible penalty of 25 years’ incarceration. Stated another way, no reasonable person in appellant’s position would have concluded, based on the record before this Court, that the total possible sentence would not exceed eight years.

For these reasons, appellant’s case is distinguishable from *Matthews v. State*, 424 Md. 503 (2012), a case on which appellant relies heavily. In that case, the defendant pleaded guilty and, in exchange, the State asked for “actual and immediate incarceration” of “forty-three years,” which the State indicated was the “cap” based on a “guidelines range” of “twenty-three to forty-three years.” *Id.* at 521-22. At the plea hearing, the court recounted the terms of the plea to the defendant as follows:

Your guidelines are twenty-three to forty-three years. The State is asking for a sentence of forty-three years to be served. The Court has agreed to cap any sentence and your defense attorneys are free to argue. And theoretically I can give you anything from the mandatory minimum on the one count, which is five years without parole, up to the maximum of life imprisonment.

Id. at 522.

The court subsequently imposed a sentence of life imprisonment, with all but thirty years suspended. *Id.* at 510. The defendant filed a petition for post-conviction relief,

arguing that the total sentence – life imprisonment – exceeded the sentencing term of the plea agreement, which called for a “cap” of forty-three years’ imprisonment. *Id.* at 507. The post-conviction court agreed with appellant and ordered that he be resentenced; however, the court also found that the plea agreement was not presented as a binding agreement, so the resentencing court was free to impose whatever sentence it deemed appropriate. *Id.* at 508-09. The resentencing court re-imposed appellant’s original sentence, and appellant filed a motion to correct an illegal sentence, which was denied. *Id.* at 510.

On appeal, the defendant argued that his sentence was illegal because it exceeded the sentencing term of the plea agreement. *Id.* at 523. The State countered that the court only agreed to cap the sentence’s *executed* time at forty-three years; therefore, because the court suspended all but thirty years, the actual term of incarceration fell below the cap and was in accordance with the terms of the plea agreement. *Id.* The Court of Appeals ultimately agreed with appellant and vacated his sentence, holding that the record of the plea hearing did not clearly disclose the maximum agreed-upon sentence:

No one mentioned, much less explained to [the defendant] on the record, that a sentence greater than the forty-three year “cap” could be imposed, with a suspended portion of the sentence in excess of those forty-three years. Neither did the State, defense counsel, or the court explain for the record that the words “guidelines range” referred solely to executed time. We grant the possibility that a lay defendant might reasonably understand the phrase “actual and immediate incarceration” to include only the non-suspended portion of a sentence because a defendant might never serve the suspended portion. Yet, it is also possible that a lay defendant who, as in the case at bar, has just heard the State inform the court that it would be “asking for incarceration within the guidelines” might reasonably understand the State to be referring to the total years of incarceration to which the defendant would be exposed, including any suspended portion.

Id. at 524.

The Court concluded that the sentencing term of the agreement, as revealed by the record of the plea hearing, was ambiguous, such that “a reasonable lay defendant in Petitioner’s place would not have clearly understood what was contemplated by the agreed-upon sentence of ‘incarceration of forty-three years.’” *Id.* at 525. The Court also noted that its conclusion was supported by the ruling of the post-conviction court, which agreed with the defendant’s interpretation of the plea agreement. *Id.* The Court then resolved the ambiguity in favor of the defendant and held that he was “entitled to have the plea agreement enforced, based on the terms as he reasonably understood them to be: a maximum sentence, including any suspended portion, of forty-three years.” *Id.*

Shifting our focus back to the present case, it is evident that we are not faced with the same ambiguities. Appellant was told on two separate occasions that he was subject to a maximum penalty of 25 years’ incarceration, and neither the court nor the State made any statements contrary to this fact. And while defense counsel did reference a “cap” when discussing appellant’s potential sentence, at no time did the State or the court express, or even imply, that this was a cap on appellant’s sentence. In any event, defense counsel’s reference to a cap was immediately followed by a reminder to appellant that “the maximum penalty is 25 years.” Finally, although we recognize that our interpretation of the plea agreement is limited solely to the record of the plea hearing, like the Court of Appeals in *Matthews*, we find support for our conclusion elsewhere, namely, in the record of the sentencing hearing. There, both the State and defense counsel made clear that the court could sentence appellant up to the statutory maximum of 25 years’ imprisonment.

In sum, the record before us plainly reveals that the maximum agreed-upon sentence was 25 years' imprisonment and that appellant was well-aware of this fact. And because the actual sentence imposed did not exceed this agreed-upon maximum, appellant's sentence is legal.

B.

Appellant also argues, as he did below, that the sentencing court erroneously concluded that the ceramic cat used by appellant during the assault was a “weapon.” Appellant maintains that this erroneous ruling resulted in an additional “point” on the sentencing guidelines worksheet, which thereby resulted in a guidelines range of three to eight years' imprisonment. Appellant contends that a “correct” calculation of the guidelines, one that omitted consideration of the ceramic cat as a weapon, would have resulted in a guidelines range of one to six years' imprisonment.

We need not reach the merits of appellant's argument, as any error the court may have made in calculating the guidelines would not affect the legality of appellant's sentence. As previously noted, a sentence imposed as a result of a plea agreement is illegal when the sentence violates the terms of the plea agreement. In the instant case, the terms of the plea agreement, as argued by appellant, included a cap on the guidelines of eight years. Therefore, even if the sentencing court miscalculated the guidelines, the result of the miscalculation did not violate the terms of the plea agreement. Accordingly, the

sentence imposed is legal, and the circuit court did not err in denying appellant's motion to correct an illegal sentence.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**