Circuit Court for Baltimore City
Case No. 119042022

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 825

September Term, 2023

PHILLIP WEST

v.

STATE OF MARYLAND

Graeff,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 13, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Phillip West, appellant, appeals the denial, by the Circuit Court for Baltimore City, of his motion for modification of sentence. For the reasons that follow, we shall affirm.

In 2019, appellant pleaded guilty to one count of second-degree murder and one count of use of a handgun in a crime of violence. The court sentenced him to a term of 40 years, suspend all but 20 years, on the murder court, and to a consecutive term of 20 years, suspend all but 15 years, on the handgun count. The first five years of the sentence of the handgun count were to be served without the possibility of parole. In 2023, appellant filed a belated motion for modification of sentence, requesting that the motion be held sub curia until a time that he requested a hearing. The court initially ordered the motion to be held sub curia. However, the State subsequently filed an opposition, asserting that the "plea taken in this case was an ABA binding plea" and that it "would object to any modification of the Defendant's sentence." Thereafter, the court entered an order denying the motion as "the Defendant's sentence is pursuant to an ABA binding plea, and the State is opposed to any modification of sentence." This appeal followed.[1]

If the sentencing court "binds itself to fulfill the plea agreement" it may not "modify the sentence, thereby imposed, absent the consent of the parties, and in particular, in the case of reducing the sentence, absent the consent of the State." *Chertkov v. State*, 335 Md. 161, 174-75 (1994). Appellant does not contest this proposition but contends that his guilty

[1] As a general rule, this Court does not have the authority to review a decision on a motion to modify a sentence under Rule 4-345(e) that is "'addressed to the court's discretion.'" *Schmidt v. State*, 245 Md. App. 400, 408 (2020) (citation omitted). However, this Court "may review such a decision where, as here, the circuit court ruled as a matter of law that it did not have the ability to consider the motion on its merits." *Id*.

plea was not a "binding plea" as there was no "mention of the plea being an ABA binding plea" in the transcript. He thus asserts that the court erred in denying his motion for modification of sentence based solely on the fact that the State was opposed to the requested modification.

A binding plea agreement sometimes is known as an "American Bar Association (ABA) plea agreement," *see* COMAR 14.22.01.02(B)(2), because it is the form of binding agreement authorized by the ABA's Standards for Criminal Justice. *See Sharp v. State*, 446 Md. 669, 698-99 (2016). However, contrary to appellant's contention, the failure of the court or the parties to specifically refer to the agreement as an "ABA binding plea" is not controlling. Rather, Md. Rule 4-243 governs the formation of binding plea agreements. Pursuant to that Rule, an agreement between the State and the defendant is "not binding on the court unless the judge to whom the agreement is presented approves it." Md. Rule 4-243(c)(2). If a judge approves the plea agreement, he or she "shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement[.]" Md. Rule 4-243(c)(3). A plea agreement becomes binding when (1) the State submits the plea agreement as binding and the court accepts that it is bound and (2) the court begins "talking in the language" of the plea agreement and embodies the agreement in its sentence. *State v. Smith*, 230 Md. App. 214, 227 (2016).

Here, the State and defense counsel presented the plea agreement to the court as binding. First, the State informed the circuit court that the plea agreement was reached "through negotiation" with defense counsel. The State and defense counsel then set forth the plea in specific terms, including that appellant would receive a "sentence of 40 years

[on the murder count], 20 years would be served, 20 would be suspended" and would receive a consecutive sentence of "20, suspend all but five" on the handgun count, with the "five years without parole." Notably, nothing in the agreement was left to the court's discretion.

After confirming its understanding of the plea agreement, the court then "[spoke] in the language" of that agreement, by reciting its exact terms to appellant with respect to each count and asking him if he understood that this would be his sentence. The court then embodied the agreement in the judgment by sentencing appellant accordingly. In short, the colloquy between the State, the defense, and the circuit court judge was entirely consistent with a proposed binding plea agreement, and the circuit court's actions thereafter were consistent with a proposed binding plea agreement as presented by the State and the defendant and approved by the court. Consequently, the court did not err in denying appellant's motion for modification of sentence on the grounds that the State did not consent to the modification.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.