Circuit Court for Baltimore County
Case Nos. 03-K-11-005762, 03-K-11-006089

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 7

September Term, 2019

---

CURTIS LEONARD HAMM

v.

STATE OF MARYLAND

---

Graeff,
Nazarian,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Alpert, J.

---

Filed: May 7, 2020

In 2012, appellant, Curtis Leonard Hamm, pleaded guilty, pursuant to a binding plea agreement, to separate charges of robbery and robbery with a dangerous weapon. The Circuit Court for Baltimore County thereafter sentenced him to consecutive terms of ten years' imprisonment, with all but one year suspended, to be followed by three years' probation. Hamm subsequently violated his probation and, in 2014, received nearly eighteen years of his "backup" time. Then, in 2019, he filed a motion to correct an illegal sentence, claiming that the original sentences, imposed in 2012, as well as the VOP sentences, imposed in 2014, violated the terms of a binding plea agreement. After that motion was denied, he noted this appeal.

For the reasons that follow, we conclude that the 2012 and 2014 sentences exceeded the maximum allowable sentence under the plea agreement and were therefore illegal. We vacate those sentences and remand for imposition of a lawful sentence.

## BACKGROUND

On the night of September 20, 2011, Hamm, with several others, placed a telephone order to a Chinese carry out restaurant in Randallstown, in Baltimore County. When an employee of that restaurant attempted to deliver the order to a nearby apartment, Hamm and the others robbed her, taking the food, her keys and cell phone, and approximately $60 in cash. Police subsequently determined that a cell phone, associated with Hamm, had been used to place the order. Hamm ultimately was charged, in Case No. 03-K-11-005762, for his role in that incident.

A few weeks later, in the morning of October 6, 2011, Hamm, having been released on bail following his arrest for the September 20th robbery, teamed up with several others

to assault and rob at knifepoint a fifteen-year-old boy at a school playground in Randallstown.[1] The victim notified police and gave a description of the assailants. Shortly thereafter, police apprehended Hamm and one of the others, and the victim identified Hamm in an ensuing show-up identification. Hamm was found to be in possession of the victim's property, including his shoes, jacket, hat, cell phone, and identification card. Hamm ultimately was charged, in Case No. 03-K-11-006089, for his role in that incident.

On January 23, 2012, a hearing was held in the Circuit Court for Baltimore County so that Hamm could plead guilty in both cases pursuant to a plea agreement. The following colloquy ensued:

> STATE: Your Honor, there have been plea negotiations in this case. The Defendant is tendering a guilty plea to one count in each case. Your Honor, as to the case ending in 5762, it is a guilty plea to the first count, which is robbery. Upon a finding of guilt, the State will nolle pross the remaining counts in that case. As to the case ending in 6089, there would be a guilty plea to count number one, charging the Defendant with robbery with a dangerous and deadly weapon. Again, the State will nolle pross the remaining counts upon a finding of guilt. The State's recommendation is, same recommendation as to both cases, that is a ten year, suspend all but eighteen-month sentence to be served at the Detention Center, with a period of supervised probation upon release to be determined by the Court. Defense counsel is free to argue for whatever he deem[s] appropriate. It's also my understanding defense counsel is requesting a pre-sentence investigation. And finally, just so the Court is aware, as to the sentencing guidelines, as to the robbery count, it's a recommendation of [***3**] (inaudible) to three years and then as to the robbery with a dangerous and deadly weapon count, it is a recommendation of one to six years in terms of the sentencing guidelines.

[1] The victim averred that one of the assailants had what appeared to be a handgun, but the State proceeded on the armed robbery charge solely on the basis of the knife.

> [DEFENSE COUNSEL]: Can I ask a quick question of the State?
>
> THE COURT: Sure.
>
> [DEFENSE COUNSEL]: Thank you, Your Honor. Your Honor, that's my understanding of the plea agreement.
>
> THE COURT: The State's recommendation is going to be a sentence totaling ten years, suspending all but a total of eighteen months?
>
> STATE: Yes, Your Honor.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: And free to argue for less and we would like to have a PSI done.
>
> THE COURT: I will defer sentencing for that purpose and that's fine with me.

Defense counsel and the court then examined Hamm on the record to ensure that his guilty pleas were being entered knowingly and voluntarily. During that examination, the court declared its understanding of the terms of the plea agreement:

> THE COURT: Okay. The commitment that I've made to, to [Defense Counsel] and you is that I will sentence you to a term of, at, at the maximum ten years in the Division of Corrections, suspending all of that but eighteen months to be served in the County Detention Center. [Defense Counsel] has a right to argue that I ought to impose a period of incarceration of less than that. But the, the cap that I'm placing on a period of incarceration is eighteen months. So, you understand all that?
>
> MR. HAMM: Yes, sir.

The court ultimately found that Hamm's guilty pleas were being entered knowingly and voluntarily, and, after the State made its factual proffers, the court declared Hamm guilty of the offenses. The court then set a date for sentencing, and the hearing concluded.

Subsequently, the court sentenced Hamm, in Case No. 6089, to ten years' imprisonment, with all but one year suspended, and with credit for time served, the balance of the one year to be served in home detention. The court further sentenced Hamm, in Case No. 5762, to ten years' imprisonment, to be served consecutively to the sentence in Case No. 6089, all suspended, to be followed by three years' probation.

On September 16, 2012, while still on home detention, Hamm, armed with an axe handle, and another man, Womack, armed with a shotgun, assaulted two men.[2] That led, one year later, to Hamm's convictions, following a jury trial, of two counts each of assault in the first degree and use of a firearm in the commission of a crime of violence. On February 11, 2014, Hamm was sentenced in that case, No. 03-K-12-005848, to fifteen years' imprisonment, the first five without the possibility of parole, commencing September 20, 2012.

Immediately after sentencing in Case No. 5848, a hearing was held to resolve a charge that Hamm had violated the terms of his probation in Case Nos. 5762 and 6089. Hamm admitted the violation, and the circuit court sentenced him, in Case No. 5762, to eight years' imprisonment, to be served consecutively to any other sentences then

[2] According to the State, one of the assault victims had been involved, with Hamm, in one of the previous robberies, and the assault was in retaliation for his cooperation with the police in solving that previous case.

outstanding, including that just imposed in Case No. 5848; and it sentenced him, in Case No. 6089, to ten years' imprisonment, to be served consecutively to the sentences just imposed.[3]

In January 2019, Hamm filed a motion to correct an illegal sentence, alleging that the 2012 sentences exceeded the maximum term fixed by a binding plea agreement. Because the 2014 sentences in Case Nos. 5762 and 6089 incorporated nearly all the outstanding "backup" time, Hamm further alleged that those sentences were infected with the same inherent illegality. Later that same month, the circuit court held a hearing on Hamm's motion, and it subsequently issued an order, denying the motion:

> The statements made by [the court] at the plea hearing on January 23, 2012, coupled with the statements made by counsel, as reflected in the transcript, establish that the [court] committed only to a cap of active incarceration applicable to both cases that would not exceed 18 months. The [court] said: "But the, the cap that I'm placing **on a period of incarceration** is eighteen months." The State said "the State's recommendation is, same recommendation **as to both cases**, that is a ten year, suspend all but eighteen-month to be served at the Detention Center." The Defendant's attorney, in qualifying him for the plea, said "The max, okay, **the maximum is twenty years** and he indicated the sentence he's about to give you clearly is going to be within that, so it would not be an illegal sentence . . ."

Hamm then noted this timely appeal.

[3] Hamm had already been serving the sentence in Case No. 6089, and, indeed, the commitment record, issued following the February 2014 resentencing, indicates that he had been awarded credit for 240 days already served.

## DISCUSSION

"The court may correct an illegal sentence at any time." Md. Rule 4-345(a). If a sentence is "illegal" within the meaning of this rule, a defendant may file a motion to correct it, "notwithstanding that (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal." *Chaney v. State*, 397 Md. 460, 466 (2007). Moreover, if a trial court denies a motion made under Rule 4-345(a), the defendant is entitled to appellate review of that denial. *State v. Kanaras*, 357 Md. 170, 177-84 (1999).

"The scope of this privilege, allowing collateral and belated attacks on the sentence and excluding waiver as a bar to relief, is narrow[.]" *Chaney*, 397 Md. at 466. An "illegal sentence," as contemplated by Rule 4-345(a), is a sentence that is "intrinsically," *id.*, or "inherently" illegal. *Matthews v. State*, 424 Md. 503, 519 (2012).

In Maryland, there are three categories of "inherently" illegal sentences that are cognizable under Rule 4-345(a): a sentence imposed "where no sentence or sanction should have been imposed," *Johnson v. State*, 427 Md. 356, 368 (2012) (quoting *Alston v. State*, 425 Md. 326, 339 (2012)); a sentence that exceeds the statutory maximum for the offense, *Carlini v. State*, 215 Md. App. 415, 427 (2013); and "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[.]'" *Matthews*, 424 Md. at 519 (quoting *Dotson v. State*, 321 Md. 515, 524 (1991)). This appeal concerns the third category.

Plea bargains have been likened to contracts, albeit of a very special kind. *Ray v. State*, 454 Md. 563, 576 (2017). That is because due process forms the backdrop in which plea-bargaining proceeds. Accordingly, in interpreting the terms of a court-approved plea agreement, "exclusive application of contract law is inappropriate because '[d]ue process concerns for fairness and the adequacy of procedural safeguards guide any'" such interpretation. *Id.* (quoting *Solorzano v. State*, 397 Md. 661, 668 (2007)).[4]

In *Ray*, the Court of Appeals sought to "clarify the relationship between plea agreement interpretation and contract law," setting forth an interpretive hierarchy, which we are bound to apply. 454 Md. at 577. The first step of our analysis is to "determine whether the plain language of the agreement is clear and unambiguous as a matter of law." *Id.* If it is, "then further interpretive tools are unnecessary, and we enforce the agreement accordingly." *Id.* (citations omitted).

But "if the plain language of the agreement is ambiguous, we must determine what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be, based on the record developed at the plea proceeding." *Id.* (citing *Cuffley v. State*, 416 Md. 568, 582 (2010)). And, finally, "if, after we have examined the agreement and plea proceeding record, we still find ambiguity regarding what the defendant

[4] Indeed, the amalgamation of contract law and principles of due process also governs, more generally, the interpretation and enforcement of agreements between the State and criminal suspects. *See, e.g.*, *Sifrit v. State*, 383 Md. 77, 93-94 (2004) (interpreting memorandum of understanding between the State and a criminal suspect); *State v. Brockman*, 277 Md. 687, 697 (1976)) (eschewing "the strict application of the common law principles of contracts" in fashioning a remedy for the State's breach of a two-way plea agreement).

reasonably understood to be the terms of the agreement, then the ambiguity should be construed in favor of the defendant." *Id.* at 577-78 (citing *Solorzano*, 397 Md. at 673).

Although *Ray* does not expressly say so, it can only be read intelligibly if we add an additional interpretive gloss, namely, that the first step in its interpretive hierarchy applies only if there is a written agreement. *See Hughes v. State*, 243 Md. App. 187, 200 (2019) (observing that, when determining whether a sentence was illegally imposed, in violation of a binding plea agreement, "we must resolve the terms of the plea agreement, which, unless in writing, must be ascertained through only the record of the plea agreement hearing") (citing *Cuffley*, 416 Md. at 582). Indeed, *Ray*, unlike the instant case, dealt with interpretation of a written plea agreement.[5] Because, in the case before us, there was no written agreement, we begin, as did the Court in *Cuffley*, *Baines v. State*, 416 Md. 604 (2010), and *Matthews*, with the record of the plea hearing.

Before applying this interpretive hierarchy, we must answer a threshold question, which is whether there was a binding plea agreement in this case, as that is a necessary

[5] The guilty pleas in this case were entered in 2012, shortly after it had become clear that a sentence in excess of the maximum in a binding plea agreement is an inherently illegal sentence. Thus, like the plea agreements in *Cuffley* and *Matthews*, the plea agreement here was oral, and its terms were announced at the plea hearing. We cannot help but observe that, by now, it should be clear that best practice is to file a written plea agreement, at the plea hearing, executed by all parties to the agreement. Indeed, because that practice had been followed in *Ray*, the agreement withstood a subsequent challenge otherwise similar to the one raised here.

predicate to Hamm's claim.[6] The State contends that it was not a binding agreement. This contention is without merit.

The court, in expressing its understanding of the plea agreement, declared:

> . . . The commitment that I've made to, to [Defense Counsel] and you is that I will sentence you to a term of, at, at the maximum ten years in the Division of Corrections, suspending all of that but eighteen months to be served in the County Detention Center. [Defense Counsel] has a right to argue that I ought to impose a period of incarceration of less than that. But the, the cap that I'm placing on a period of incarceration is eighteen months. . . .

According to the State, the court's statement ("The commitment that I've made") apparently refers to an off-the-record discussion, which, according to *Cuffley*, 416 Md. at 582, cannot be considered in construing the terms of a plea agreement. That, however, belies a misreading of *Cuffley*. It may well be that the parties conferred, off the record, in negotiating the plea agreement. But the court, here, stated **on the record** that it was bound by the terms as it understood and declared them to be in open court. Our conclusion relies **solely** upon what was stated on the record during the plea proceeding, as required by *Cuffley*. And based upon what the court plainly said, we have little difficulty in concluding that the agreement in question was a binding agreement.

Moreover, we do not think its terms were ambiguous. The court plainly stated that it would sentence Hamm to a term of, at most, ten years' imprisonment, with all but

[6] If the circuit court refrains from binding itself to a plea agreement, then the maximum sentence allowable by law is simply the statutory maximum for the offense, or, in the increasingly rare case of a common law crime, any limitation imposed by the Eighth Amendment and its Maryland cognates. Here, there is no dispute that the sentences imposed did not exceed the statutory maximum.

eighteen months suspended. The court said nothing to suggest that the agreed-upon cap applied separately to the sentence in each case, nor did it mention anything about imposing two consecutive ten-year sentences. Moreover, contrary to the court's insistence, in its order denying the motion to correct, that it had "committed only to a cap of active incarceration applicable to both cases that would not exceed 18 months," we think its "commitment," during the plea proceeding, plainly applied, not only to the period of active incarceration, but also to the total length of the sentence.

From the record of the plea proceeding, a "reasonable lay person in the defendant's position" would understand the agreed-upon sentence, in the instant case, to be, at most, ten years, not twenty years, as was actually imposed. *Ray*, 454 Md. at 577. But even if we were to assume that the record of the plea proceeding was ambiguous, any residual ambiguity would have to be construed in Hamm's favor. *Id.* at 577-78.

As for the notion, expressed in the circuit court's order denying Hamm's motion to correct illegal sentence, as well as in the State's brief, that we may infer, from the absence of an objection during both the initial sentencing hearing and the VOP hearing, that the parties understood the plea agreement as permitting two consecutive, ten-year sentences, we need only observe that the same could have been said about *Cuffley*, *Baines*, and *Matthews*. That no objection was lodged until 2019 is completely beside the point. If a sentence is "illegal" within the meaning of Rule 4-345(a), a defendant may file a motion to correct it, "notwithstanding that (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal." *Chaney*, *supra*, 397 Md. at 466. And in any event, the

lack of objection during sentencing is irrelevant in determining the terms of the plea agreement, for which we must look solely to the record of the plea hearing. *Cuffley*, 416 Md. at 582; *Baines*, 416 Md. at 619.

We conclude that the binding plea agreement in this case provided for a maximum sentence of ten years' incarceration. Therefore, both the 2012 sentences and the 2014 VOP sentences are illegal. Accordingly, we vacate the sentences in Case Nos. 5762 and 6089 and remand for resentencing in accordance with the terms of the 2012 binding plea agreement.

**ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. SENTENCES IN CASE NOS. 5762 AND 6089 VACATED. CASE REMANDED FOR RESENTENCING IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE COUNTY.**