Circuit Court for Prince George's County
Case No: CT131247X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 135

September Term, 2020

DARRYL ADAMSON, JR.

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 9, 2021

*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 2014, pursuant to a plea agreement with the State, Darryl Adamson, Jr., appellant, entered an *Alford* plea to second-degree murder and use of a handgun in the commission of a felony or crime of violence. He was subsequently sentenced by the court to a total term of 50 years' imprisonment, all but 20 years suspended, the first five years to be served without the possibility of parole, and to a five-year term of supervised probation upon release. In 2019, Mr. Adamson, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that his sentence was illegal because the sentencing terms of the plea agreement were "renegotiated" at the plea and sentencing hearings and "all parties agreed" that he "would receive two 20 year sentences that would run concurrent." The circuit court summarily denied the motion, a decision Mr. Adamson appeals. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Plea Hearing

At the March 14, 2014 plea hearing, defense counsel informed the court that Mr. Adamson intended to accept a "slightly new plea offer" that the State had offered the day before. When the court asked him if that was true, Mr. Adamson responded in the affirmative. The following colloquy then occurred:

> [THE STATE]: Just for purposes of the record, this is an ABA plea.
>
> THE COURT: What that means is once she [the prosecutor] says this is the deal, you say you agree, then I have to follow it. So no matter how mad I get, I guess you will be stuck with me going along with it. But then, again, I might not accept it and it goes down the road to the big guy.
>
> [THE STATE]: Your Honor, it is the State's understanding that at this time the defendant is withdrawing his not guilty plea and is pleading guilty to

> Count 1, the lesser included of second degree murder of Derek Turner; and Count 2, use of a handgun. *It is an ABA agreement that the sentence will be 50 years, suspend all but 20.*
>
> THE COURT: Wait a minute. Say that again. Count 1 is what?
>
> [THE STATE]: Second degree murder.
>
> THE COURT: How many years?
>
> [THE STATE]: *It will be a total amount of 50, suspend all but 20. And the first 5 will be mandatory*.
>
> THE COURT: That's the handgun offense?
>
> [THE STATE]: Correct.
>
> THE COURT: That carries - -
>
> [THE STATE]: Twenty years.
>
> THE COURT: Suspend all but the 20, and the first 5 is without, yes.
>
> [THE STATE]: The period of probation is within the discretion of the Court. Obviously, I believe the sentencing will be in front of Judge Clarke.

(Emphasis added.)

The court then requested that the parties approach the bench, where the colloquy continued.

> THE COURT: I will put it in front of Judge Clarke; but if it's an ABA, I'm the one that's committing what the sentence is. So the murder is to be how many years suspended?
>
> [THE STATE]: *The total is 50.*
>
> THE COURT: What's the maximum sentence for second degree?
>
> [DEFENSE COUNSEL]: Thirty. So we can suspend all but –

> THE COURT: The first one would be 30 years, suspend all but 20. The second will be use of the handgun. That will be 20 years - - no, it runs concurrent with 1. Then you have 5 years without parole?
>
> [THE STATE]: Correct.
>
> THE COURT: Got a little problem. You want Judge Clarke to sentence?
>
> [THE STATE]: It doesn't really matter, actually.
>
> THE COURT: The problem is - - I can't bind her.
>
> [THE STATE]: Since it is a binding plea agreement, I don't think it will matter.
>
> THE COURT: We're going to do it today?
>
> [THE STATE]: No.

(Emphasis added.)

The transcript reflects that counsel then returned to the trial tables and the next statement on the record was by the court: "Did you hear that conversation?" The transcript does not reflect to whom the court's question was directed or the response to the question. Rather, the transcript indicates that the prosecutor next informs the court that at sentencing, the State would "withdraw[ ] a violation of probation matter[.]" After a very brief discussion about the violation of probation case, the colloquy continued:

> [THE STATE]: The period of probation, Your Honor, would be within Your Honor's discretion.
>
> THE COURT: Five years.
>
> You've heard what the plea agreement is. Is that what you're agreeing to, young man?
>
> [DEFENSE COUNSEL]: I beg the Court's indulgence, Your Honor.

([Defense counsel] conferred with his client.)

THE COURT: I can see why Judge Clarke didn't come back.

[DEFENSE COUNSEL]: I answered the question about probation versus parole will work for him when he's released. It's a legitimate question.

THE COURT: Probation is within my discretion. Parole is not.

The court then examined Mr. Adamson and elicited, among other things, that he was 20 years old and had completed one year of community college. The court reviewed the rights Mr. Adamson would be waiving by entering the plea and confirmed that he had "talked this over" with his attorney. The court also confirmed that Mr. Adamson understood the nature of second-degree murder and use of a handgun in the commission of a crime of violence; that he had discussed the crimes with his attorney; and that defense counsel had "answered all of [his] questions about this case[.]" When the court asked whether "anyone made promises to you that are different than what they just told me the plea agreement is," Mr. Adamson replied "No, sir." When asked whether he was pleading guilty because he was in fact guilty, he replied: "I'm not telling you I'm guilty. I'm just taking a cop." In response, the court stated: "Are you telling me that you are guilty because you wish to take advantage of the offer and not run the risk of going to trial and being found with something far worse?" Mr. Adamson replied: "That's exactly what I'm saying." The court then explained the meaning of an *Alford* plea. Ultimately, the court concluded that Mr. Adamson was entering his plea knowingly and voluntarily and accepted it.

Sentencing

On June 19, 2014, three months after he entered the plea, Mr. Adamson appeared in court for sentencing before the same judge who had accepted the plea. The proceeding began with the following colloquy:

> [DEFENSE COUNSEL]: Your Honor, this is a guilty plea on March 14th of 2014 to one count of second degree murder, one count of use of a handgun. *There was an ABA agreement in this case that my client would receive a sentence of 50 years suspending all but 20 years*. Total on the two cases.[1]
>
> THE COURT: Yeah, the way I have it broken down - -
>
> [DEFENSE COUNSEL]: Yes, sir.
>
> THE COURT: - - is Count 1, that's the second degree murder, 30 years suspend all but 20.
>
> [THE STATE]: I think it has to be 15 then - -
>
> THE COURT: I have handgun 20 years, suspend all but 15. Is that what you are saying? I wrote down 20 and 20 running concurrent.
>
> [THE STATE]: Concurrent, yes.
>
> THE COURT: First five is without parole.
>
> [THE STATE]: Correct.
>
> [DEFENSE COUNSEL]: Correct, Your Honor.
>
> THE COURT: Okay. All right. And then five years probation.
>
> [DEFENSE COUNSEL]: Correct, Your Honor.
>
> THE COURT: All right.
>
> [DEFENSE COUNSEL]: You Honor - -

[1] It appears that defense counsel meant two "counts," not two "cases" as the murder and use of a handgun charges were included in the same indictment.

> THE COURT: If you want to submit on that, I'll follow the rule. But your choice.

(Emphasis added.)

Defense counsel replied that he would "submit" because "[a]ll the hard work has been done," but he had just "[o]ne point of allocution," which was that the court "include, along with the sentence in this case, the court's recommendation that [Mr. Adamson] be screened for the Patuxent Youthful Offender Program." After the court heard from the victim's mother, the State asked the court to "impose the total sentence of 50 suspend all but 20 years" and to order that Mr. Adamson have no contact with the victim's family.

Immediately prior to imposition of sentence, a bench conference was held with counsel off the record, the substance of which was not transcribed. Then the court announced its sentence:

> THE COURT: Count 2, use of handgun in felony the sentence is 20 years. Five years without parole.
>
> Attempted murder, 30 years. That's going to run consecutive.
>
> [THE STATE]: Your Honor, it's actually second degree murder, not attempt.
>
> THE COURT: Second degree. Consecutive suspended, so he has to do 20 years. He has 30 years over his head. He's got five years probation on this.

No one objected. Mr. Adamson filed a timely application for leave to appeal, but he did not challenge the plea or the sentence and he voluntarily withdrew the application a short time later.

DISCUSSION

As he did in his Rule 4-345(a) motion, Mr. Adamson acknowledges that the "original" plea agreement was for a total of 50 years, all but 20 years suspended, the first five years of imprisonment to be served without the possibility of parole. He maintains, however, that at the plea hearing - during the colloquy at the bench - the sentencing terms were "renegotiated" and "[a]s a result, the parties agreed that [he] would receive two 20 years sentences that would run concurrent." He relies on the excerpt from the sentencing transcript set forth above to support his position that the sentencing terms were altered to two concurrently run 20-year terms. He, therefore, contends that the court breached the plea agreement when it imposed consecutively run sentences totaling 50 years imprisonment, all but 20 years suspended.

Mr. Adamson also maintains that the circuit court erred in ruling on his Rule 4-345(a) motion without holding a hearing. A court, however, may deny a motion to correct an illegal sentence without a hearing. *Scott v. State*, 379 Md. 170, 191 (2004) (Rule 4-345(a) "does not require a hearing in open court.").

The State responds that the sentence imposed by the court was the sentence provided for in the binding plea agreement and, therefore, it is legal. The State suggests that the conversation at the bench during the plea hearing where the court "referred to 'concurrent' rather than 'consecutive' sentences . . . appears to be a slip of the tongue[.]"

Rule 4-345(a) permits a court to "correct an illegal sentence at any time." The scope of this Rule, however, is narrow and applies only to those sentences which are "inherently illegal." *Bryant v. State*, 436 Md. 653, 662 (2014). An inherently illegal sentence includes

a sentence that exceeded the sentencing terms of a binding plea agreement. *Matthews v. State*, 424 Md. 503, 519 (2012). The interpretation of a plea agreement, and whether a sentence violated its terms, are questions of law which we review de novo. *Ray v. State*, 454 Md. 563, 572-73 (2017).

In *Ray*, the Court of Appeals set forth a three-step analysis for construing the terms of a binding plea agreement when resolving an illegal sentence claim. First, we look to the plain language of the agreement to determine whether that language "is clear and unambiguous as a matter of law." 454 Md. at 577. If it is, "then further interpretative tools are unnecessary, and we enforce the agreement accordingly." *Id.* But if the plain language is ambiguous, we next look to the record developed at the plea hearing to determine "what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be[.]" *Id*. If "we still find ambiguity regarding what the defendant reasonably understood to be the terms of the agreement," then we must resolve the ambiguity in favor of the defendant, *id*. at 577-78, and he is "entitled to have the plea agreement enforced, based on the terms as he reasonably understood them to be[.]" *Matthews*, 424 Md. at 525.

Here, it does not appear from the record before us that the State and Mr. Adamson executed a written plea agreement from which we could assess whether the agreement's "plain language" is clear and unambiguous. Accordingly, we proceed to step two and look to the terms of the plea agreement as the parties relayed them to the court at the March 14, 2014 plea hearing. What the parties related at the *sentencing* hearing, held several months after the plea was accepted, is not pertinent. *Cuffley v. State*, 416 Md. 568, 582 (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.").

At the outset of the plea hearing, defense counsel informed the court that, the day before, the State had extended a "slightly new plea offer" and Mr. Adamson intended to accept it, which Mr. Adamson confirmed. The State then advised the court that "this is an ABA plea[,]" which prompted the court to explain to Mr. Adamson that an ABA plea meant that the court would be bound to impose the agreed-upon sentence. The State then announced the terms: Mr. Adamson would withdraw his plea of not guilty and enter a guilty plea to second-degree murder and use of a handgun; and "the sentence will be 50 years, suspend all but 20." The State reiterated a short time later: "It will be a total amount of 50, suspend all but 20. And the first 5 will be mandatory." Upon the court's query, the State clarified that the hand-gun offense was 20 years, and the mandatory five years was attached to that sentence. Finally, the State stated that "[t]he period of probation is within the discretion of the Court."

Mr. Adamson agrees that this was the plea bargain he struck with the State, but he claims that these "original" sentencing terms were then "renegotiated" at the bench when the court queried counsel again regarding the sentencing terms. During that colloquy, the State, for the third time, informed the court that the "total is 50 years." When discussing the maximum punishment allowed by statute and how the sentences would be structured, the transcript reflects that the court and counsel were talking over each other. The transcript also indicates that the court, when referring to the handgun sentence, stated: "That will be 20 years - - no, it runs concurrent with 1. Then you have 5 years without parole[.]"

Although in hindsight this conversation, as transcribed on paper, arguably inserts some ambiguity into the way the sentences would be structured, in our view it did not constitute a "renegotiation" of the plea bargain. The only sentencing terms set forth in the plea agreement were clear and unambiguous: a total term of 50 years, all but 20 years suspended, with the first five years served without the possibility of parole. How the sentences would be structured to satisfy that agreement was left open and was not an explicit part of the agreed-upon bargain.[2]

In sum, we hold that the circuit court did not err in denying Mr. Adamson's motion to correct an illegal sentence because his sentence did not breach the terms of the binding plea agreement.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[2] Although we may not look to the subsequently held sentencing hearing in interpreting the plea agreement, nonetheless we note that our interpretation - not Mr. Adamson's - is supported by defense counsel's opening remarks at sentencing that, "[t]here was an ABA agreement in this case that my client would receive a sentence of 50 years suspending all but 20 years. Total on the two cases."