

Circuit Court for Montgomery County
Case No.: 124123C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 195

September Term, 2021

MICHAEL PATRICK

v.

STATE OF MARYLAND

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 25, 2022

*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.

On January 9, 2015, Michael Patrick, appellant, appeared in the Circuit Court for Montgomery County and pursuant to a plea agreement with the State, pleaded guilty to two counts of armed robbery, kidnapping, and automobile theft and entered *Alford* pleas to two counts of armed robbery. Mr. Patrick faced a total term of 115 years' incarceration, but under the terms of the plea agreement, the court agreed to bind itself to a cap of 40 years of executed incarceration. On April 23, 2015, Mr. Patrick appeared in court for a sentencing hearing and the court imposed a total term of 100 years, with all but 40 years suspended, to be followed by a five-year term of supervised probation.

In November 2020, Mr. Patrick, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he acknowledged that he was sentenced in accord with the terms of his plea agreement, but noted that the Order of Probation that was signed by him and the sentencing judge reflects that “[a]ll but 30 years” of his sentence was suspended. He, therefore, maintained that his sentence is illegal because, in essence, the Order of Probation trumped the court's pronouncement that all but 40 years were suspended. The circuit court denied relief, noting that it had previously denied a similar motion. Mr. Patrick appeals that ruling. We shall affirm the judgment because the sentence is legal.

The sentencing transcript unambiguously reflects that the court sentenced Mr. Patrick to a total term of 100 years' imprisonment, with all but 40 years suspended, and to a five-year term of supervised probation upon release. The docket entry and commitment record reflect the same. The Order of Probation indicating that all but 30 years were suspended was obviously a clerical mistake and certainly did not supersede the court's

pronouncement of sentence in open court. The general rule is that, where there is a conflict between a sentencing transcript and either a docket entry or a commitment record, the transcript controls unless it is shown to be in error. *See, e.g., Gatewood v. State*, 158 Md. App. 458, 481-82 (2004) (transcript generally prevails over docket entry), *aff'd*, 388 Md. 526 (2005); *Dutton v. State*, 160 Md. App. 180, 191-92 (2004) (transcript generally prevails over commitment record). In our view, the same rule applies to an order of probation.

Moreover, the purpose of an order of probation is to “furnish to the defendant a written order stating the conditions and duration of probation,” and to provide a copy of the same to the Division of Parole and Probation. *See* Md. Rule 4-346. The order of probation, therefore, focuses on the conditions of probation. *Id.*

The defendant is required to sign the order of probation under a paragraph entitled “Consent” in which the defendant acknowledges that he or she “understand[s] the conditions and agree[s] to follow them” and that failure to do so could result in charges for violating probation. Although the document signed by Mr. Patrick includes the sentence imposed in his case and noted that “[a]ll but 30 years” was suspended, that appears to have been set forth for informational purposes only and, in any event, the sentencing information preceded the actual “Probation/Supervision Order.” Thus, we reject Mr. Patrick’s contention that the Order of Probation was a “contract” sentencing him to 100 years, all but 30 years suspended. We also reject as meritless his claim that the court had “changed its mind” after pronouncing sentence in open court and reduced the suspended time from 40 to 30 years. Nothing in the record before us supports that notion.

Finally, we note that the record before us reflects that on May 14, 2015, the Order of Probation in this case was corrected to reflect that all but 40 years of Mr. Patrick’s sentence was suspended.

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