Circuit Court for Prince George's County
Case No: CT07-1378X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 306

September Term, 2020

BOBBY BANKS JONES

v.

STATE OF MARYLAND

Fader, C.J.,
Beachley,
Ripken,

JJ.

Opinion by Beachley, J.

Filed: March 19, 2021

In 2007, Bobby Jones, appellant, appeared in the Circuit Court for Prince George's County and pleaded guilty to second-degree murder and use of a handgun in the commission of a crime of violence. The court sentenced him to 30 years' imprisonment for the murder and to a concurrent term of 20 years, all but five years suspended (to be served without the possibility of parole) for the handgun offense. The court also ordered a five-year term of supervised probation upon Mr. Jones's release from prison.

In 2019, Mr. Jones filed a Maryland Rule 4-345(a) motion in which he maintained that his sentence was illegal because the trial court had violated its agreement to impose concurrent sentences. In Mr. Jones's view, by suspending a portion of the handgun sentence and imposing a period of probation upon release, the "term of probation and suspended sentence for the handgun conviction in this case do not run concurrently" with the murder sentence. Following a hearing and a review of the plea hearing transcript, the court concluded that it had not bound itself to impose concurrent sentences and that the parties' plea bargain had simply been that the State would recommend that the sentences be run concurrently with each other.[1] Accordingly, the court rejected the claim that the sentence breached the plea agreement and, therefore, denied the motion to correct it. Mr. Jones appeals that ruling. We affirm.

[1] The judge who ruled on the Rule 4-345(a) motion to correct an illegal sentence was the same judge who had presided over the plea and sentencing proceedings.

BACKGROUND

Plea Hearing

On May 25, 2007, following an argument, Mr. Jones shot and killed his brother. The State charged him with first-degree murder, first-degree assault, and two counts of use of a handgun in the commission of a crime of violence. At a November 29, 2007 hearing, the State informed the court that, pursuant to a plea agreement, Mr. Jones would plead guilty to second-degree murder and one count of use of a handgun. The following was then placed on the record:

> [THE STATE]: It's going to be the State's recommendation, and the defense is aware of this, that the second degree murder count run concurrent with the handgun count. What we've proffered to the defense is that the State's request will be for an executed sentence of no more than 30 years, which would be the maximum on the second degree murder charge. With the gun running concurrent, the Court will be free to propose whatever sentence it pleases, as well as with regard to the length of the probation in this particular matter.
>
> [DEFENSE COUNSEL]: It's our understanding, Your Honor, we are asking that you, for today's purposes, agree to do the handgun count concurrent and the second degree, both sentences, in fact, be free to allocute with the State intending to ask for 30, which Mr. Jones understands.[2]

[2] At this particular point in the proceeding, it is not clear from the transcript whether Mr. Jones was present in the courtroom. When the case was called, the State and defense counsel introduced themselves for the record and defense counsel stated that Mr. Jones "should be in lock-up." The State then proceeded to inform the court that the case would proceed as a plea. The transcript does not indicate when Mr. Jones entered the courtroom, but on page five of the transcript the court addresses Mr. Jones personally.

The prosecutor then informed the court of the sentencing guidelines and defense counsel stated that Mr. Jones had no prior criminal convictions. The State advised the court that the victim's family was "aware of the plea[,]" noting that they "had discussed this about two weeks ago." Defense counsel then asked for the "Court's brief indulgence to go over the waiver form" and informed the court that she had "reviewed with Mr. Jones the waiver of rights and he signed that form." The form included the fact that the maximum penalties for the offenses Mr. Jones was pleading guilty to were "30y, 20y," but it did not mention the terms of any plea agreement or how the sentences might be structured.

The colloquy with the court then continued:

THE COURT: This will be a plea to second degree murder, which is a lesser included charge of Count I; is that right --

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: -- and Count IV, use of a handgun in the commission of a crime of violence?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: The only other terms of the agreement are that the handgun charge is to be -- the sentence for that is to be concurrent with the second degree murder charge?

[DEFENSE COUNSEL]: Yes, Your Honor, and besides that the defense would be free to allocute.

The court then examined Mr. Jones, eliciting that he was then 52 years old, had a high school diploma, and "at least four years['] worth of college[.]" Mr. Jones indicated

that he understood the proceeding and the rights he would be waiving by pleading guilty.

The colloquy continued:

THE COURT:	Do you understand that if I accept this plea, the only thing left to do is to sentence you?
[MR. JONES]:	Yes, Your Honor.
THE COURT:	Do you understand that the maximum sentence for second degree murder is 30 years, and the maximum sentence for use of a handgun -- was this in the commission of a felony or a crime [of] violence or did it matter?
[THE STATE]:	I don't think it matters.
THE COURT:	Okay.
[DEFENSE COUNSEL]:	Well, Count IV is the crime of violence.
THE COURT:	All right. Do you understand that that charge carries a minimum of five years without parole and up to 20 years?
[MR. JONES]:	Yes, Your Honor.
THE COURT:	Now, other than the promise that they would drop the other charges and ask me to run the two sentences concurrently, that is together -- first of all, is that your understanding of the promises of the agreement?
[MR. JONES]:	Yes, sir.
THE COURT:	Other than the promises in that agreement, did anybody promise you anything else to get you to plead guilty?
[MR. JONES]:	No, Your Honor. No.

* * *

THE COURT: Has [your attorney] answered any questions you may have had about your case or about this plea?

[MR. JONES]: All the questions, Your Honor.

THE COURT: All right. So, you are happy with her services?

[MR. JONES]: Yes, sir.

After accepting the plea and hearing the State's proffer in support thereof, the court agreed to order a presentence investigation. The court informed Mr. Jones that it would "consider that along with any other information in determining what sentence is appropriate under the circumstances." Mr. Jones responded that he understood.

Sentencing

Mr. Jones was sentenced three months later. At the outset of that hearing, the court asked: "This was an ABA plea to count 1, amended, second degree murder, with a cap of 30, and count 4, use of a handgun, concurrent?" The State replied, "That's correct, Your Honor." The State reviewed the facts of the crime and "ask[ed]" the court "to impose a sentence of 30 years on the second degree murder" and "to impose a concurrent sentence, as well, with respect to the use of a handgun, in accordance with the plea agreement." Defense counsel reviewed Mr. Jones's life history, presented an elderly neighbor as a character witness, and reminded the court that the sentencing guidelines were "15 to 25 years[.]" The guidelines comment prompted the following exchange:

THE COURT: Well, let me ask about that. They didn't put down that there was an ABA plea agreement. I've agreed to give a concurrent sentence, but

isn't the use of a handgun, under the statute, to be in addition to the underlying crime?[3]

[DEFENSE COUNSEL]: I think it's in your discretion whether it runs consecutive or concurrent.

THE COURT: Well, I understand that, but in calculating the guidelines, shouldn't the guidelines stack on each other? What they've just done is repeated the second degree murder guidelines.

[DEFENSE COUNSEL]: Your Honor, I didn't look into that upon receiving the PSI, so I don't know for sure whether the answer to that is yes or no. But I would ask you to consider sentencing him toward the lower end of his guidelines, especially taking into account his age and failing health.

After hearing from Mr. Jones, the court sentenced him to 30 years' imprisonment for second-degree murder and to 20 years for the handgun offense. The court announced that it would suspend all but five years of the handgun sentence "and that sentence will be concurrent" with the murder sentence. Finally, the court imposed a five-year term of supervised probation upon release. No one objected to the sentence as imposed and Mr. Jones did not seek leave to appeal.

Motion to Correct Illegal Sentence

As noted, more than 11 years after he was sentenced, Mr. Jones filed a motion to correct an illegal sentence claiming that, by suspending a portion of the handgun sentence and imposing a term of probation, the two sentences were not run concurrently with each

[3] The court apparently misspoke at the sentencing hearing when it stated, "I've agreed to give a concurrent sentence . . . ." As we discuss *infra*, the court never indicated at the *plea hearing* that it was binding itself to the proposed concurrent sentences.

other because he "would not begin serving" his probationary term or the suspended portion of the handgun sentence "until he had completed his 30-year sentence" for murder. According to Mr. Jones, this violated the terms of his "ABA binding plea agreement," which provided for concurrent sentences.

On March 4, 2020, the court convened a hearing on the motion. The State argued that the plea agreement was "non-binding" and there was nothing ambiguous about its terms. Defense counsel clarified that "we are not arguing that this was a binding plea for a specific sentence" but rather that the sentences would be "run together, or that are concurrent." Despite the comments it had made at the sentencing hearing, the court rejected Mr. Jones's position that it had ever agreed or bound itself to run the sentences concurrently with each other and concluded that the only agreement between the parties was that the State would "ask" the court to run the sentences concurrently. Accordingly, the court denied the motion.

DISCUSSION

On appeal, Mr. Jones makes the same argument he made in the circuit court and urges this Court to "reverse and direct that the probationary portion of the [handgun] sentence be vacated, and/or order a new sentencing hearing in order to effectuate, *inter alia*, correction of the illegality." More specifically, Mr. Jones asserts that "what the parties understood to be a binding plea agreement reveals at least ambiguity with respect to the nature of any suspended time and probation." He points out that the trial court's "explanation to Mr. Jones of [the plea] terms was without any mention of probation[,]" and therefore maintains that a "reasonable layperson in Mr. Jones'[s] position would have

believed that his guilty plea subjected him to a sentence which did not exceed 30 years of incarceration[,]" the applicable maximum term for second-degree murder. In other words, he claims that "[n]othing in the plea colloquy would put a reasonable person on notice that, despite the 30 year maximum for second degree murder, he faced the potential of an additional period of suspended punishment over and above that maximum." In sum, he insists that "there is at least ambiguity regarding whether a probationary period was a part of the plea agreement[,]" and notes that at sentencing the judge himself had referred to this as an "ABA plea."

The State first responds that the plea agreement was not binding on the court because the court "made no explicit promise binding itself to the plea agreement." But even if the court had agreed to bind itself, the State maintains that the sentence imposed did not exceed the terms of the agreement. Citing the excerpts from the plea hearing reproduced above, the State asserts that "the terms of the plea agreement were that the court would 'run the two sentences concurrently.'" As to the handgun charge, "the court was 'free to propose whatever sentence it please[d], as well as with regard to the length of the probation[.]'" (Alterations in original). Accordingly, the State maintains that a "reasonable lay person in Jones's position would understand that the terms of the agreement were for his two sentences to run concurrently, and that the court was free to impose 'whatever sentence' it wanted on the gun charge so long as it was concurrent to the murder charge."

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 exceeds the sentencing terms of a binding plea agreement. *Matthews v. State*, 424 Md. 503, 519 (2012) (citing *Dotson v. State*, 321 Md. 515, 524 (1991)). 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) (quoting *Cuffley v. State*, 416 Md. 568, 581 (2010)).

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." *Id.* 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.*[4] 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, at the outset of the plea hearing the State informed the court that the parties had reached a plea agreement whereby Mr. Jones would plead guilty to two of the four counts, the lesser included offense of second-degree murder and use of a handgun in the

[4] The record developed at the plea hearing controls. *Cuffley*, 416 Md. at 582 ("[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.").

commission of a crime of violence. (If there was a written agreement, it was not submitted to the court.) The prosecutor informed the court of the terms, noting that "the defense is aware of this," that "[i]t's going to be the State's *recommendation*" that the murder sentence "will be for an executed sentence of no more than 30 years" and that the handgun sentence be run concurrently. (Emphasis added). The prosecutor further stated that the court "will be free to propose whatever sentence it pleases, as well as with regard to the length of the probation in this particular matter." During the proceedings, the prosecutor advised the court that the victim's family was "aware of the plea[,]" noting that the terms of the plea were discussed with them "about two weeks ago." In other words, the plea agreement had been negotiated before the parties appeared in court for the hearing.

After the State informed the court of the plea terms, defense counsel asked the court to "agree to do the handgun count concurrent" and confirmed its understanding that the State "intend[s] to ask for 30" on the murder charge, but the parties were "free to allocute" as to the length of the sentences. The court never indicated during this hearing that it was bound to concurrent sentences for the two charges.

Defense counsel also submitted to the court the "waiver of rights" form that Mr. Jones had signed, which set forth the maximum sentences he was facing for each count. The form did not indicate that the court had agreed to impose any particular sentence or had agreed to structure the sentences in any specific manner.

As part of confirming the terms of the plea agreement on the record, defense counsel agreed with the court's summation that the agreement provided for Mr. Jones's entry of guilty pleas to second-degree murder and use of a handgun in the commission of a crime

of violence, and the "only other terms of the plea agreement" were that the handgun sentence "is to be concurrent with the second degree murder charge[.]" Defense counsel added that "besides that the defense would be free to allocute."

When examining Mr. Jones before accepting the plea, the court confirmed that he understood that, if the court accepted the plea, "the only thing left to do is to sentence you[.]" The court then reviewed the maximum sentences Mr. Jones was facing for each offense and that the first five years of the handgun offense must be served without parole. The court then stated: "Now, other than the promise that they would drop the other charges and *ask* me to run the two sentences concurrently, that is together -- first of all, is that your understanding of the promises of the agreement?" (Emphasis added). Mr. Jones replied in the affirmative. Mr. Jones also informed the court that he was pleased with the services of his defense counsel and that she had answered "[a]ll the questions" he had about the case and the plea. Finally, at the conclusion of the hearing, the court informed Mr. Jones that it would consider the presentence investigation report that would be ordered "along with any other information in determining what sentence is appropriate under the circumstances." Mr. Jones replied that he understood.

In our view, the trial court did not agree to *bind* itself to any particular sentence or to run the sentences concurrently with each other. A reasonable person in Mr. Jones's position would have understood that, and also would have understood that the agreement simply provided that the State would *recommend* or *ask* the court to run the sentences concurrently. Moreover, the court adequately conveyed to Mr. Jones that it was free to "determine what sentence" would be "appropriate under the circumstances."

Finally, we note that Mr. Jones presumes that he will not begin probation until he has served all 30 years of his sentence for murder. It is conceivable, however, that he may be released from prison prior to serving the full 30-year murder sentence, which means he could at some point be "serving" both sentences outside the prison walls at the same time, that is, concurrently. *See State v. Parker*, 334 Md. 576, 587–88 (1994) (noting that, although different from incarceration, it is not facially incorrect to say that "parole constitutes service of the sentence beyond the prison walls").

In sum, because Mr. Jones's handgun sentence is legal, the circuit court did not err in denying the Rule 4-345(a) motion to correct it.

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