

Circuit Court for Cecil County
Case No. 07-K-10-469

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 312

September Term, 2021

JOEL THOMAS MILBURN

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: October 26, 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.

In 2010, Joel Milburn, appellant, pleaded guilty, in the Circuit Court for Cecil County, to one count of first-degree murder. Pursuant to a plea agreement, the court sentenced Mr. Milburn to a term of life imprisonment, with all but forty years suspended, and no period of probation.

In 2015, the circuit court determined, *sua sponte*, that Mr. Milburn’s sentence was illegal because it did not include a period of probation. The court resentenced Mr. Milburn to a term of life imprisonment, with all but forty years suspended, and a five-year period of probation.

In 2021, Mr. Milburn filed a motion to correct an illegal sentence, arguing that the circuit court’s imposition of a five-year period of probation was illegal because it violated the terms of the plea agreement, which called for no probation. The court held a hearing on Mr. Milburn’s motion, and, at the behest of the parties, the court agreed to vacate the 2015 sentence and resentence Mr. Milburn in light of the arguments presented at the hearing. At the conclusion of the hearing, the court determined that it was not bound by the plea agreement and that a five-year period of probation was appropriate. The court resentenced Mr. Milburn to a term of life imprisonment, with all but forty years suspended, and a five-year period of probation. This timely appeal followed.

In this appeal, Mr. Milburn presents a single question for our review:

Did the circuit court err in imposing a sentence that included a five-year period of probation?

For reasons to follow, we hold that the circuit court did not err. We therefore affirm the court’s judgment.

BACKGROUND

Original Sentence

In 2009, Mr. Milburn participated in an armed home invasion with several other assailants. During the robbery, one of the assailants shot and killed one of the home's occupants. Mr. Milburn was subsequently arrested and charged.

In 2010, Mr. Milburn pleaded guilty to one count of first-degree murder pursuant to a plea agreement with the State. At Mr. Milburn's guilty plea hearing, defense counsel outlined the terms of the plea agreement as follows:

[T]he State is recommending a sentence of life, suspending all but a cap of 40 years, leaving the defense able to argue for less, although the State will be recommending the 40 years at time of sentence, and also that there will be no probation component to the ultimate sentence that is imposed. This is a non-binding agreement, although the Court has already indicated its willingness to abide by the limits, that is, the cap sentence and terms of the agreement as they exist.

At the sentencing hearing that followed, the circuit court reiterated that there had been "a plea of guilty with the understanding that this sentence would be life suspending all but 40 years." Defense counsel later added that there was "no component of probation attached to" the sentence, and the court agreed. The court ultimately sentenced Mr. Milburn to a term of life imprisonment, with all but forty years suspended, and no period of probation.

2015 Corrected Sentence

In 2015, Mr. Milburn filed a motion to correct an illegal sentence. At the hearing on that motion, Mr. Milburn informed the circuit court that he wanted to withdraw the motion. After accepting that withdrawal, the court noted that it had reviewed Mr.

Milburn’s file and discovered that his original sentence was illegal because it did not include a period of probation. The court then vacated Mr. Milburn’s original sentence and imposed a new sentence of life imprisonment, with all but forty years suspended, and a five-year period of probation.

2021 Corrected Sentence

In 2021, Mr. Milburn filed a petition for post-conviction relief and a motion to correct an illegal sentence. At the hearing on those filings, the parties informed the circuit court that Mr. Milburn had agreed to withdraw his petition for post-conviction relief in exchange for a full hearing on the merits of his motion to correct an illegal sentence. The parties indicated that they wished to “redo the motion to correct illegal sentence hearing” that took place in 2015 and to treat that hearing as if it had never happened. The parties asked that Mr. Milburn’s original sentence be reimposed and that the 2015 sentence be vacated for the purposes of determining the merits of Mr. Milburn’s motion to correct an illegal sentence. The court agreed.

On the merits, Mr. Milburn conceded that his original sentence was illegal because it did not include a period of probation. Mr. Milburn maintained that, while the standard remedy would be to remove the illegality by imposing a period of probation, doing so would result in an illegal sentence because it would violate the terms of the plea agreement, which called for no probation. Mr. Milburn argued that the equitable solution would be to impose a one-day period of probation.

In the end, the circuit court imposed the same sentence it had imposed in 2015 – a term of life imprisonment, with all but 40 years suspended, and a five-year period of

probation. The court also ordered that restitution be a condition of Mr. Milburn's probation, should the State choose to request it. In so doing, the court stated that it had considered all the relevant facts and circumstances, the evidence presented, the terms of Mr. Milburn's plea agreement, and the relevant case law. The court found that Mr. Milburn's original life sentence was illegal because it included suspended time without a period of probation. The court found, therefore, that it was "not able to abide by the terms of the illegal agreement that was reached." The court explained that, under the relevant case law, it was required to correct the illegal sentence by imposing the maximum legal sentence with the illegality removed. The court determined that, under the circumstances, the appropriate sentence was life imprisonment, with all but 40 years suspended, and a five-year period of probation.

After the circuit court made those remarks, defense counsel noted that Mr. Milburn's post-conviction petition had been withdrawn "with the understanding that nobody here today was asking for restitution or for five years of probation." The court responded that the plea agreement "was not a legal sentence" and that the court was "not bound by something that is illegal." The court explained that it had "an obligation to correct it" and "an obligation to do what . . . is appropriate in this case." The court concluded that, based on the circumstances of the case, the terms of Mr. Milburn's probation were apt.

This timely appeal followed. Additional facts will be supplied below.

DISCUSSION

Parties' contentions

Mr. Milburn argues that the circuit court erred in including a five-year period of probation in his sentence. Preliminarily, Mr. Milburn recognizes that his original sentence of life imprisonment, which included a suspended portion and no period of probation, was an illegal sentence and that, consequently, some period of probation was required. That is, Mr. Milburn does not argue that the court erred in altering his original sentence to include a period of probation. He argues, rather, that the manner in which the court corrected his sentence was erroneous. He raises two primary arguments. First, he contends that the court abused its discretion in “resentencing him based upon improper considerations and without reference to the binding plea agreement.” Second, he contends that the court “abused [its] discretion in failing to correct his sentence in a manner consistent with the plea agreement.”

The State argues that the circuit court did not abuse its discretion in imposing a five-year term of probation, as that term was within the court’s statutory authority. The State notes that the court could not abide by the plea agreement because the agreement did not include a period of probation and thus was illegal.

Standard of Review

Maryland Rule 4-345(a) allows a trial court to correct an illegal sentence at any time. “Whether a sentence is an illegal sentence under Maryland Rule 4-345(a) is a question of law that is subject to de novo review.” *State v. Crawley*, 455 Md. 52, 66 (2017). Likewise, “[w]hether a trial court has violated the terms of a plea agreement is a question

of law, which we review de novo.” *Cuffley v. State*, 416 Md. 568, 581 (2010). A court’s decision granting probation is generally reviewed for abuse of discretion. *Johnson v. State*, 62 Md. App. 548, 551 (1985); *see also Crawley*, 455 Md. at 68.

Analysis

Before discussing the specifics of Mr. Milburn’s various claims, we first set forth the relevant law. Section 6-222 of the Criminal Procedure Article (“Crim. Proc.”) of the Maryland Code allows a sentencing court to impose a “split sentence,” whereby the court sentences a defendant for a specified time, suspends some (or all) of the sentence, and orders a period of probation. Md. Code, Crim. Proc. § 6-222(a). The statute limits any term of probation imposed by the circuit court to five years. *Id.*

In *Cathcart v. State*, 397 Md. 320 (2007), the Court of Appeals held that a split sentence may be used in connection with a life sentence, but it must include “a period of probation attached to the suspended part of the sentence.” *Id.* at 327. The court explained that, without a period of probation, the sentence would not be “split” but rather would be limited to the unsuspended part of the sentence, which would become the effective sentence. *Id.* at 330. The Court noted that the “[f]ailure to impose a period of probation does not necessarily make the sentence illegal but simply precludes it from having the status of a split sentence under CP § 6-222.” *Id.*

The Court of Appeals continued this discussion in *Greco v. State*, 427 Md. 477 (2012). There, the defendant was convicted of several offenses, including first-degree murder, which, by statute, required a minimum sentence of life imprisonment. *Id.* at 482, 505. The defendant was thereafter sentenced to a term of life imprisonment, with all but

fifty years suspended, and no period of probation. *Id.* at 505. The Court ultimately held that the sentence was illegal because, under *Cathcart*, the sentencing court’s failure to include a period of probation converted the defendant’s sentence to a “term-of-years” sentence of fifty years, which violated the statutory minimum sentence of life imprisonment. *Id.* at 507, 513. The Court remanded the case for resentencing, stating that the new sentence was “limited by the maximum legal sentence that could have been imposed, with the illegality removed.” *Id.* at 513. The Court declared, therefore, that the new sentence should be “life imprisonment, all but fifty years suspended, to be followed by some period of probation.” *Id.*

In *Crawley*, 455 Md. 52, the Court of Appeals considered whether its holding in *Greco* applied when the illegal sentence was imposed pursuant to a plea agreement. *Id.* at 55. There, the defendant pleaded guilty to first-degree felony murder and armed robbery pursuant to a plea agreement. *Id.* at 56. The agreement called for a sentence of life imprisonment, with all but 35 years suspended. *Id.* The agreement did not mention probation, and the issue of probation was not raised at sentencing. *Id.* at 56-57. The sentencing court ultimately sentenced the defendant to a term of life imprisonment, with all but 35 years suspended, and no period of probation. *Id.* at 57.

Several years later, after the defendant filed a motion to correct an illegal sentence in the circuit court, the court found that, under *Greco*, the defendant’s sentence was illegal. *Id.* at 61-62. The court resentenced the defendant to a term of life imprisonment, with all but 35 years suspended, and four years of supervised probation. *Id.* at 62. After the defendant noted an appeal to this Court, we reversed on the grounds that the defendant

never contemplated probation when he entered the agreement. *Id.* at 63. We remanded the case so that the defendant would have the opportunity to negotiate that term or withdraw his guilty plea. *Id.*

After granting *certiorari*, the Court of Appeals reversed this Court’s decision and held that the sentencing court did not err in imposing a four-year term of probation. *Id.* at 68. In so doing, the Court emphasized that the defendant’s original sentence, which omitted a term of probation, was illegal under *Greco*. *Id.* at 65-68. The Court then rejected the premise that the rule announced in *Greco* was somehow inapplicable to a sentence following a guilty plea. *Id.* at 66-68. The Court explained that a sentencing court has no authority “to impose a sentence that does not comport with a legislatively-mandated sentence, and any such sentence must be corrected to remedy the illegality.” *Id.* at 66. The Court further explained that “a defendant cannot consent to an illegal sentence” and that the sentencing term of the plea agreement in that case, “though agreed upon by the parties and imposed by the court, was unequivocally illegal.” *Id.* at 66-67. The Court held, therefore, that “the rule established by *Greco* applies regardless of whether the sentence was the product of a plea agreement or upon a conviction following trial.” *Id.* at 55. The Court then explained why the sentencing court in that case did not err in correcting the defendant’s sentence to include a four-year term of probation:

Greco instructs that a corrected sentence is “limited by the maximum legal sentence that could have been imposed, with the illegality removed.” 427 Md. at 513. The [sentencing] court followed the dictates of *Greco* by vacating the original unlawful sentence, reimposing the mandatory life sentence with all but 35 years suspended, and adding a period of probation to the suspended portion of that sentence. In so doing, the [sentencing] court effectively removed the illegality created by the absence of a period of

probation attached to the suspended portion of the life sentence. There is no dispute that the four-year probation period satisfied constitutional standards and statutory limits. [*Meyer v. State*, 445 Md. 648, 670 (2015)] (“When imposing probation conditions, [a] judge is vested with very broad discretion . . . [in order] to best accomplish the objectives of sentencing – punishment, deterrence and rehabilitation[,] and is limited only by constitutional standards and statutory limits.”) (citations and internal quotations omitted). The imposition of that period of probation, moreover, did not constitute an abuse of the circuit court’s “very broad discretion.” *Id.*

Id. at 68.

Based on the above case law, it is beyond cavil that, in the instant case, the life sentence imposed pursuant to Mr. Milburn’s plea agreement was illegal because it included a suspended portion without a period of probation. The sole question before this Court is whether the circuit court erred in resentencing Mr. Milburn to a term of life imprisonment, with all but forty years suspended, and a five-year period of probation. With those principles in mind, we now turn to the substance of Mr. Milburn’s arguments.

A.

Mr. Milburn first argues that the circuit court abused its discretion in “resentencing him based upon improper considerations and without reference to the binding plea agreement.” He asserts that, under *Crawley*, the court’s power was strictly limited to correcting the illegality by imposing some period of probation. He asserts that the court’s power was also limited by the terms of the plea agreement, which “remained the relevant loadstar as it identified the outer bounds of the court’s discretion in performing its limited task to remedy the only illegality in the sentence: the lack of any term of probation.” He argues that, based on the record of the sentencing hearing, the court “did not view its task to be this limited corrective function” but rather it “viewed the scope of its discretion in

this case to be resentencing *ab initio*, and this permitted the imposition of up to an unsuspended life sentence.” In support, Mr. Milburn highlights several remarks made by the sentencing court regarding the illegality of the plea agreement and the various factors it considered, beyond the plea agreement, in fashioning his sentence.

The State asserts that the circuit court did not abuse its discretion in imposing a five-year term of probation. The State notes that, under *Crawley*, the proper remedy was for the court to vacate the original unlawful sentence, reimpose the life sentence and suspended term, and add a period of probation. The State asserts that the court did just that in Mr. Milburn’s case. The State also notes that the probationary term was within the court’s statutory authority.

We hold that the circuit court did not abuse its discretion in imposing the disputed probationary period. The record shows that the court considered the terms of the plea agreement and the relevant case law in reaching its decision. The court found that, under *Crawley*, the sentence set forth in the plea agreement was illegal and that, consequently, the court was obligated to correct it. The court noted that, in such a situation, a sentencing court is directed to impose the maximum legal sentence with the illegality removed. The court then imposed a term of life imprisonment, with all but forty years suspended, and a five-year term of probation, which was the exact same sentence as the plea agreement, with the illegality removed.

The circuit court’s decision was consistent with the case law and not an abuse of discretion. The court exhibited a clear understanding of the law and the facts of the case, including Mr. Milburn’s plea agreement and original sentence. The court followed the

dictates of *Greco* and *Crawley* by vacating the original sentence, reimposing the mandatory life sentence with all but forty years suspended, and adding a period of probation. That the term of probation reached the statutory cap is, by itself, of no moment. Like in *Crawley*, it is undisputed that the term of probation satisfied constitutional standards and statutory limits.

To be sure, the circuit court made several comments indicating that it was not bound by the terms of the plea agreement. Mr. Milburn cites those comments as evidence that the court somehow believed that it had the authority to impose any sentence the court deemed appropriate.

We disagree with Mr. Milburn’s interpretation of the record. The cited comments were not made about the plea agreement, generally, but rather were made in reference to the term of the plea agreement that called for no probation. That is, it is clear from the record that the court was discussing the “no probation” portion of the plea agreement when it stated that it was not bound by the agreement. The context of the comments do not suggest that the court ignored the plea agreement in its entirety, nor do they suggest that the court believed it could sentence Mr. Milburn anew and without any reference to his original sentence. Moreover, the court’s other comment regarding the relevant case law, in which the court recognized that it was required to impose the maximum legal sentence with the illegality removed, demonstrates the court’s clear understanding of its limited role in fashioning Mr. Milburn’s sentence. That the court ultimately imposed that very sentence – the maximum legal sentence with the illegality removed – is further proof that the court did not exceed the bounds of its authority in resentencing Mr. Milburn.

As to Mr. Milburn’s reliance on the circuit court’s references to certain other factors it considered in fashioning his sentence, we remain unpersuaded. The court, in imposing a period of probation, was permitted to consider factors outside of the plea agreement. *See Meyer, supra*, 445 Md. at 670 (“When imposing probation conditions, [a] judge is vested with very broad discretion . . . [in order] to best accomplish the objective of sentencing – punishment, deterrence and rehabilitation[.]”) (citations and quotation marks omitted). There is nothing in the record to indicate that the court considered those additional factors in deciding anything other than the terms and conditions of Mr. Milburn’s probation.

B.

Mr. Milburn next claims that, even if the circuit court properly considered the plea agreement, the court nevertheless erred in imposing the statutory maximum of five years’ probation. He argues that, “by imposing the most onerous term of probation, the lower court exceeded its discretion to *correct* the sentence, and violated the binding terms of the plea agreement, which require the imposition of minimal probation.” He contends that, while a court may retain its full discretion to impose probation when the terms of a plea agreement are silent as to probation, that discretion can also be circumscribed by the parties, which is what happened in his case. He avers that, because the parties expressly included “no probation” as a term of the plea agreement, and because the court accepted that term when it accepted Mr. Milburn’s guilty plea prior to imposing the original sentence, the court bound itself to the understanding that “there would [be] minimal probationary obligations at the end of [his] forty[-]year active term of incarceration.” Mr.

Milburn argues that the court’s imposition of the maximum period of probation violated both the letter and the spirit of the plea agreement.

The State counters that none of Mr. Milburn’s arguments are meritorious. The State asserts that there is no support in the relevant case law for drawing a distinction between plea agreements that are silent on probation and those that expressly call for no probation. The State contends that, in either case, the bargained term is illegal and must be corrected by the court. The State maintains that it would be impossible for the court to abide by the terms of such an agreement because any term of probation would necessarily violate those terms. The State contends that the court in the instant case was therefore not required to adhere to the “no probation” term of the plea agreement.

We hold that the circuit court did not err in imposing the statutory maximum of five years’ probation. To begin with, we do not agree with Mr. Milburn’s interpretation and application of the law to his case. Because Mr. Milburn’s plea agreement expressly included a provision that called for no probation, he insists that, while the holding of *Crawley* is generally applicable to his case, it is nevertheless distinguishable because, in that case, the exclusion of probation from the defendant’s original sentence was not an express term of the plea agreement. In making that argument, Mr. Milburn relies heavily on cases that involve the application and interpretation of binding plea agreements, and he focuses predominantly on those cases that discuss the restrictions on a sentencing court’s discretionary power to craft a sentence beyond the terms of a binding plea agreement. *See Matthews v. State*, 424 Md. 503, 519 (2012) (“[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[] is . . . an inherently illegal sentence.”) (citation and quotation marks omitted). Mr. Milburn suggests that a reviewing court cannot apply the principles of *Crawley* in cases such as his without also applying, with equal force and weight, the principles espoused in cases involving binding plea agreements.

The problem with that approach is that there is nothing in *Crawley* to indicate that the holding of that case should be interpreted differently when the binding plea agreement expressly includes a “no probation” provision. Although Mr. Milburn is correct in asserting that, ordinarily, a sentencing court must adhere to the sentence set forth in a binding plea agreement, *see Ray v. State*, 454 Md. 563, 572-76 (2017), the Court of Appeals made clear in *Crawley* that “the rule established by *Greco* applies *regardless of whether the sentence was the product of a plea agreement[.]*” *Crawley*, 455 Md. at 55 (emphasis added). The Court then stated, in no uncertain terms, that, when an illegal sentence has been bargained for by the parties and accepted by the court as part of a plea agreement, the illegal sentence must be corrected, and the corrected sentence must be confined to “the maximum legal sentence that could have been imposed, with the illegality removed.” *Id.* at 67-68 (citation and quotation marks omitted). The Court held that, where a bargained-for life sentence includes a suspended portion but fails to include the requisite term of probation, the proper remedy is to add some period of probation to the original sentence, provided that the period of probation satisfies “constitutional standards and statutory limits” and does “not constitute an abuse of the circuit court’s ‘very broad discretion.’” *Id.* at 68 (citation omitted). That is precisely what happened here.

Moreover, although the Court of Appeals in *Crawley* did not explicitly address a situation in which a plea agreement included an express “no probation” provision, the Court’s tenor suggests that such a situation would produce the same result. The Court emphasized that “a defendant cannot consent to an illegal sentence[.]” and the Court ultimately held that the sentencing term of the plea agreement in that case “was unequivocally illegal” even though it had been “agreed upon by the parties and imposed by the court[.]” *Id.* at 66-67. The Court also emphasized that a sentencing court had no authority “to impose a sentence that does not comport with a legislatively-mandated sentence” and that “such sentence must be corrected to remedy the illegality.” *Id.* at 66. Finally, in concluding that *Greco* applied with equal force when the sentence was the product of a plea agreement, at no point did the Court state, or even insinuate, that the result of that case would have been any different had there been a bargained-for “no probation” term in the plea agreement.

From that, we are convinced that the circuit court imposed a proper sentence in the instant case. As the State points out, *any* probationary period, even the “minimal” one posited by Mr. Milburn, would violate the terms of his plea agreement. We must assume that, when it issued its opinion in *Crawley*, the Court of Appeals understood the relevant precedent regarding a court’s sentencing power under a binding plea agreement. We must likewise assume that the Court effectively deemed that precedent inapplicable in a situation such as this one, given that, as noted, the addition of any probationary period would exceed the terms of the agreed-upon sentence, regardless of whether an express “no probation” term was part of that bargain. Consequently, *Cuffley* must stand for the proposition that,

where a defendant bargains for and receives no probation as part of a “split” life sentence, and where that sentence is deemed illegal pursuant to *Crawley*, the proper remedy is for the sentencing court to correct the sentence by adding a probationary term that satisfies constitutional standards and statutory limits and does not evince an abuse of discretion. Again, that is exactly what the court did here.

In reaching our holding, we are mindful of Mr. Milburn’s insistence that the parties had bargained for the “no probation” term in an attempt to circumscribe the court’s discretionary power over his sentence vis-à-vis probation. But, as the Court of Appeals made clear in *Crawley*, the parties cannot agree to an illegal sentence, and the sentencing court does not have the authority to impose an illegal sentence. Thus, regardless of whether the parties, the court, or both, agreed to the sentence outlined in the plea agreement, that sentence was illegal, and the court was obliged to correct it. In so doing, the court was not required to speculate as to what the parties’ intentions were regarding probation, nor was the court required to capture the spirit of the plea agreement in deciding on the necessary term of probation. Instead, the court was required to fix the illegality pursuant to *Crawley*, which it did.

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