Circuit Court for Prince George's County
Case No.: CT070218A

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 395

September Term, 2023

ERIC BROWN

v.

STATE OF MARYLAND

Berger,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: April 3, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is Eric Brown's second appeal involving sentences he received for two carjacking offenses. For the reasons to be discussed, we shall affirm the April 6, 2023 judgment of the Circuit Court for Prince George's County striking the sentences imposed on August 7, 2007 and re-sentencing him to two concurrently run terms of seven years' imprisonment, with credit for time served. For the sake of clarity, however, we shall also remand with instructions for the court to strike any previous order or commitment record directing the execution of previously suspended time following a 2014 violation of probation.

BACKGROUND

In 2007, Mr. Brown pleaded guilty to two counts of carjacking and was sentenced to twenty-five years' imprisonment, all but seven years suspended, for one count and to a consecutively-run term of twenty-five years, fully suspended, for the second count, to be followed by a term of four years' probation upon release. He was released in 2011. In 2014, he was convicted of second-degree murder and use of a handgun in the commission of a crime of violence and sentenced to a total term of fifty years' imprisonment. The new conviction prompted the revocation of his probation in this case and on May 30, 2014, the court ordered Mr. Brown to serve twenty-five years of his previously suspended time, to run consecutive to the murder sentence.

In 2018, Mr. Brown filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that his original sentence in this case breached the terms of the binding plea agreement which called for the carjacking sentences to run concurrently. The circuit court agreed, and on November 4, 2019, the court issued an order directing that the

carjacking sentences run concurrently and "that the sentence imposed [on] May 30, 2014 as a result of his violation of probation be 18 years consecutive to" the murder sentence in the other case. An amended commitment record reflecting the same was issued on January 29, 2020.

Mr. Brown then noted an appeal and contended that the circuit court did not fully correct the sentences. He maintained that the terms of the binding plea agreement provided that the carjacking sentences would run concurrently, and that he would receive a sentence within the sentencing guidelines. He asserted that he "was never advised that the sentences included the potential for the imposition of suspended time and probation, let alone the imposition of any time that exceeded the number of years expected under the guidelines." Given that the guidelines in this case were four to nine years, he argued that his sentences as originally imposed and as amended following the violation of probation were illegal. This Court agreed. *Brown v. State*, No. 43, September Term, 2021 (filed May 19, 2022) ("*Brown I*"). We held "that sentencing Mr. Brown to a split sentence in the first instance and subsequently sentencing him to the suspended portion of that sentence based on his violation of probation was illegal." *Brown I,* slip op. at 11. We concluded that, under the terms of the binding plea agreement as placed on the record of the plea hearing, "Mr. Brown's agreement was for four to nine years of 'actual incarceration within the guidelines' or 'actual incarcerable time.'" *Id*. at 9-10. Because neither a period of probation nor suspended time was mentioned at the plea hearing, sentencing Mr. Brown to something other than a flat four to nine years was illegal. Accordingly, we reversed the

decision of the circuit court "and remanded with instructions to vacate the illegal sentences in accordance with" our opinion. *Id*. at 11.

On April 6, 2023, the court convened a re-sentencing hearing. The court struck the sentences imposed on August 7, 2007, and re-sentenced Mr. Brown to two concurrently run terms of seven years' imprisonment, with credit for time served. Although defense counsel urged the court to "dismiss" the 2014 violation of probation given that the suspended time and probation should never have been imposed, the court took no action related thereto. Mr. Brown appealed.

DISCUSSION

On appeal, Mr. Brown asserts that the re-sentencing court "erred in illegally resentencing [him] to two concurrent terms of 7 years, as one of those terms originally had been suspended in its entirety." And because the term of probation imposed in 2007 was not lawful, Mr. Brown claims that the court in 2014 had no authority to find him in violation of probation. He, therefore, maintains that the re-sentencing court in 2023 "erred in failing to strike/vacate the probationary aspect of the original sentence—and thus the probation violation—thereby leaving the illegality in relation to the probation violation still in place." He requests that this Court: vacate or strike the seven-year sentence imposed for the carjacking conviction for which he was originally sentenced to a fully suspended twenty-five-year term of incarceration; vacate or strike the "probationary aspect of his original sentence"; and vacate or strike the finding of a violation of probation.

The State agrees that "any sentence on a violation of probation would be illegal." The State, however, maintains that the re-sentencing court made no error in imposing "a

concurrent seven-year sentence on the second count, even though the court suspended that sentence in 2007." Relying on *Twigg v. State*, 447 Md. 1 (2016), the State asserts that the re-sentencing court was free to impose any sentence that did not exceed the original one.

We agree with the State that the re-sentencing court did not err or impose an illegal sentence when it struck the sentences imposed on August 7, 2007 and sentenced Mr. Brown to two concurrently run terms of seven years' imprisonment, with credit for time served. In 2007, the court imposed an aggregate sentence of fifty years, with all but seven years suspended. In 2023, the re-sentencing court imposed an aggregate or total sentence of seven years. Pursuant to Md. Code, Courts & Judicial Proceedings § 12-702(b), following a remand from the appellate court to the circuit court for re-sentencing, "the lower court may impose any sentence authorized by law to be imposed as punishment for the offense" but "may not impose a sentence more severe than the sentence previously imposed for the offense" absent certain exceptions. In *Twigg*, *supra*, the Maryland Supreme Court held that there was no violation of § 12-702(b) where the defendant's "total sentence would not be greater than the total . . . originally imposed." 447 Md. at 30. In so ruling, the Supreme Court rejected Twigg's argument that § 12-702(b) "preclude[d] imposition of a new sentence for his conviction of child abuse because any sentence that modifies the originally imposed, fully suspended sentence would constitute a 'sentence more severe than the sentence previously imposed' for that crime." *Id*. at 24. Instead, the Supreme Court concluded that the focus is on "the total sentence for all those counts upon which the defendant was convicted." *Id*. at 25.

Here, the sentence Mr. Brown received in 2023 is less than the total originally imposed in 2007 and the new sentence comports with the terms of the binding plea agreement. Hence, the concurrently-run terms of seven years' incarceration for both carjacking counts is legal.

We turn now to Mr. Brown's request that we order the circuit court to vacate or strike the "probationary aspect of his original sentence" and vacate or strike the 2014 finding that he had violated conditions of his probation. We see no need to do so. The Daily Sheet filed by the court dated April 6, 2023 reflects that the court "ordered" that "the sentence dated 8-7-2007 is stricken[,]" which obviously included the term of probation that accompanied that sentence.

As for the finding in 2014 that Mr. Brown had violated conditions of probation, which prompted the court to revoke his probation and order him to serve previously suspended time, we note that Mr. Brown did not seek leave to appeal that decision. What is before us now is a sentencing issue and everyone agrees that the court's 2014 order (and November 4, 2019 amendment thereto) directing Mr. Brown to serve previously suspended time for violating conditions of his probation was, in hindsight, invalid.[1] But for the sake of clarity, and to avoid confusion in the Commitment Office of the Division of Correction, we shall remand this case with instructions for the circuit court to strike any order or

[1] By committing new crimes following his early release from prison, Mr. Brown may have violated conditions of his parole or mandatory supervision release had he been placed thereon. That, however, would have been an issue for the Maryland Parole Commission, not the Judiciary.

amended commitment record directing the execution of previously suspended time based on the 2014 admission by Mr. Brown that he had violated conditions of his probation.

APRIL 6, 2023 JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY RE-SENTENCING APPELLANT TO TWO CONCURRENT TERMS OF SEVEN YEARS' IMPRISONMENT AFFIRMED.

CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO STRIKE ANY COMMITMENT RECORD OR ORDER DIRECTING THE EXECUTION OF PREVIOUSLY SUSPENDED TIME BASED ON THE 2014 VIOLATION OF PROBATION.

COSTS TO BE SPLIT BETWEEN APPELLANT AND PRINCE GEORGE'S COUNTY.