Circuit Court for Washington County
Case No: 21-K-11-046255

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 449

September Term, 2020

JOHN RICHARD TITUS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: March 8, 2021

In 2011, pursuant to a plea agreement with the State, John Richard Titus, appellant, pleaded guilty to possession with intent to distribute a large amount of marijuana, possession with intent to distribute oxycodone, and possession of a firearm in relation to a drug trafficking crime. In exchange, the State agreed to *nol pros* other charges and cap its sentencing request "for active time" at 15 years' imprisonment, the first 10 years to be served without parole. The court accepted the plea and sentenced Mr. Titus to a total term of 30 years, all but 15 years suspended, to be followed by a three-year term of supervised probation. In 2017, the court granted Mr. Titus's request for drug treatment pursuant to Health-General § 8-507 and he entered a facility outside of prison; the remainder of the active portion of his sentence was suspended. In 2018, however, he was charged with violating conditions of his probation and on March 11, 2019, the court revoked his probation and ordered him to serve a total of 20 years of his previously suspended time. A month later, his Commitment Record was amended to show that he was serving a total term of 15 years – 15 years on one count and a concurrently run term of five years on another.

In 2020, Mr. Titus, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that, pursuant to the 2011 plea agreement, the trial court had bound itself "to a cap of fifteen years as a sentence, any sentence of active and/or suspended incarceration could not exceed fifteen years." He argued, therefore, that the sentencing court had breached the plea agreement when it sentenced him to 30 years, all but 15 years suspended and hence he was serving an illegal sentence. The circuit court summarily denied the motion, and Mr. Titus filed a timely appeal. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Mr. Titus was charged by indictment with 29 counts of CDS and firearm related offenses. On November 15, 2011, he appeared in court with counsel for a plea hearing. The prosecutor informed the court that, pursuant to a plea agreement, Mr. Titus would tender a guilty plea to possession with intent to distribute marijuana in a large amount (count 15); possession with intent to distribute oxycodone (count 18); and possession of a firearm in relation to a drug trafficking crime (count 26). If the court accepted the plea, the State would *nol pros* the remaining charges and "will be capping its request for *active* time at fifteen years. The first ten of which are mandatory, must be served without parole." (Emphasis added.) Mr. Titus would also forfeit certain items seized in the investigation, including "currency and several firearms[.]"

The court and counsel then reviewed the statutory minimum and maximum penalties for each offense. When then asked whether he understood "the maximums" that he was "facing on all of this," Mr. Titus replied in the affirmative. The following colloquy then occurred:

> [DEFENSE COUNSEL]: It's my understanding that the Court is bound to an agreement where the Court would not exceed fifteen years incarceration. We're free to argue, ah, down to . . . all the way down to ten years, which is the least the Court can do because of the two five year mandatory penalties.
>
> [THE STATE]: That's correct.
>
> THE COURT: Alright. And we talked about that before a jury trial that was supposed to start and Mr. Titus you weren't present, but your attorney was and I *did bind myself to not exceed the maximum being sought by the State*. Your attorney is free to argue for less as a . . . as a give or take of five years potentially your attorney could try to knock off of this.

(Emphasis added.)

The court then reviewed with Mr. Titus the rights he would be waiving by pleading guilty and, thereafter, reiterated the terms of the plea agreement.

> We've put this plea agreement on the record, but just for the record, the State said if your plea of guilty is accepted, the State will nol pros the other charges against you. Ah, you're going to face a minimum of ten years incarceration no matter what. *The maximum you would face because I bound myself to the plea agreement would be fifteen years actual incarceration.* There could also be these various fines we talked about earlier.

(Emphasis added.)

After further examination of Mr. Titus, the court announced that it found his plea to have been "intelligently and understandingly made" and accepted it. Immediately thereafter, the following exchange occurred:

> [THE STATE]: Your Honor, I think it also should be on the record that the State is deferring to the Court in terms of any probation in this matter. The extent of any suspended sentence, the terms and conditions and . . ., ah, duration of probation would be at the Court's discretion.
>
> THE COURT: That's true. The State's only . . . *this plea agreement only talks about actually imposed incarceration*.
>
> [THE STATE]: That's correct.
>
> THE COURT: *There could be suspended portions of incarceration up to the maximum on each offense. And that's not part of the plea agreement. I could impose a suspended sentence to the maximum*.
>
> [DEFENSE COUNSEL]: Understood, your Honor.

(Emphasis added.)

After the State proffered facts in support of the plea, it urged the court to impose a sentence of 15 years active time, with additional suspended time, and appropriate

"safeguards in effect with respect to proper probation upon release." Defense counsel asked the court to "consider a ten year flat sentence" and "no further sentence beyond that." As noted, the court sentenced Mr. Titus to a total term of 30 years' imprisonment, all but 15 years suspended, to be followed by a three-year period of supervised probation.

DISCUSSION

In this appeal from the denial of his motion to correct an illegal sentence, Mr. Titus asserts that, "[d]uring the court's colloquy with [him], he was not informed that his plea agreement could include a suspended sentence above the agreed-upon cap." He further states that, "[a]fter accepting the guilty plea, the court acknowledged that Mr. Titus's plea agreement did not include a suspended sentence[,]" but "[d]espite that recognition, the court imposed a split sentence of fifteen years active incarceration, with fifteen years suspended." He maintains that "a reasonable lay person in [his] position would not have understood his/her plea agreement to allow for a suspended sentence above the cap of fifteen years actual incarceration." He therefore asserts that his sentence is "inherently illegal."

The State responds that "the agreed-upon cap unambiguously applied only to the executed portion of Titus's sentence" and, therefore, "a reasonable defendant would understand that the court was free to impose an additional suspended sentence above the State's recommended fifteen years' incarceration."

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. Titus 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 November 15, 2011 plea hearing.

At the outset of the plea hearing, the prosecutor informed the court that, in exchange for Mr. Titus's plea of guilty to three counts in the 29-count Indictment, the State would

nol pros the remaining charges and would "cap[ ] its request for *active* time at fifteen years." (Emphasis added.) The statutory minimum and maximum penalties for each of the offenses were then discussed on the record and Mr. Titus confirmed that he understood "the maximums" that he was "facing on all of this." The court announced that it would "bind [it]self to not exceed the *maximum being sought by the State*." (Emphasis added.) Later in the proceeding, the judge reiterated that: "The maximum you would face because I bound myself to the plea agreement would be fifteen years *actual incarceration*." (Emphasis added.)

We are persuaded that a reasonable lay person in Mr. Titus's position would have understood that the agreement provided for a cap of 15 years on *active or actual incarceration* and did not preclude the court from imposing time beyond 15 years so long as that time was suspended. We find nothing ambiguous about the meaning of "active" and "actual" incarceration – terms that are, in the sentencing context, frequently used interchangeably not only with each other, but with the term "executed" incarceration.

"Active" means "characterized by action rather than by contemplation or speculation." *Webster's Third New International Dictionary, Unabridged* (1976, p. 22). The definition of "actual" includes "in existence or taking place at the time: present or current." *Id.* Suspended time in the context of sentencing is the opposite of "active" or "actual" incarceration. Hence, a reasonable person in Mr. Titus's position would not have reasonably understood the plea agreement at issue here as prohibiting a total sentence beyond the cap of 15 years' "active" or "actual" time. *See Ray, supra*, 454 Md. at 580 (a reasonable person would understand that, despite a binding plea agreement providing for a

cap of four years "executed" time, he or she could be subjected to an additional, but unexecuted, period of incarceration imposed as suspended time where the person was informed on the record of the plea proceeding of the statutory maximum sentence he or she was facing).

Moreover, immediately after the court accepted Mr. Titus's plea, the prosecutor placed on the record the fact that "any probation" would be left to the court's discretion, which prompted the court to unambiguously state that "this plea agreement only talks about actually imposed incarceration[.]" The court further stated that "[t]here could be suspended portions of incarceration up to the maximum on each offense." Mr. Titus did not dispute that fact nor raise any question about it. And, finally, the court's statement that suspended time was "not part of the plea agreement" did not mean, as Mr. Titus seems to argue, that the plea agreement prohibited the court from imposing any suspended time. Rather, that declaration simply meant that any suspended time was left to the court's discretion.

In sum, because the sentencing court did not breach the terms of the plea agreement when sentencing Mr. Titus, his sentence is legal and, accordingly, the circuit court did not err in denying his Rule 4-345(a) motion to correct an illegal sentence.

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