

Circuit Court for Montgomery County
Case No. 00000116567C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0528

September Term, 2018

JOSE MIGUEL GALDAMEZ

v.

STATE OF MARYLAND

Wright,
Shaw Geter,
Salmon, James P.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: September 3, 2019

*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 2011, Appellant, Jose Miguel Galdamez, pled guilty, in the Circuit Court for Montgomery County, to one count of sexual abuse of a minor and one count of second-degree sexual offense. The circuit court sentenced appellant to 15 years' imprisonment for each offense, to run consecutively.

In 2018, appellant, acting *pro se*, filed a Motion to Correct an Illegal Sentence and for Other Appropriate Relief, which the circuit court summarily denied without a hearing. Appellant noted this timely appeal, and presents us with two questions,¹ which we have rephrased and consolidated into one: 1) Did the circuit court properly deny his motion to correct an illegal sentence? For the following reasons, we vacate the judgment of the circuit court, and remand the case for the circuit court to impose a period of extended parole supervision consistent with this opinion.

BACKGROUND

Because the facts of the underlying offense are of little relevance to our discussion, we shall only briefly mention them. On March 14, 2011, appellant pled guilty as part of a

¹ Appellant phrased his questions as follows:

1. (A) Did the court err in not imposing a term of sexual offender supervision pursuant to Criminal Procedure Article § 11-723 where that statute, by its own terms, requires such term for a sex offense committed on or after August 1, 2006? (B) Since a term of supervision was not included within the plain terms of Mr. Ga[l]damez's plea agreement, is the agreement reached by the parties void as it is unenforceable?
2. Does retroactive application of the 2010 amendment to Criminal Procedure Article § 11-723 violate state and federal ex post facto prohibitions?

binding plea agreement to one count of sexual abuse of a minor and one count of second-degree sexual offense, for having anal intercourse with a five-year old boy between May and August 2010. Pursuant to that guilty plea agreement, in exchange for appellant's guilty pleas, the State would seek a sentence not exceeding 36 years' imprisonment, and the circuit court would impose a sentence not exceeding 30 years' imprisonment.

On April 12, 2011, the court sentenced appellant to two 15-year consecutive terms of imprisonment, one for each offense to which he pled guilty. During the sentencing proceeding appellant was notified that he would be a lifetime sexual offender registrant. Notably, there was no mention of extended parole supervision during the guilty plea or sentencing proceedings.

Seven years later, appellant filed a pleading titled Motion to Correct an Illegal Sentence and for Other Appropriate Relief wherein he claimed that his sentence is illegal because the circuit court failed to impose a period of "extended parole supervision" as it was required by statute to do. From that standpoint, appellant claims that the illegality in his sentence should not be remedied by remanding the case to the circuit court for it to impose a period of extended parole supervision because such an action would illegally increase his sentence. Moreover, according to appellant, imposing extended parole supervision would violate the binding guilty plea agreement because the agreement did not contemplate a period of extended parole supervision. Appellant concluded that, because the guilty plea agreement did not include a period of extended supervision, the guilty plea agreement is invalid, and he is entitled to withdraw from it.

As noted earlier, the circuit court summarily denied the motion without a hearing.

DISCUSSION

I.

Standard of Review.

Maryland Rule 4-345(a) permits the correction of an illegal sentence “at any time.” We review the denial of a motion to correct an illegal sentence under a *de novo* standard of review. *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

Appellant’s Sentence is Illegal.

Under the law as it existed at the time appellant committed his offenses, the circuit court was required to impose a term of extended parole supervision for certain offenses. According to Md. Code Ann. Crim. Proc § 11-701(f)(4) (2008 Repl. Vol),² appellant was categorized as an “extended parole supervision offender” because he had been “convicted of a violation of § 3-602^[3] of the Criminal Law article for commission of a sexual act involving penetration of a child under the age of 12 years[.]” According to CP § 11-723, “a sentence for an extended parole supervision offender shall include a term of extended sexual offender parole supervision[.]” ranging in duration from not less than three years to a maximum term of life.

² Appellant’s offenses were committed prior to the 2010 revision of Title 11 of the Criminal Procedure Article. Unless otherwise noted, all references to the Criminal Procedure Article “(CP)” will be to the 2008 Replacement Volume. CP § 11-701(f)(4) and 11-723 were left unchanged in the 2009 supplement.

³ Section 3-602 of the Criminal Law article prohibits sexual abuse of a minor.

In *Greco v. State*, 427 Md. 477, 513 (2012) the circuit court had imposed a sentence of life with all but 50 years suspended for first degree murder, but did not impose a period of probation. Under the holding of *Cathcart v. State*, 397 Md. 320 (2007), because no period of probation was imposed on Greco’s split sentence, the sentence was converted, by operation of law, to a term of 50 years. According to Md. Code Ann. Crim. Law §2-201(b), the minimum sentence for first-degree murder is life imprisonment. Thus, the Court of Appeals held that the 50-year term of imprisonment was not authorized by statute, and it therefore amounted to an illegal sentence within the contemplation of Md. Rule 4-345. *Greco*, 427 Md. at 512–513. The Court of Appeals remanded the case to the circuit court to have the “illegality removed.” *Id.* at 513. To remove the illegality, the Court of Appeals ordered that the circuit court impose “some period of probation.” *Id.*

We agree with appellant that his sentence is illegal to the extent that the circuit court failed to impose a period of extended parole supervision as required by CP § 11-723 because the non-imposition of extended parole supervision was “not authorized by statute.” *Greco*, 427 Md. at 513. We therefore remand the case to the circuit court with instructions to remove the illegality by imposing extended parole supervision for a period of not less than three years and not more than life.

We are not persuaded that the terms of the plea agreement were, or will be, in any way, breached by the imposition of extended parole supervision. The binding plea agreement in appellant’s case was silent as to the issue of extended parole supervision, which, as has been recounted, was required to have been imposed in this case.

In *Lafontant v. State*, 197 Md. App. 217, 234, *cert. denied*, 419 Md. 647 (2011), this Court rejected Lafontant’s claim that the circuit court breached the terms of his guilty plea agreement by making restitution to the victim a condition of his probation, despite that the plea agreement was silent as to restitution. *Lafontant*, 197 Md. App. at 234. We noted that restitution is “known to be a standard condition of probation,” and Lafontant “should reasonably have known that the court could impose a period of probation, and that one of the conditions might be restitution, if requested by the victim.” *Id.* at 235–36. *See also Carlini v. State*, 215 Md. App. 415, 455 (2013) (“The failure of a plea agreement to mention restitution by no means implies that there is an agreed-upon sentencing cap that precludes restitution.”).

Here, given that appellant was pleading guilty to sexually abusing and assaulting a five-year old boy, and knew he would have to register as a sexual offender, he reasonably should have known that he would be supervised, as required by statute, for some period of time upon release from imprisonment.

Because we have determined that imposing extended parole supervision does not breach the binding guilty plea agreement in the instant case, we reject appellant’s contention that he is entitled to withdraw his guilty plea.

II.

Appellant’s second argument is that, according to *Doe v. Maryland Dep’t of Pub. Safety & Corr. Servs.*, 430 Md. 535 (2013), “the court cannot impose a sentence under the

new version [*i.e.*, the post-2010 amended version of CP § 11-723] because retroactive application of the current law violates state and federal ex post facto prohibitions.”⁴

As far as this Court can ascertain, the post-2010 version of CP § 11-723 has not been applied to appellant. As a result, the claim is not ripe, and we decline to address it. *See Stevenson v. Lanham*, 127 Md. App. 597, 612 (1999) (“[A] case ordinarily is not ripe if it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen or upon a matter which is future, contingent and uncertain” (internal quotation omitted)).

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
VACATED AND REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY MONTGOMERY COUNTY.**

⁴ This argument was not raised by appellant in the circuit court.