Circuit Court for Prince George's County
Case No.: CT072449X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 530

September Term, 2021

KENNETH GROVES

v.

STATE OF MARYLAND

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 20, 2021

*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 2008, appellant Kenneth Groves appeared with counsel in the Circuit Court for Prince George's County and entered *Alford* pleas to two counts of first-degree assault, armed robbery, and use of a handgun in the commission of a felony or crime of violence. The court sentenced him to a total term of 50 years' imprisonment, suspending all but 30 years, to be followed by a five-year term of supervised probation. In May 2021, Mr. Groves, representing himself, filed a motion to correct an illegal sentence in which he asserted that his sentence was illegal because the plea agreement provided for "a cap of 20 to 40 years." He claimed that suspended time "was not a part of the deal." After reviewing the transcript from the plea hearing, the circuit court denied relief. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

As pertinent here, the transcript from the June 11, 2008 plea hearing reflects that defense counsel informed the court that Mr. Groves would enter *Alford* pleas to first-degree assault (Count 2), first-degree assault (Count 5), armed robbery (Count 8), and use of a handgun in the commission of a felony or crime of violence (Count 12). As to sentencing, defense counsel informed the court that the parties had "agreed upon a range of executed time[,]" explaining that the State had agreed to recommend no more than 40 years and the defense would advocate for no less than 20 years. When the court asked for clarification regarding whether the sentences would run consecutively and inquired about suspended time, the prosecutor responded: "There is no agreement as to an unexecuted sentence or as to probation. The only agreement is as to the period of executed incarceration that could

be imposed[.]" Defense counsel agreed, stating: "There's no agreement on consecutive, Your Honor, just that range on executed time."

Prior to accepting the plea, the court engaged Mr. Groves in a colloquy to confirm, among other things, that he understood the sentencing terms of the plea agreement:

> THE COURT: That's the agreed upon sentences that I can give you. I will give you a sentence of incarceration between 20 years and 40 years, and there's no guaranty it could be 20. It could be 40. I have to listen. I don't know anything about you. I don't know anything about the case. I can give you a suspended sentence, and it could be up to 90 years, because that's the maximum you are pleading guilty to.
>
> So, you can get - - the worst case for you will be 90 years, suspend all but 40. And the best case will be 20 years with nothing over your head. There is no deal as to what I'm going to place over your head and suspend down, and you will be placed on probation.
>
> I can tell you with these offenses, it's going to be a full 5 years. I'm telling you when you get out, you are going to have 5 years of probation.

When the court asked Mr. Groves if the terms it had just related was his understanding of the plea agreement, Mr. Groves answered "yes" and then asked to speak with his attorney for a moment. After an off-record discussion, Mr. Groves informed the court that he was ready to proceed. The court then informed Mr. Groves that the handgun offense carried a mandatory minimum term of five years without parole.

After a further examination, in which the court elicited that Mr. Groves was then 29 years old, had "some college, some trade school" education, and was not under the influence of any medication, drugs, or alcohol, the court accepted the plea.

At a sentencing hearing held on August 22, 2008, the court sentenced Mr. Groves to 25 years for first-degree assault (Count 2); a consecutive 25 years for first-degree assault

(Count 5); 20 years for armed robbery (Count 8), to run concurrent with Count 2; and to 20 years (the first five without parole) for the handgun offense (Count 12), to run concurrent with Count 2. The total term was 50 years, all but 30 years suspended. The court also imposed a five-year term of supervised probation upon release. Mr. Groves did not seek leave to appeal.

DISCUSSION

In this appeal, Mr. Groves maintains that his sentence is illegal because it exceeded the agreed upon cap of 20 to 40 years. We disagree. The sentencing terms of the plea agreement were clear: an "executed" sentence in the 20 to 40-year range. The prosecutor stated: "There is no agreement as to an unexecuted sentence or as to probation. The only agreement is as to the period of executed incarceration[.]" Defense counsel agreed that the only agreement was on the 20 to 40-year "range on executed time."

The court, when reviewing the plea agreement terms with Mr. Groves, explained to him that it could impose "a suspended sentence, and it could be up to 90 years, because that's the maximum you are pleading guilty to." The court further advised Mr. Groves that "the worst case for you will be 90 years, suspend all but 40." And the judge informed him that "[t]here's no deal as to what I'm going to place over your head and suspend down, and you will be placed on probation." Mr. Groves indicated that he understood those terms.

In *Ray v. State,* 454 Md. 563 (2017), the Court of Appeals held that a plea agreement that provided for a "cap of four years on any executed incarceration" was not breached when the court imposed a sentence of 10 years' imprisonment, suspending all but four years. The Court concluded that the referenced language was "clear and unambiguous"

and that it would be "unreasonable to interpret the plain language of the agreement as prohibiting a *total* sentence beyond the cap specifically imposed on *executed* incarceration." *Id*. at 578. The same can be said here. The agreement with Mr. Groves was for "executed incarceration" only. Accordingly, the circuit court did not err in denying his motion to correct an illegal sentence.

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