Circuit Court for Frederick County
Case No.: 10-K-11-050667

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 549

September Term, 2020

JOHN MICHAEL JUPITER, JR.

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 1, 2021

On June 18, 2012, pursuant to a binding guilty plea agreement, John Michael Jupiter, Jr., appellant, pleaded guilty in the Circuit Court for Frederick County to sexual abuse of a minor and continuing course of conduct sexual abuse of a minor. On October 31, 2012, the court sentenced appellant to twenty-five years' imprisonment for sexual abuse of minor, and to a consecutive term of thirty years' imprisonment, all suspended in favor of five years of probation.

Thereafter, appellant filed a motion to correct an illegal sentence in which he contended that the court imposed a sentence in excess of that which was contemplated by the plea agreement. The court denied appellant's motion, and appellant noted an appeal from that decision. For the reasons stated below, we shall affirm the judgment of the circuit court.

BACKGROUND

During the guilty plea proceeding, initially, the State summarized the plea agreement as follows:

> All right, the State anticipates guilty pleas to two counts in this charging document. Count l reflecting sexual abuse of a minor between the dates of September, 2010 through September of 2011.
>
> And then Count 4 which is a continuing course of conduct [of]fense that reflect dates a year earlier, September of '09 through September of 2010. It's the same victim.
>
> If those two pleas are accepted we would be entering [a] nolle prosequi to the remaining counts. Your Honor, the defendant's guidelines, he has no prior criminal record. For these two offenses are for eight to 18 years. Yes, yes, eight to 18 years aggregate of active incarceration.
>
> The agreement is that the State has capped at an above the guidelines sentence at 25 years of active incarceration, that the Defense is free to argue

for a lesser sentence disposition at sentencing.

> The Defense is going to be asking for a postponement of sentencing today until a much later date as we discussed up at the bench. The State has no objection to that. We also have no objection to the defendant continuing on his current conditions of bond and that all conditions remain in effect pending that sentencing.

Appellant's counsel then confirmed "that is my understanding" of the plea agreement. Thereafter counsel conducted a voir dire examination of appellant about his guilty plea. As part of that examination, counsel explained that the maximum sentence for Count 1 was 25 years, and the maximum sentence for Count 2 was 30 years. Counsel then inquired whether the court intended to bind itself to the agreement. The following exchange occurred:

> DEFENSE COUNSEL: Has Your Honor agreed to the binding of the 25 so I can –
>
> THE COURT: I certainly will –
>
> DEFENSE COUNSEL: Okay, thank you.
>
> THE COURT: – bind to the cap.
>
> DEFENSE COUNSEL: Thank you, Your Honor.
>
> THE COURT: Of executed time.
>
> DEFENSE COUNSEL: Thank you. So, what this Court has said is that they will bind themselves to that cap of 25. So, if this Court for some odd reason on the sentencing gave you more than that 25 that would also be grounds to appeal because this Court has told you what it's going to do. Do you understand that?
>
> APPELLANT: Yes.

Toward the end of counsel's examination of appellant, the court clarified that, under the agreement, it could suspend a portion of whatever sentence it imposed and order a term of probation.

> THE COURT: Okay. I just have one question is whether the 25 years is a binding cap on executed time or is the Court free to impose additional time or is it, in other words I could say 30 years, suspend all but 25 with a period of probation. Because they mean two different things and I just wanted to clarify that.
>
> DEFENSE COUNSEL: I don't think we've ever –
>
> THE STATE: It's a binding cap on executed time.
>
> DEFENSE COUNSEL: And I think that's fair, Your Honor.
>
> THE COURT: A period of additional, okay.
>
> THE STATE: Yes.
>
> THE COURT: I just wanted to clarify. I don't know whether I will or not.
>
> DEFENSE COUNSEL: Sure.
>
> THE COURT: I don't know what my sentence is going to be but I just wanted to make that clear for the record.
>
> DEFENSE COUNSEL: Yes, I think that's, that was my understanding is that Your Honor could suspend a portion of it.
>
> THE COURT: Okay. And –
>
> THE STATE: A portion of the 55 years.
>
> THE COURT: Exactly.
>
> DEFENSE COUNSEL: Yes, of course, yes.

During the October 31, 2012 sentencing hearing, the court imposed sentence as follows:

> On Count 1, I am going to sentence you to 25 years in the Division of Correction. On Count 3 I am going to sentence you to 30 years; That is to be

served consecutively to Count l. It is suspended in its entirety. Five years of supervised probation that begins upon your release. You have to comply with all the standard conditions of probation.

DISCUSSION

Appellant contends that he did not understand that the plea agreement permitted the court to sentence him to suspended time beyond the agreed upon "cap" of 25 years' imprisonment. As, a result, according to appellant, his sentence is illegal because it exceeded what was contemplated by the plea agreement. Appellant's argument is based on the fact that he claims he is "very slow in intelligence" coupled with the fact that, when initially explaining the plea agreement on the record, neither the State nor defense counsel ever explained "about this suspended portion."

A sentence that exceeds the terms of a binding plea agreement is an inherently illegal sentence that may be corrected at any time pursuant to a Rule 4-345(a) motion. *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, because there is no written plea agreement in the record before us (and neither party asserts that the agreement was reduced to writing), we look to the terms of the plea agreement as placed on the record at the June 18, 2012 guilty plea hearing. *Cuffley v. State*, 416 Md. 568, 582 (2010) ("[A]ny question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort *solely* to the record established at the Rule 4-243 plea proceeding.").

At the outset of the guilty plea hearing in this case, the State explained that the plea agreement contemplated a cap on sentencing of "25 years of *active* incarceration." The court then confirmed that it had bound itself to a cap of 25 years of *executed* time. The court later questioned whether, and then clarified that, under the agreement, it could impose a sentence in excess of the cap, suspend it down to the cap, and impose a period of probation. The court then explained that it had asked about the agreement because it wanted to make it "clear for the record."

In our view, whatever ambiguity may have existed about the terms of the plea agreement, as stated on the record by the State at the outset of the plea hearing, was eliminated when the precise terms of the agreement were brought into focus as the hearing progressed. On this record, we find that under the plain and unambiguous terms of the plea agreement the court had the authority to impose a sentence beyond the 25-year cap, and

suspend that sentence down to the cap – which is exactly what the court did when it imposed a 25-year sentence plus a fully suspended consecutive 30-year sentence. Appellant's sentence did not exceed the terms of the binding plea agreement, and is, therefore, not illegal.

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