Circuit Court for Montgomery County
Case Nos.: 122822C & 123698C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 591 & 689

September Term, 2020

DAQUAN TYLER

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: June 1, 2021

Daquan Tyler, appellant, was convicted of various criminal offenses in the Circuit Court for Montgomery County in two separate cases. Representing himself, he filed a motion to correct an illegal sentence in each case. Both were denied. He filed an appeal from those denials in both cases, which, on motion of the parties, we consolidated. We will address each case separately and, for the reasons to be discussed, we affirm.

No. 689, Sept. Term 2020 – Circuit Court Case No. 122822C

In this case, appellant was tried by a jury and was found guilty of obstruction of justice and solicitation to intimidate a witness. When imposing sentence, the court said the following:

> So as to Count 7, obstruction of justice, it is the sentence of this Court, sir, that you be committed to the Maryland Division of Corrections [sic] for a period of five years. That sentence will run consecutive to any other sentence that you are presently serving. As to Count 8, solicit, intimidate a witness, it is the sentence of this Court, sir, that you be committed to the Maryland Division of Corrections [sic] for a period of five years. That sentence will run consecutive to Count 7.

Appellant claims that his sentence is illegal because the court's directive that the sentence "will run consecutive to any other sentence that you are presently serving" is indefinite and ambiguous. According to appellant, that is so because, at the time the court imposed his sentence, appellant was already serving a one-year sentence and an eight-year sentence in two unrelated cases and the court did not specify which of those two sentences the sentence in this case was supposed to be consecutive to.[1] Thus, under the Rule of

[1] Appellant claims that, at the time of the sentencing hearing, he was serving a one-year sentence on count 11 of district court case number 0D00292642, and an eight-year sentence on count 1 of circuit court case number 122557C. It is unclear how appellant (continued)

Lenity, according to appellant, the sentence in this case should be deemed as imposed consecutive to the one-year sentence, not the eight-year sentence.

The State claims that there is nothing ambiguous about appellant's sentence because the word "any" has a broad meaning which "applies to all members of a multi-member set, not the single most appealing one."

We are not persuaded that appellant's sentence is, in any way, ambiguous. According to appellant's argument, the ten-year sentence imposed in this case should be construed as being consecutive to the shorter of his two sentences and concurrent to the longer one. In our view, there is nothing about the pronouncement of appellant's sentence that would lead to the conclusion that his sentence was meant to be concurrent to any other sentence. To the contrary, the court imposed the ten-year sentence "consecutive to any other sentence that you are presently serving." The court was not required to know all of the sentences that appellant may have been serving when it imposed the ten-year sentence. We believe that the court's reference to "any other sentence" was the analytical equivalent of a reference to "whatever other sentence or sentences" and is therefore not ambiguous or illegal.

No. 591, Sept. Term 2020 – Circuit Court Case No. 123698C

In this case, appellant pleaded guilty, pursuant to a binding guilty plea agreement, to theft of goods with a value between $10,000 and $100,000. During the guilty plea

arrived at the duration of his sentence in case number 122557C. In his informal brief of appellant in No. 591, Sept. Term 2020 (addressed below), appellant states that he is serving a 27-year sentence in case number 122557C. This is also reflected in the docket entries for that case.

hearing, the State summarized the plea agreement as follows:

> The plea agreement is that the defendant will be pleading guilty to Count 1, theft 10,000 to 100,000 in Case 123698. It is an agreed upon sentence of eight years flat that the defendant will be serving consecutive to the sentence … that is imposed [in] 122557C, and it is to be concurrent to any sentence imposed in 122822C. [2]

As part of the agreement, the State agreed to enter a nolle prosequi in several other cases, and to not charge appellant in another. On May 9, 2014, the court imposed sentence in conformance with the plea agreement, as follows:

> So, pursuant to the plea agreement in this case, I believe that the agreed upon sentence was eight years to be consecutive to 122557, and I understand that Judge McCally has imposed a 10-year sentence consecutive in 122822. So, pursuant to the plea agreement in this case, I'll impose eight years consecutive to Criminal No. 122557 and concurrent with the 10-year sentence in 122822.[3]

Appellant claims that his sentence is illegal because it is "contradictory, conflicting, ambiguous," and imposed in violation of the guilty plea agreement. Specifically, he claims that:

> As the courts chose to run this case # 123698 count # one eight year sentence consecutive to the 27 year sentence in case # 122557C as a whole and not concurrent to the 10 year sentence in case # 122822C as stated at [appellant's] sentencing hearing and better yet as stated in [appellant's] binding plea agreement hearing in this case # 123698C. Defendant's sentence is illegal under Md. Rule 4-345 (b) and or (a).

Appellant also claims that the plea agreement was ambiguous, and that he thought that, under the agreement, the sentence in this case would be consecutive to "case

[2] The sentence in case number 122822C had not yet been imposed.

[3] The 10-year sentence imposed in case number 122822C was imposed earlier on the same day as the sentence imposed in this case.

#122557C unless his future case #122822C sentencing is ran concurrent in whole or in part to case # 122557C. In which this case # 123698C sentencing is ran concurrent in whole or part to case # 122822-C."

The precise nature of appellant's argument is not at all clear to this Court. Nevertheless, put simply, the sentence that appellant received is exactly the sentence he bargained for and exactly the sentence agreed to on the record during his guilty plea proceeding. There is nothing illegal or ambiguous about it. As a result, the sentence was not imposed in violation of the plea agreement.

Later in his brief, appellant also contends that the term of his plea agreement that called for his sentence to be made concurrent to the sentence in case # 122822C, which had not yet been imposed, was an illegal term based on language in *DiPietrantonio v. State*, 61 Md. App. 528 (1985). Specifically, appellant relies on the following passage from *DiPietrantonio*:

> "[The sentencing court] may make [its] sentence concurrent with or consecutive to whatever other sentence then exists, … [the court] may not, however, presume to bind the future. To do so would be, *ipso facto*, to usurp the sentencing prerogative of some other judge operating in a near or distant time yet to be."
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> ****
>
> A judge cannot imbue the sentence he is then imposing, in any controlling fashion, with power over the future judicial actions of others. His sentence may not be consecutive to or concurrent with a term of confinement which is not then in *esse*.

Id. at 532–33 (quoting *State v. White*, 41 Md. App. 514 (1979)). The fatal flaw with appellant's argument in this regard is that, in this case, the court did not "bind the future."

The court imposed the sentence in this case after the sentences had already been imposed in case numbers 122822C and 122557C. That the court had already agreed to impose the sentence concurrently with whatever sentence would be imposed in case number 122822C is of no moment.

Conclusion.

For the foregoing reasons, we affirm the judgment of the circuit court in both cases.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IN CASE NUMBER 122822C AFFIRMED.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IN CASE NUMBER 123698C AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0591s20cn.pdf