UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0616

September Term, 2014

DALLAS BRANTE DAVIS

v.

STATE OF MARYLAND

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: July 22, 2015

This appeal arises from the Circuit Court for Wicomico County's denial of a motion to correct an illegal sentence filed by appellant, Dallas Brante Davis. There is some confusion regarding from what case this appeal stems, as Davis was involved in a series of criminal cases: K05-0787 and K05-0788 in 2005, and K13-0194 and K13-0713[1] in 2013. After reviewing the records of these cases, we are able to ascertain that this appeal arises solely out of criminal case K13-0194, in which Davis entered a guilty plea to the charge of first-degree assault and received a sentence of twenty-five years in jail, suspending all but a maximum of eight years, and five years of probation.

We have consolidated Davis's nine questions presented,[2] all of which essentially involve the same issue, into a single question:

[1] Based on our unreported decision in *Davis v. State*, No. 324, Sept. Term 2014 (filed May 20, 2015), we were able to ascertain from Maryland Case Search that K13-0713 was the matter being appealed in that case.

[2] Davis has filed this appeal *pro se*. His nine questions were as follows:

> I. Is Maryland Rule 4-345(a) the appropriate vehicle for challenging a sentence that is imposed in violation of a plea agreement to which the sentencing court bound itself to?
>
> II. Is the sentence illegal because the sentence was not in accordance with the plea agreement?
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> III. Did the court below err in denying the "Motion to Correct Illegal Sentence," and if so, was the denial in conflict with the decision in *Cuffley v. State*, [416 Md. 568 (2010)], *supra*?
>
> IV. Did the trial court err when it sentenced the Appellant to twenty-five (25) years on a plea agreement conditioned on an agreed "eight (8) year cap," even when the twenty-five (25) year sentence was suspended all but eight (8) years, with five (5) years' probation?

(continued…)

Whether the circuit court properly denied Davis's motion to correct an illegal sentence.

Facts and Proceedings

On December 6, 2005, Davis entered guilty pleas to both criminal cases K05-0787 and K05-0788. In case K05-0787, Davis was charged and entered guilty pleas to the following counts: count two, for felonious possession of cocaine, Schedule Two, controlled dangerous substance; count nine, for being in possession of a firearm during and in relation to a drug trafficking crime; and count 14, for contributing to the condition of a child and rendering that child as one in need of assistance. In case K05-0788, Davis was charged and entered guilty pleas to the following counts: count two, for possession of cocaine as to

(…continued)

V. Did the trial court, the State and counsel engage in an ambiguous plea negotiated agreement requiring the use of the "Rule of Lenity," favoring in this instant case Appellant in receiving a sentence of executed time of eight (8) years as described by counsel during the plea negotiations?

VI. By the State, the court and counsel all agreeing that the maximum penalty for the crime was twenty (20) years even when the State said they would "request" twenty-five (25) years, was the ambiguity confusing enough to warrant resentencing with cap of eight (8) years, or at least the twenty (20) year maximum sentence all suspended but eight (8) years?

VII. Did the guilty pleas establish that the Appellant had the requisite understanding of the nature and elements of the crime of first (1st) degree assault?

VIII. Trial court erred when it sentenced Appellant consecutive to the parole retake and not credit Appellant with the time for the pending case?

IX. Did the trial court err in imposing a condition of probation that was not part of the plea bargain?

Schedule Two, controlled dangerous substance; and count three, for possession of marijuana, a Schedule One, controlled dangerous substance.

On February 7, 2013, Davis broke into the home of his ex-girlfriend, Latanya Christopher, and assaulted her. As a result, Davis was charged with assault and burglary in criminal case K13-0194. On September 18, 2013, the State presented the circuit court with a binding plea agreement, and the court accepted the binding plea of no more than eight years' incarceration. On the same day, Davis pleaded guilty to the charge of first-degree assault and received, as promised, a sentence of twenty-five years in jail, suspending all but a maximum of eight years, and five years of probation.

Davis's trial on case K13-0194 was initially scheduled for September 10, 2013, and Christopher was subpoenaed by the State to appear. On September 7, 2013, three days before Davis's trial was to begin, Christopher received a handwritten letter in the mail from Davis trying to influence Christopher from testifying against him. Thereafter, in case K13-0713, Davis was charged with attempting to influence a witness, in a proceeding related to the commission of a crime of violence, based on the letter he sent to Christopher. Davis was found guilty of that offense on April 23, 2014.[3] On May 20, 2015, the judgment of the circuit court in case K13-0713 was affirmed by this Court.

On March 13, 2014, while case K13-0713 was pending, Davis filed a *Pro Se* Motion to Correct Illegal Sentence in case K13-0194. On April 21, 2014, the court denied Davis's motion, and the present appeal followed on May 8, 2014.

[3] These facts are taken from *Davis, supra*, No. 324, Sept. Term, arising out of the pending charge mentioned during the September 18, 2013 plea hearing.

Discussion

Davis contends that the sentence for his conviction in case K13-0194 is illegal under Md. Rule 4-345(a) because it (1) exceeded the binding plea agreement, and (2) went beyond the Maryland Sentencing Guidelines ("the guidelines"). Davis specifically argues that the plea agreement was ambiguous, and that he reasonably understood the sentence at the time of the plea to be an eight-year cap and probation, instead of twenty-five years, all suspended but eight years, and probation. Davis contends that the circuit court erred in sentencing him outside of the guidelines of seven to thirteen years' incarceration.[4] Thus, according to Davis, the circuit court erred when it denied his motion to correct an illegal sentence. We disagree.

Maryland Rule 4-345(a) permits a "court to correct an illegal sentence at any time." To constitute an "illegal sentence" subject to correction at any time, the illegality must actually inhere in the sentence itself. *Carlini v. State*, 215 Md. App. 415, 426 (2013). Courts have deemed sentences inherently "illegal," pursuant to Md. Rule 4-345(a), when the sentences have exceeded the legislatively-imposed statutory maximum. *Matthews v. State*, 424 Md. 503, 512 (2012). The Court of Appeals has held that when a trial judge accepts a binding plea agreement, "any sentence then imposed in excess of the sentencing cap thus agreed upon is an illegal sentence within the contemplation of Md. Rule 4-345(a)."

[4] The State's brief also addresses Davis's argument challenging the voluntariness of his guilty plea in cases K05-0787 and K05-0788. According to the State, those claims are not properly raised in an appeal from a motion to correct an illegal sentence and should not be considered in this appeal. We agree.

Carlini, 215 Md. App. at 428 (citing *Cuffley v. State*, 416 Md. 568, 586 (2010)). The terms of a plea agreement are to be construed according to the reasonable understanding of the defendant when he pled guilty. *Cuffley*, 416 Md. at 581. For purposes of identifying the sentencing term of a binding plea agreement, courts have considered "what was stated on the record at the time of plea concerning that term of the agreement and what a reasonable lay person in Petitioner's position would understand, based on what was stated, the agreed-upon sentence to be." *Id.* at 584.

"Whether a trial court has violated the terms of a plea agreement is a question of law, which we review *de novo*." *Id.* at 581. Md. Rule 4-345(a) appellate review deals only with legal questions, not factual or procedural questions. *Carlini*, 215 Md. App. at 443. "Deference as to factfinding or to discretionary decisions is not involved. Once the outer boundary markers for a sentence are objectively established, the only question is whether the ultimate sentence itself is or is not inherently illegal. That is quintessentially a question of law calling for *de novo* appellate review." *Id.*

In this case, the circuit court did not exceed the legislatively-imposed statutory maximum by sentencing Davis to eight years of incarceration for his first-degree assault conviction. Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article § 3-202(b) provides, "A person who violates this section is guilty of the felony of assault in the first degree and on conviction is subject to imprisonment not exceeding 25 years." Thus, eight years of incarceration is within the range permitted by the Code.

Next, based on the record before us, a reasonable lay person in Davis's position would understand that the sentence would be twenty-five years, but with eight years of

incarceration. The sentence did not exceed the limit of eight years' incarceration clearly set in the binding plea agreement. The following colloquy is pertinent:

> [PROSECUTOR]: . . . The State will request 25 years in the Division of Corrections, suspend all but eight years. The State's asking Your Honor to be bound to – that be a binding cap, active cap, the eight. The State's requesting five years supervised probation with the following conditions: The Defendant have no contact with the victim or her children or their work or their schools.
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> ***
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> [THE COURT]: All right. Now, Mr. Davis, then your counsel has indicated you wish to plead guilty to the charge of first degrees assault, domestically related, for which the maximum penalty is 25 years in jail. Is that what you want to do?
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> [DAVIS]: Yes, sir.
>
> [THE COURT]: And you heard the Deputy State's Attorney recite the terms and conditions of the plea offer, did you not?
>
> [DAVIS]: Yes, sir.
>
> [THE COURT]: Under those terms you would receive a sentence of 25 years in jail, suspending all but a maximum of eight years, so there would be an eight year cap if the Court accepts the plea agreement, do you understand that, on active incarceration?
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> [DAVIS]: (Nodding head in the affirmative.)
>
> ***
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> [PROSECUTOR]: Your Honor, for those reasons the State asks you to accept the binding plea.
>
> [THE COURT]: All right. Ms. Harvey.
>
> [DEFENSE COUNSEL]: Yes, Your Honor, it's clear, 25 suspend all but a cap of eight.
>
> ***

> [THE COURT]: . . . *I'm going to accept the binding plea of no more than eight years incarcerated.* The Defendant was on probation at the time this offense was committed. If that means anything that means you don't break the law and you broke it in a very severe manner. The Court is going to impose a sentence of 25 years in the jurisdiction of the Commissioner of Corrections, I'll suspend all but eight years of that sentence to be served in the Division of Correction. Place you on five years [of] probation upon your release . . . .

(Emphasis added).

Davis relies heavily upon *Cuffley, supra*, 416 Md. 568; *Baines v. State*, 416 Md. 604 (2010); and *Solorzano v. State*, 397 Md. 661 (2007), to support his assertion that the sentences are illegal because the circuit court went beyond the guidelines.[5] These cases are inapposite as their plea bargains were for a sentence "within the guidelines" – a request which Davis never made. In *Cuffley*, the sentencing court stated, "[t]he plea agreement, as I understand it, is that I will impose a sentence somewhere within the guidelines." *Cuffley*, 416 Md. at 585. In *Baines*, the circuit court accepted the plea and agreed "just [to] commit myself within [the] Guidelines." *Baines*, 416 Md. at 607. In *Solorzano*, the sentencing court accepted the plea based on the anticipated guidelines range and ordered a pre-sentence report, which confirmed the guidelines range. *Solorzano*, 397 Md. at 665.

[5] The guidelines "are voluntary sentencing guidelines that a court need not follow." Md. Code (2001, 2008 Repl. Vol.), Criminal Procedure Article § 6-211(b); *see also* Maryland State Commission on Criminal Sentencing Policy, *Maryland Sentencing Guidelines Manual*, Scope (2015) (stating that the guidelines are "voluntary and may not be construed to require a court to sentence a defendant as prescribed by this chapter").

Although the guidelines worksheet are part of the record and indicated a guideline range of seven to thirteen years, there was no reference to the guidelines as being part of the plea agreement.[6]

Therefore, the sentences were not illegal, and the circuit court correctly denied the motion to correct an illegal sentence.[7]

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

[6] As we have stated, although the guidelines were not made part of the plea agreement, the State made reference to the guidelines in the context of why the circuit court should accept the binding plea:

> [PROSECUTOR]: Thank you, Your Honor.
>
> Your Honor, the Defendant's criminal history is in 2005 he was convicted of possession with the intent, that was of a narcotic, I don't know if it was cocaine or heroin. In that same case he was convicted of firearm drug trafficking and contributing to the condition of a child.
>
> In another case in 2005 he was convicted of possession of not marijuana and possession of marijuana.
>
> In 2002 the Defendant was convicted of possession not marijuana.
>
> Your Honor, I believe the Defendant's guidelines are 7 to 13 years. And, Your Honor, this plea agreement is what the victim indicated that she wanted. Certainly Your Honor know the risk of going to trial in cases such as these. If I might ask the victim if she'd like to make an impact statement.

[7] As to Davis's question no. VIII, as Davis was on a parole retake warrant, the State requested that his active period of incarceration be consecutive to any sentence he was then serving. Davis did not object to the imposition of his sentence consecutive to any sentence he then served or was obligated to serve, and we need not address this claim on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any [issue not presented to the trial court] unless it plainly appears by the record to have been raised in or decided by the trial courts . . . .").