Circuit Court for Prince George's County
Case Nos. CT042-084X, -089X, -282X, and -283X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 878

September Term, 2018

EDWARD JASON TINSLEY

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 23, 2019

In 2005, Edward Tinsley ("Appellant") pleaded guilty in the Circuit Court for Prince George's County, pursuant to a plea bargain involving four separate cases, to one count of theft and three counts of robbery with a deadly weapon. The State informed the court that Tinsley's plea agreement included a "cap of 50 years." When assessing whether Tinsley was entering the plea knowingly and willingly, the sentencing judge clarified that the 50-year cap applied to "time served, actual time served." Tinsley's counsel agreed that the cap applied to "executed time" and Tinsley affirmed that he understood the import of that term. The court then sentenced Tinsley to 75 years' imprisonment with all but 50 years suspended. Tinsley later moved to correct his sentence as illegal for exceeding the terms of his plea agreement, which he argued capped his total sentence at 50 years rather than simply capping his executed time. Following a hearing, the court denied Tinsley's motion. In this appeal, Tinsley presents a single question for our review:

> Did the circuit court err in denying Tinsley's motion to correct an illegal sentence?

We affirm the judgment of the circuit court because any ambiguity in the plea agreement was resolved at the plea hearing when the court clarified, and Tinsley affirmed, that the 50-year cap in his agreement applied only to executed time.

BACKGROUND

On August 11, 2004, Tinsley and another assailant, Eric Gill, approached a woman on the street and forced the woman, at gunpoint, to withdraw money from a nearby ATM. The woman complied, and Tinsley and Gill fled the scene with the woman's cash and bank card. On September 6, 2004, Tinsley and Gill approached another woman on the street

and robbed her, at gunpoint, of $253 in cash. Several weeks later, Tinsley and Gill approached four individuals who were sitting in a parked car and robbed them, at gunpoint, of their wallets and handbags and the property contained therein. The next day, the police apprehended Tinsley after watching him flee a vehicle that turned out to be stolen. Tinsley was thereafter indicted in four separate cases: one case for each of the three robberies and another case for his having been in possession of a stolen vehicle.

On March 11, 2005, the court held a plea hearing, at which the State informed the court that Tinsley had accepted a plea agreement in all four cases:

> [STATE]: Your Honor, we're before the Court today, we're asking the Court to accept a plea agreement in this matter. Essentially, Your Honor, the Defendant would be entering a plea of guilty to three separate counts of robbery with a deadly weapon in the different cases, an additional car theft, and the agreement, **Your Honor, would be free to alloc[a]te all the way up to the State's cap of 50 years.**
>
> THE COURT: Fifty years?
>
> [STATE]: Fifty years?
>
> [DEFENSE]: **Fifty years, and that would be the cap**, Your Honor.

(Emphasis added).

The court then questioned Tinsley to determine whether he understood the consequences of his guilty plea and to assess whether he was entering into the plea agreement knowingly and voluntarily. At one point during that questioning, the judge indicated that had "in [her] hand" four forms entitled "Waiver of Rights at Plea." Those forms, each of which Tinsley had signed, set out "the maximum penalty for each count,"

which at the time was 20 years' imprisonment on each of the robbery counts and 15 years' imprisonment on the theft count—totaling 75 years. Tinsley confirmed that he had reviewed the forms and that he understood that the forms advised him of the maximum penalty for each count.

After the court determined that Tinsley was entering into the plea agreement knowingly and voluntarily, the State read the facts of each case into the record. Afterward, the court again addressed Tinsley:

THE COURT: All right. Very well. Sir, would you please stand. **Sir, do you understand that the State agreed – are you asking me to bind myself to the cap maximum of 50?**

[DEFENSE]: **Yes, Your Honor.**

[STATE]: Yes, we are, Your Honor.

THE COURT: All right. **Sir, do you understand that the Court has agreed** with the State's Attorney and your attorney on your behalf **that whatever sentence I impose, it will be no more than 50 years. That's time served, actual time served?**

[DEFENSE]: **That will be executed time.**

THE COURT: **Executed time, okay. Executed time, do you understand that?**

[TINSLEY]: **Yes.**

THE COURT: And that probation is going to be at the Court's discretion. Do you understand that?

[TINSLEY]: Yes, ma'am.

THE COURT: Do you agree with that?

[TINSLEY]: Yes, ma'am.

(Emphasis added).

The court accepted Tinsley's pleas of guilty to one count of theft over $500 and three counts of robbery with a deadly weapon. At a subsequent sentencing hearing, the court sentenced Tinsley to 75 years' imprisonment with all but 50 years suspended: 15 years' imprisonment, with all but seven years suspended, on the theft conviction; a consecutive term of 20 years' imprisonment, with all but 15 years suspended, on the first robbery conviction; a consecutive term of 20 years' imprisonment, with all but 14 years suspended, on the second robbery conviction; and a consecutive term of 20 years' imprisonment, with all but 14 years suspended, on the third robbery conviction.

In 2018, Tinsley moved to correct his sentence as illegal, claiming that the court's sentence exceeded the terms of the plea bargain. At the hearing on his motion, Tinsley argued that, when the court accepted his plea bargain, a reasonable person in his position would have understood that the agreed-upon sentencing "cap" of 50 years applied to the total sentence (including suspended time), not just incarceration time. The court denied Tinsley's motion, finding that, based on the record from the plea hearing, "it was clear that the agreement was the executed time" — that "actual time of incarceration would not exceed 50 years." This timely appeal followed.

DISCUSSION

Tinsley contends that the circuit court erred in denying his motion to correct an illegal sentence. He asserts that a "review of the entirety of discussions regarding the sentence that would be imposed as part of the plea agreement reveals ambiguity with

respect to the nature of the cap that was agreed upon." Tinsley maintains that "the initial references to the cap provided absolutely no indication that the court could sentence [him] to more than the agreed upon 50 years" and that "a reasonable layperson in [his] position would have believed that his guilty plea subjected him to a sentence which did not exceed 50 years of incarceration." According to Tinsley, we must resolve the "ambiguity" in the terms of his plea agreement in his favor, meaining he is entitled to the benefit of the bargain: a total sentence, including suspended time, that does not exceed 50 years.

The State responds that "the circuit court correctly denied Tinsley's motion because the disputed term of the plea agreement, *i.e.*, the 'cap' on Tinsley's sentence, was clear and unambiguous." The State notes that, when the court accepted Tinsley's guilty plea, the court "was explicit that the 50-year 'cap' referred to 'actual time served, which defense counsel quickly clarified meant 'executed time.'" The State also notes that, when the sentencing court then referenced "executed time" and asked Tinsley if he understood, Tinsley responded in the affirmative.[1] The State maintains, therefore, that the court's "reference to a 50-year cap unambiguously referred only to the executed portion of Tinsley's sentence" and that, as a result, Tinsley's sentence was legal. The State further maintains that, even if an ambiguity exists, Tinsley would not be entitled to relief because,

[1] Additionally, the State asserts that a reasonable person in Tinsley's position would have known of the potential for suspended time because the court, in announcing the sentencing term, informed Tinsley that "probation was going to be at the court's discretion." We disagree, as the court's statement made no mention of "suspended time" or provided any indication of when the period of probation would commence. Moreover, a nearly identical argument was considered and rejected by the Court of Appeals in *Cuffley v. State*, 416 Md. 568, 584-85.

at the plea hearing, Tinsley confirmed that he was aware of the maximum penalty for each charge, thus refuting his claim that he did not understand that "executed time" was "limited to time spent in prison."

"Plea bargaining plays an indispensable role in the administration of criminal justice." *Dotson v. State*, 321 Md. 515, 517-18 (1991) (internal citation and quotation marks omitted). Generally, "the maximum sentence allowable by law is that designated by the Legislature," *id.* at 522; however, Maryland Rule 4-243 permits defendants and the prosecution to enter into plea agreements. If a judge approves a plea agreement, the "agreement is binding on the court." *Id.* at 518-19 (citing Md. Rule 2-243(c)(2)-(3)). The harshest sentence allowable by the plea agreement becomes the maximum allowable by law. *See id.* at 522.

Maryland Rule 4-345(a) allows a trial court to "correct an illegal sentence at any time." A sentence is illegal if it is not permitted by law, such as when "there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed[.]" *Chaney v. State*, 397 Md. 460, 466 (2007). The Court of Appeals has held that a sentence is illegal when it "is imposed in violation of a plea agreement to which the sentencing court bound itself." *Matthews v. State*, 424 Md. 503, 506, 519 (2012). The interpretation of a plea agreement, including whether any terms are ambiguous, and whether the trial court's sentence violated the terms of the plea agreement are questions of law, which we review without deference. *Ray v. State*, 454 Md. 563, 572-73 (2017); *Cuffley, v. State*, 416 Md. 568, 581 (2010).

To determine whether a sentence violated the terms of a plea agreement, we first look to the plain language of the plea agreement. *See Ray*, 454 Md. at 577. "If the plain language of the agreement is clear and unambiguous, then further interpretive tools are unnecessary, and we enforce the agreement accordingly." *Id.* If, however, the plain language is ambiguous, we next look to the record developed at the plea proceeding to determine "what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be[.]" *Id.* The defendant's reasonable understanding is an objective measure that does not depend "on what the defendant actually understood the agreement to mean," but instead "on what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding."[2] *Cuffley*, 416 Md. at 582. If the record at the plea proceeding reveals what the defendant reasonably understood to be the terms of the agreement before pleading guilty, "then that determination governs the agreement." *Baines v. State*, 416 Md. 604, 615 (2010). But if the agreement remains ambiguous even with the added context of the plea proceeding, we must resolve the ambiguity in the defendant's favor, and he or she is "entitled to have the

[2] For this reason, we do not agree with State's contention that a reasonable person would have known that the "cap" was limited to executed time because Tinsley "already was on probation" and "had more experience with sentencing and probation than a first-time offender." Tinsley's experience with the criminal justice system has no bearing on what a reasonable person in his position would have understood.

plea agreement enforced, based on the terms as he [or she] reasonably understood them to be[.]"[3] *Matthews*, 424 Md. at 525.

We agree with the State that the Court of Appeals' recent decision in *Ray*, 454 Md. 563, controls Tinsley's case. Ray pleaded not guilty with an agreed statement of facts to charges of conspiracy to commit theft and making a false statement to the police. *Id.* at 566-67. Ray's written plea agreement, which Ray signed and the court read into the record at Ray's plea hearing, included the following term: "Cap of four years on any executed incarceration." *Id.* at 567-68. Additionally, Ray signed an "advice of rights form," which outlined the elements of each offense and stated that the maximum penalty for the offense was "10 years + 6 months." *Id.* at 567. After the State read the agreed statement of facts into the record, the court found Ray guilty of both charges. *Id.* at 569. The court later sentenced Ray to a term of 10 years' imprisonment, with all but four years suspended, on the conspiracy conviction and a concurrent term of six months' imprisonment on the conviction of making a false statement. *Id.* Ray moved to correct the sentence as illegal, claiming that "a reasonable lay person in his position[] would have understood the agreement was limited to a maximum total sentence of four years, not suspended time . . . in addition to a four-year term of incarceration[.]" *Id.* at 569-70. The circuit court denied Ray's motion, and this Court affirmed. *Id.* at 570.

Before the Court of Appeals, Ray argued that, under the so called "*Cuffley* Trilogy" (*Cuffley*, 416 Md. 568; *Baines*, 416 Md. 604; and *Matthews*, 424 Md. 503), his sentence

[3] A defendant may, in the alternative, elect to have his guilty plea vacated. *Cuffley*, 416 Md. at 580-81.

was illegal because it exceeded the maximum sentence per his plea agreement. *Id.* at 571-73. The Court disagreed, holding that the "plain language of the disputed provision in [Ray's] agreement, '[c]ap of four years on any executed incarceration,' was clear and unambiguous," *id.* at 581, in that the terms made "no reference whatsoever to any suspended sentence and, indeed, distinguished themselves from it." *Id.* at 578 (quoting *Ray v. State*, 230 Md. App. 157, 186 (2016)). The court observed that it would be "unreasonable to interpret [that language] as prohibiting a *total* sentence beyond the cap specifically imposed on *executed* incarceration." *Id.* at 578 (emphasis in original). Regardless, the Court determined that, even *if* the language was ambiguous, Ray would not prevail because "his argument that he did not understand that his 'executed' incarceration would be limited to four years . . . was refuted by the record." *Id.* at 580 (internal citations omitted). The record showed that Ray had acknowledged, by way of the "advice of rights form," that he was aware of the maximum penalty of 10 years and 6 months. *Id.* The Court reasoned that, under the circumstances, "a reasonable person in [Ray's] position would have understood that he or she could be subject to an additional but unexecuted period of incarceration imposed as a suspended sentence." *Id.*

Further, the Court in *Ray* distinguished the *Cuffley* Trilogy, explaining that each of the three cases involved a plea agreement that "provided for a non-specific cap on the sentence, generally." *Id.* at 578-79. Specifically, Cuffley's agreement allowed "a sentence within the guidelines as formulated by [counsel,]" which was "four to eight years[,]" 416 Md. at 573; Baines's agreement called for a sentence "within the guidelines," 416 Md. at 607; and Matthews pleaded guilty in exchange for a sentence of incarceration "within . . .

the top of the guidelines range . . . [of] twenty-three to forty-three years[,]" 424 Md. at 506-07 (internal quotation marks omitted). The Court in *Ray* characterized these agreements as failing to indicate, expressly, "whether the cap was upon the executed portion of the sentence, or on the total sentence." 454 Md. at 579. The Court of Appeals agreed with this Court that the sentencing caps in the *Cuffley* Trilogy were "ambiguous by definition." *Id.* (quoting 230 Md. App. at 186). Moreover, the Court emphasized,

> There is even a suggestion in [*Cuffley*] that an adjective (past participle) such as "executed" is exactly what the plea bargain in that case needed to dissipate any possible ambiguity: "Neither did the State, defense counsel, or the Court explain for the record that the words 'guidelines range' referred solely to executed time."

Id. (quoting 230 Md. App. at 187 (quoting *Cuffley*, 424 Md. at 524)). In contrast to the agreements in the *Cuffley* Trilogy, the agreement in *Ray* "expressly provided that the sentencing cap was to be imposed on executed time[,]" making the agreement's plain language "clear and unambiguous." *Id.*

Returning to the case before us, it does not appear from the record that the State and Tinsley executed a written plea agreement from which we may assess whether the agreement's "plain language" is clear and unambiguous.[4] We look, then, to the terms of the plea agreement as the parties relayed them to the court at the plea proceeding. When

[4] The State relies on *Ray v. State* for the proposition that the "plain language" of the plea agreement in this case is clear and unambiguous. But *Ray* is distinguishable because, in that case, the parties executed a written plea agreement, which was read into the record and included express language regarding the defendant's sentence. *Ray*, 454 Md. at 568, 578-79. The Court of Appeals ultimately held that that language was clear and unambiguous based solely on the plain language of the agreement. *Id.* at 578-79. Here, there was no written agreement, and none of the agreement's terms were read into the record.

the State first informed the court that Tinsley had agreed to plead guilty in exchange for an agreed-on sentence, the State indicated that the court "would be free to alloc[a]te all the way up to the State's cap of 50 years." This was ambiguous. Unlike the agreement in *Ray*, which specified that the "[c]ap of four years" was "on *any executed incarceration*[,]" 454 Md. at 567 (emphasis added), the stated agreement in this case included no similar qualification. As a result, the agreement suffered from the same infirmity that was present in the *Cuffley* Trilogy: the "cap of 50 years" did not indicate, expressly, whether it capped only "the executed portion of the sentence, or [] the total sentence." *See Ray*, 454 Md. at 579.

Given this first-level ambiguity, we must look beyond the agreement's plain language to discern whether the surrounding circumstances at the plea hearing dissipate the ambiguity. Following the State's presentation of the plea agreement, the court questioned Tinsley about his plea and, in so doing, asked him whether he had reviewed four forms entitled "Waiver of Rights at Plea," which advised him of "the maximum penalty for each count," which totaled 75 years. Tinsley responded that he had reviewed the forms and that he understood the maximum penalty for each count. Later, the court asked Tinsley if he wanted the court to "bind [itself] to the cap maximum of 50," and defense counsel responded in the affirmative. The court then asked Tinsley if he understood that his sentence would "be no more than 50 years," at which point the court asked, "*That's time served, actual time served?*" Defense counsel affirmed, "*That will be executed time.*" The court then addressed Tinsley: "*Executed time, okay. Executed time, do you understand that?*" and Tinsley responded, "*Yes.*" (Emphasis added).

Based on these facts, we hold that a reasonable person in Tinsley's position would have understood that the "cap" of 50 years referred to "executed time" and did not include suspended time. Although the State's initial statement regarding the "cap of 50 years" did not mention whether that cap was limited to actual incarceration time, the court clarified that Tinsley's sentence would be "no more than 50 years" of "actual time served." Tinsley then confirmed that he understood that that meant "executed time." The court's clarification here resolved any ambiguity about whether Tinsley's plea agreement capped only executed time. *See Ray*, 454 Md. at 578-79.

Further supporting our conclusion is Tinsley's acknowledgment that he had reviewed and signed a "Waiver of Rights Form" for each count, which set out the maximum penalty he faced on the four charges. We know from *Ray* that a defendant's acknowledgment that he or she is subject to a greater maximum penalty than the executed time mandated by the plea agreement would lead a reasonable person to "underst[and] that he or she could be subject to an additional but unexecuted period of incarceration imposed as a suspended sentence." *Id.* at 580.

Accordingly, we conclude that any ambiguity in the plea agreement was resolved at the plea hearing when the court clarified, and Tinsley affirmed, that the 50-year cap in his agreement applied only to executed time. Tinsley's sentence of 75 years' imprisonment, with all but 50 years suspended, was legal, and 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.