Circuit Court for Prince George's County
Case No: CT120050A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1125

September Term, 2018

TREVON MARQUISE MONTGOMERY

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: July 13, 2020

*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 2012, pursuant to a 31-count indictment filed in the Circuit Court for Prince George's County, Trevon Marquise Montgomery, appellant, was charged with first-degree murder, attempted robbery with a dangerous weapon, use of a handgun in the commission of a felony or crime of violence, and related offenses. On October 29, 2013, pursuant to a plea agreement with the State, Mr. Montgomery pled guilty to one count of robbery with a dangerous weapon and one count of use of a handgun in the commission of a felony or crime of violence. The court sentenced him to a total term of 40 years' imprisonment, suspending all but 20 years, to be followed by a five-year period of probation. He did not seek leave to appeal.

In 2018, Mr. Montgomery, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that the sentencing court breached the plea agreement by imposing the five-year term of probation because a probationary term had not been discussed on the record before the court accepted the plea. The circuit court summarily denied the motion, a ruling Mr. Montgomery appeals. For the reasons to be discussed, we shall affirm the judgment.

As placed on the record at the plea hearing, in exchange for the guilty pleas to robbery with a deadly weapon and use of a handgun in the commission of a crime of violence, the State agreed to recommend a "total sentence of 40 years all suspended but 20 years," with credit for pre-trial detention. The court agreed to bind itself to that sentence and ensured that Mr. Montgomery understood the sentence would be "capped at 40 years, suspend all but 20." The State further agreed to nol pross the remaining 29 counts.

After examining Mr. Montgomery and hearing the State's proffer of facts in support of the plea, the court found that the plea was entered knowingly and voluntarily and was supported by the factual proffer. The court then turned to sentencing and the State and defense counsel agreed that the sentence should be 20 years' imprisonment, all suspended, for robbery with a deadly weapon and a consecutive term of 20 years, the first five years without the possibility of parole, for the use of a handgun. At that point, before pronouncement of the sentence, the State noted that "the only thing we did not discuss was the period of probation" and suggested that it be five years. Defense counsel concurred.

The court then sentenced Mr. Montgomery to 20 years' imprisonment for robbery with a deadly weapon, all suspended, and a five-year period of probation upon release. The court sentenced him to 20 years, the first five years without the possibility of parole, for the use of a handgun in a crime of violence, to run consecutive to the robbery sentence.

In this appeal, Mr. Montgomery continues to argue that the imposition of a period of probation breached the terms of his plea agreement because a probationary term was not mentioned at the plea hearing until after the court accepted the plea and, therefore, his sentence is illegal. The State acknowledges that a period of probation was not "expressly discussed until after he entered into the plea agreement[,]" but asserts that Mr. Montgomery's sentence is legal given that "his plea agreement expressly provided for a suspended sentence" and, therefore, "probation was implicit in the terms of the agreement." The State maintains that this Court's decision in *Rankin v. State,* 174 Md. App. 404, *cert. denied,* 400 Md. 649 (2007) is controlling. We agree with the State.

In *Rankin,* the defendant entered into a plea agreement that provided for a cap of three years "active time." In its examination of the defendant before accepting the plea, the court advised him that "the active portion of sentence, that's the portion not suspended, cannot exceed three years," but informed him that it could, "as part of the sentence, impose the sentence where the suspended portion exceeds three years." 174 Md. App. at 406. A term of probation was not mentioned either in the written plea agreement or at the plea hearing. When the defendant returned to court some weeks after entering the plea, the court imposed a 20-year term of incarceration, all but three years suspended, to be followed by a five-period of probation. *Id.* The defendant later violated his probation and the court ordered him to serve 10 years of his previously suspended time. *Id.* at 407. He then filed a motion to correct an illegal sentence, claiming that, because the plea agreement did not provide for a period of probation, the sentencing court's addition of a probationary term rendered his sentence illegal. *Id.* at 408. The circuit court denied the motion, and on appeal this Court affirmed the judgment.

Given that the agreement in *Rankin* provided for a suspended sentence, we concluded that "a probationary period was implicit in the terms of the plea agreement." *Id.* at 410. We noted that, whenever a court suspends a sentence, it must impose a period of probation. *See* Md. Code, Criminal Procedure, § 6-222(a); *State v. Crawley*, 455 Md. 52, 66 (2017) ("a court, when imposing a split sentence must impose a period of probation"). Accordingly, we held that "the right to impose a period of probation is included in any plea agreement that provides for a suspended sentence." 174 Md. App. at 411-12.

Mr. Montgomery's sentence is not illegal for the same reasons we held the sentence was not illegal in *Rankin*. A period of probation was an implicit term of the plea agreement because of the suspended portion of the sentence. As such, 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.