UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0409

September Term, 2015

EDWARD STANLEY STEWART, III

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: April 5, 2016

*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.

Edward Stanley Stewart, III, appellant, filed a motion to correct an illegal sentence in the Circuit Court for Charles County in which he alleged that his sentence for third-degree sex offense exceeded the sentencing terms of a binding plea agreement and was therefore illegal. The court denied the motion and Stewart appealed. For the reasons to be discussed, we affirm.

BACKGROUND

Pursuant to an indictment filed in 2008, Stewart was charged with sexual abuse of a minor, two counts of third-degree sex offense, and second-degree assault based on an incident involving his eight-year old niece. On October 16, 2008, Stewart appeared in court for a plea hearing. The prosecutor stated for the record that the "agreement" that had been reached "and discussed with" the presiding judge had been "reduced . . . to writing." The prosecutor then submitted the agreement to the court.

The written plea agreement provided that Stewart would enter an Alford plea to one count of sex offense in the third degree and the State would dismiss the remaining charges. As to sentencing, the written agreement provided:

> Court will sentence Defendant to no more than 1 year active incarceration. Terms and conditions of suspended time and/or probation are at the court's discretion. There is no other sentencing limitation except that provided by law. Order PSI.

The agreement was signed by the prosecutor, defense counsel, the presiding judge, and Stewart. The agreement was dated October 16, 2008 – the date of the plea hearing.

In its *voir dire* of Stewart before accepting the plea, it was elicited that Stewart was 23 years old, had completed the ninth grade, could read, write, and understand the English language, and was not under the influence of any drugs, medication, or alcohol. Stewart confirmed that he had discussed the charges against him with his attorney and he was satisfied with the attorney's services.

In reviewing the terms of the plea agreement with Stewart, the judge first confirmed that he would "plead guilty" to third-degree sex offense. The judge then stated:

> The State's Attorney has agreed to dismiss the other charges. I have agreed that **any active incarceration in this matter, at this time, will be limited to one year**. This is the agreement involving the Court and the lawyers as I understand it.

(Emphasis added.)

Stewart agreed that the judge had correctly outlined the terms of the plea agreement. When asked if he understood that third-degree sex offense "is a felony, carrying a maximum penalty of 10 years in prison," Stewart replied, "Yes sir." After reviewing the rights Stewart was waiving by entering the plea, and after hearing the State's proffer in support of the charges, the court accepted the plea. Before concluding the hearing, the court directed that the pre-sentencing investigative report ("PSI") be prepared.

Two months later, Stewart returned to court for sentencing. The judge recalled that, under the plea agreement, there was a "[o]ne year active cap." The State confirmed that fact and urged the judge to impose "every day that the Court can give him under the agreement,

and every day that you can suspend over his head." Stewart, speaking for himself, informed the court that he would like to join the Army "once [his] probation is completed." The court sentenced Stewart to a term of ten years' imprisonment, suspending all but one year, and awarded him credit for 189 days time served. The court imposed a five-year period of supervised probation upon release. Stewart did not object to the sentence or in any way indicate that it was contrary to the plea bargain.

Shortly after Stewart began his probationary term, the State moved to revoke his probation. In August 2011, the court held a revocation of probation hearing and found Stewart in violation of the conditions of his probation. The court terminated probation and ordered Stewart to serve the previously suspended sentence, that is nine years' imprisonment, with credit for 677 days time served.

In December 2013, Stewart filed a motion to correct an illegal sentence in which he asserted that his sentence was illegal "because the suspended portion of the sentence exceeded the sentencing cap contained in the plea agreement." He maintained that, based on the record of the plea hearing, a reasonable person in his position would have understood that "the agreed upon sentence could not exceed one year, whether the sentence was active or suspended." The court denied the motion, prompting this appeal.

DISCUSSION

Stewart presents the same argument on appeal that he did below, that is, that his sentence is illegal because it exceeded the sentence contemplated by the plea agreement. He

asserts that the sentencing terms of the agreement "at a minimum" were "ambiguous" because the court at the plea hearing merely advised him that "any active incarceration in this matter, at this time, will be limited to one year." While acknowledging that the written plea agreement left suspended time and conditions of probation to the court's discretion, Stewart maintains that, because the written agreement was not read into the record nor "explicitly . . . made a part of the record," we should not consider it. But even if we consider the written agreement, Stewart asserts that the reference in the written agreement to "'suspended time' and probation only added to the ambiguity" because Stewart was not advised, on the record, that "suspended time could be in addition to one year of active time" and "a reasonable lay person would not have understood that."

The State counters that the "'active incarceration' encompassed by Stewart's plea was clear" and unambiguous and that he "received the sentence for which he bargained." The State points out that, prior to the December 2013 motion to correct an illegal sentence (filed after he had violated probation), Stewart had not complained that his sentence "did not comport with the terms of his plea agreement." Moreover, the State notes that Stewart was ultimately ordered to serve the full ten-year sentence "solely due to his own subsequent conduct."

Maryland Rule 4-345(a) provides that a "court may correct an illegal sentence at any time." A sentence is "illegal" under this rule if, as relevant here, it exceeded the sentencing terms of a binding plea agreement. *Matthews v. State,* 424 Md. 503, 519 (2012). Questions

"concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort *solely* to the record established" at the plea hearing. *Cuffley v. State*, 416 Md. 568, 582 (2010). On appeal, our task is to "determine what the defendant reasonably understood to be the sentence the parties negotiated and the court agreed to impose." *Id.* The test is an "objective one" and, therefore, we look "not on what the defendant actually understood the agreement to mean, but rather, 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 hearing." *Id.*

In *Cuffley,* the record of the plea hearing reflected that the court agreed to "impose a sentence somewhere within the [four to eight year sentencing] guidelines," with conditions of probation "entirely within" the court's discretion. *Id.* at 574. The court later sentenced Cuffley to fifteen years' incarceration, with all but six years suspended, and to a five-year period of probation. *Id.* Cuffley later moved to correct the sentence, claiming that the court breached the plea agreement because he had understood that he would receive "a total sentence of no more than eight years." *Id.* at 574- 575. The court denied the motion and, upon appeal, this Court affirmed. *Id.* at 576. The Court of Appeals granted certiorari and reversed. The Court of Appeals noted that the plea terms, as placed on the record, did not indicate that a sentence within the guidelines referred to executed time only and that the court could impose something greater, with the additional time suspended in favor of probation. *Id.* at 585. The Court concluded that a reasonable person in Cuffley's position would have

understood "that the court would impose a total sentence of no more than eight years, a portion of which the court in its discretion might suspend in favor of a period of probation[.]" *Id.* at 585-586. Accordingly, the Court remanded the case with instructions to vacate the sentence and impose a sentence that would "conform to a sentence for which [Cuffley] bargained and upon which he relied in pleading guilty." *Id.* at 586.

Despite his protestations to the contrary, *Cuffley* is distinct from Stewart's case as the agreement here clearly provided that the "active" portion of his sentence would not exceed one year of incarceration. Specifically, the written plea agreement -- which all parties signed on the day of the plea hearing and which was submitted to the court during the hearing -- provided that Stewart would be sentenced to "no more than 1 year active incarceration" with "[t]erms and conditions of suspended time and/or probation" left to the court's discretion. The written agreement further provided that there was "no other sentencing limitation except that provided by law" and that a PSI would be ordered. A PSI would have been irrelevant and unnecessary if the court had agreed to merely impose a straight one-year sentence.

Moreover, before accepting the plea, the court confirmed that Stewart understood that the maximum penalty he was facing was ten years' imprisonment. Further, in discussing the sentencing terms of the plea agreement terms with Stewart, the judge expressly told him that "any *active* incarceration in this matter, *at this time*, will be limited to one year." (Emphasis added.) In other words, the court conveyed that Stewart would initially be sentenced to a maximum one year of "active incarceration," but could face additional *active* time later (if,

by way of implication, he violated conditions of probation). Thus, based on both the written plea agreement and the court's colloquy with Stewart before accepting the plea, we hold that a reasonable person in Stewart's position would have understood that he was facing a maximum ten-year sentence, but the court would initially impose no more than one year of active time, with suspended time and conditions of probation left to the court's discretion.

Stewart's reliance on *Baines v. State*, 416 Md. 604 (2010) is misplaced. In that case, the record of the plea hearing reflected that Baines agreed to enter an Alford plea to two counts of robbery with a dangerous weapon and would be sentenced to a term of imprisonment "within Guidelines." *Id.* at 609. A "waiver of rights at plea" form, that was signed by Baines and his counsel on the day of the plea hearing, also reflected that Baines's sentence would be "within guidelines." *Id.* No mention was made of suspended time or probation. Three months later, Baines returned to court for sentencing. *Id.* The guidelines called for a sentence between seven to thirteen years' imprisonment. *Id.* at 610. The court sentenced Baines to a total term of forty years incarceration (twenty years for each count, to run consecutively), with all but thirteen years suspended. *Id.* Baines appealed and this Court affirmed. *Id.* at 611. The Court of Appeals granted certiorari and reversed.

The Court of Appeals concluded that a reasonable understanding of Baines's plea agreement called for a "total sentence of no more than thirteen years," including any suspended time. *Id.* at 620. The Court noted that there was no indication at the plea

proceeding the court "was free to impose a sentence beyond the guidelines so long as the court suspended all but the part of the sentence that was within the guidelines." *Id.*

As discussed above, Stewart's plea agreement clearly indicated that the "one year" referred to "active time," with suspended time and probation left to the court's discretion, and that there was "no other sentencing limitation exception that provided by law." Thus, *Baines* does not support Stewart's position.

Finally, *Matthews, supra,* offers Stewart no support. In that case, Matthews agreed to plead guilty to certain offenses in exchange for a nol pros of other charges and a sentence "for incarceration of forty-three years," with the prosecutor stating for the record that the forty-three years was "a cap as to actual and immediate incarceration at the time of initial disposition." 424 Md. at 507. Before accepting the plea, the court confirmed that Matthews understood that the State was seeking "a sentence of forty-three years to be served"; that the court had "agreed to cap any sentence"; that the defense was "free to argue" for any sentence; and that the court, "theoretically," could impose "anything from the mandatory minimum [of five years on one count] up to the maximum of life imprisonment [on the other count]." *Id.* at 522-523. Several months later, the court sentenced Matthews to life imprisonment, with all but thirty years suspended. *Id.* at 507. At a subsequent post-conviction proceeding, Matthews argued that the sentence breached the terms of the plea agreement. *Id.* at 507-508. The post-conviction court granted Matthews a new sentencing hearing and the court re-imposed the same sentence. *Id.* at 510. Matthews's subsequent motion to correct the

sentence was denied and, upon appeal, this Court affirmed. *Id.* at 510-511. The Court of Appeals granted certiorari and reversed. The Court of Appeals concluded that the sentencing terms of the plea agreement, as placed on the record of the plea hearing, were ambiguous as to whether the sentencing "cap" included or excluded suspended time. *Id.* at 523. Because any ambiguity in the sentencing terms of a plea agreement must be resolved in the defendant's favor, *id.,* the Court vacated Matthews's sentence and remanded for imposition of a total sentence not to exceed forty-three years. *Id.* at 525.

We disagree with Stewart that the sentencing terms of his plea agreement were similarly ambiguous. There was no mention of a sentencing "cap" and the court made clear that it was agreeing that "any *active* incarceration in this matter, *at this time*, will be limited to one year." (Emphasis added.) And, as we have repeatedly noted, the written agreement clearly left to the court's discretion whether to impose a suspended sentence accompanied by conditions of probation.

In sum, we hold that the sentence imposed was not contrary to the sentencing terms of Stewart's plea agreement and, therefore, the circuit court did not err in denying Stewart's motion to correct the sentence.

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