

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1630

September Term, 2014

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EDWARD BORRERO

v.

STATE OF MARYLAND

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Wright,  
Graeff,  
Eyler, James R.  
(Retired, Specially Assigned),

JJ.

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Opinion by Eyler, James R., J.

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Filed: May 16, 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.

In 2014, Edward Borrero, appellant, filed, in the Circuit Court for Montgomery County, a motion to correct an illegal sentence in which he alleged that his sentence to life imprisonment (and various concurrent terms of imprisonment thereto) was illegal because it exceeded the terms of a binding plea agreement. The circuit court denied the motion and Borrero appealed. For the reasons to be discussed, we affirm.

### **BACKGROUND**

In 1994, Borrero was charged, by way of indictment, with first-degree murder, attempted first-degree murder, two counts of use of a handgun in the commission of a crime of violence, attempted robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon. The charges arose after Borrero and several accomplices attempted to rob a store in Silver Spring. In the midst of the attempted robbery, Borrero shot and wounded the store owner and shot and killed an adjacent store-owner who inadvertently interrupted the crime.

On July 18, 1994, Borrero appeared in court for a plea hearing. Defense counsel informed the court that, pursuant to a binding plea agreement, Borrero would plead guilty to all the charges in the indictment in exchange for a “binding cap of executed, life in prison as an executed sentence.” The prosecutor confirmed that Borrero “would plead guilty to the indictment, and there would be a cap of life sentence.”

In its *voir dire* of Borrero before accepting the plea, the court confirmed that he understood what he was pleading guilty to and the maximum sentence to be imposed, as illustrated by the following colloquy:

THE COURT: Mr. Borrero, it has been represented to the Court through your counsel and the State's attorney that you wish to plead guilty to the indictment in this case where you have been charged with the offense of first degree murder, use of handgun in the commission of a crime of violence, attempted first degree murder, attempted robbery with a deadly and dangerous weapon, use of a handgun in commission of a crime of violence and conspiracy to commit robbery with a deadly and dangerous weapon. Is that correct?

BORRERO: Yes, sir.

The court elicited that Borrero was 16 years old, had "made it to the ninth grade," understood the charges against him, and had given sufficient thought to the plea agreement.

The colloquy continued:

THE COURT: Do you understand that it's been represented to me that by pleading guilty you expose yourself to prison sentence of life imprisonment? Do you understand that, sir?

BORRERO: Yes, sir.

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[THE STATE]: Your Honor, before I offer a proffer, if I could, Your Honor reviewed all the rights and everything very thoroughly, but I don't recall whether Your Honor advised him that you could in fact impose a greater sentence than life executed time, because he is exposed to an additional life plus 80 years, 20 for each of the four offenses.

THE COURT: Do you understand that with respect to the second count, use of a handgun in commission of a crime of violence is an offense that subjects you to a possible 20 years in prison?

BORRERO: Yes, sir.

THE COURT: Oh, I didn't realize that the attempted murder was a separate victim. The attempted murder also is a separate potential life sentence?

[THE STATE]: Yes, Your Honor.

THE COURT: Did you understand that, sir?

BORRERO: Yes, sir.

THE COURT: Okay. An attempted robbery with a deadly and dangerous weapon, that's another potential 20 years. Did you understand that?

BORRERO: Yes, sir.

THE COURT: And the fifth count, is an additional potential 20 years. You have a handgun count, and the conspiracy to commit robbery with a deadly and dangerous weapon. The sixth count is an additional potential 20 years in prison.

BORRERO: Yes, sir.

THE COURT: You discussed all of this with your lawyer?

BORRERO: Yes, sir.

THE COURT: And it still does not affect your capacity or willingness to plead guilty in this case?

BORRERO: No, sir.

Three months after entering the plea, Borrero returned to court for sentencing. The court sentenced him to life imprisonment for first-degree murder, twenty years incarceration for use of a handgun in the commission of a crime of violence, thirty years for attempted first-degree murder, twenty years for attempted robbery with a dangerous and deadly weapon, twenty years for the second handgun offense, and twenty years for conspiracy to commit

robbery with a dangerous and deadly weapon. The sentences were imposed to run concurrently with each other. Borrero did not object to the sentence nor seek leave to appeal.

In 2014, Borrero filed a *pro se* motion to correct an illegal sentence in which he asserted that the trial court “breached its plea agreement with [him] by sentencing him beyond the agreed sentence of life with parole.” He claimed that, at the time he entered the plea, he “understood that the plea agreement consisted of him pleading guilty to the indictment in exchange for ‘the binding Cap of executed Life in prison as an executed sentence’ and that he was not informed ‘that separate sentences would be imposed for each count on the indictment.’” He, therefore, maintained that his sentence to “Life and a total of 110 years, to be served concurrently” was an illegal sentence. The circuit court denied the motion, prompting this appeal.

### **DISCUSSION**

On appeal, Borrero reiterates his claim that his sentence was illegal because it “violated the plea agreement to which the Court agreed to bind itself to.” Specifically, he maintains that “[a]t no time throughout the plea proceeding was [he] informed that separate sentences would be imposed for each count of the indictment.”

The record does not support Borrero’s assertions and we, therefore, affirm the circuit court’s denial of his motion to correct his sentence. At the outset of the plea hearing, the trial court stated its understanding that Borrero intended to plead guilty “to the indictment in this

case” and then enumerated each count of that indictment. Borrero responded “yes” when the court then asked if, in fact, it was his intention to so plead.

The record also clearly reflects that the plea agreement provided that, in exchange for Borrero pleading guilty to the charges in the indictment, the court would “cap” the sentence to a term of life imprisonment. In other words, the court agreed that the maximum sentence it would impose would be life imprisonment.

The trial court ensured that Borrero understood that, in addition to facing a life sentence for first-degree murder, he was also subject to additional time for the other offenses. The court reviewed each offense with Borrero and the “additional potential” time he was facing for each crime. Borrero indicated that he understood that he could receive “a separate potential life sentence” for attempted first-degree murder and “additional potential” time for the other offenses. When the court asked Borrero if he had “discussed all of this” with his lawyer, Borrero replied “yes, sir.” When the court asked him whether the knowledge of the potential sentences he was facing affected his “willingness to plead guilty in this case,” Borrero replied “no sir.”

In short, we hold that a reasonable person in Borrero’s position would have understood that he could be sentenced for each offense but, under the plea agreement, the maximum sentence the court would impose would be life imprisonment. He was sentenced in accordance with the plea agreement: to life imprisonment for murder in the first degree and to various additional terms of incarceration for the other offenses, with all the additional

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terms to run concurrently with the life sentence and hence, concurrently with each other. The sentence, therefore, is legal.

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