UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2860

September Term, 2014

JEFFREY FRANCE

v.

STATE OF MARYLAND

Meredith,
Leahy,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 27, 2016

The Circuit Court for Harford County denied Appellant Jeffrey France's Motion to Correct Illegal Sentence (hereinafter "the motion") on July 2, 2014. France presents a single question, which for clarity we rephrase:[1] Did the court err in denying the motion to correct Appellant's sentence which was mistakenly or illegally imposed under Rule 4-345? Finding no error, we shall affirm the judgment of the circuit court.

Facts and Proceedings

In January 2009, France was charged by indictment with first-degree assault and second-degree assault. In December 2009, France appeared with counsel before the court, and the following colloquy occurred:

> [PROSECUTOR]: Your Honor, this matter is on my trial docket. We've had plea discussions. The State understands at this point the defendant will enter a guilty plea as to one count of assault in the second-degree. I believe that is Count 2. The State is recommending, and again, it is the State's recommendation of 10 years, suspend all but three years to serve. That is, three years will be a cap. Defense counsel is free to argue for less. The [c]ourt, after the hearing the evidence in this case will then impose the sentence on the defendant.
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> [DEFENSE COUNSEL]: Well, Your Honor, we had discussions in chambers. And my understanding was that Your Honor was open to consider less time to serve than that.
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> THE COURT: If the facts are as I understand it to be, my remarks remain.

[1]France's question presented *verbatim* is: "Whether, Judges in Maryland courts, are authorize [sic], by Maryland Rules, Rule 4-243(c), to impose terms other than the terms, that a Defendant agreed to, and that a reasonable lay person in the defendant's position understood the terms to mean? If 'no[,]' was Appellant's sentence, mistakenly imposed under Rule 4-345(b) or illegally imposed under Rule 4-345(a)?"

[DEFENSE COUNSEL]: Okay, and I think – does Your Honor mind if for purposes of the record, I explain what I explained to Mr. France? My understanding is that Your Honor, based on what you heard at that time, was inclined to impose a sentence of 18 months. And of course, he, Mr. France, has credit for a considerable amount of time served. And that was what I related to Mr. France. So that was an important part of his decision to enter into this agreement. We are asking for work release eligibility.

* * *

THE COURT: You may be seated. Mr. France, you heard your attorney indicate to the [c]ourt that you desire to plead guilty to one count of second-degree assault. This particular charge carries a maximum possible penalty of 10 years incarceration and/or a fine of $2,500.

The plea agreement in this case is for a cap of three years to serve. You are free to argue for less. Is that your . . . understanding of the plea agreement in this case?

[FRANCE]: I thought the plea agreement was for 18 months.

THE COURT: The plea agreement is a three-year cap, sir.

[DEFENSE COUNSEL]: Well, again –

THE COURT: You heard your attorney indicate to you that we discussed the lesser sentence in chambers, and I'm inclined to give that lesser sentence provided the facts are as I understand it. If they're not as I understand them, I'm free to sentence you to up to three years. Is that your understanding of the plea agreement? That is the plea agreement, sir.

[FRANCE]: Okay. I understand.

THE COURT: Now you understand it?

[FRANCE]: Yes, sir.

THE COURT: Now any suspended time, terms and conditions of probation are within my discretion.

[FRANCE]: Yes, sir.

The court engaged France in a colloquy to ensure that his plea was knowing and voluntary. After the prosecutor presented the statement of facts, the court accepted France's guilty plea and found him guilty of second-degree assault beyond a reasonable doubt. The court sentenced France to a term of ten years' imprisonment and suspended all but eighteen months. The court ordered that France be placed on a period of probation for five years "beginning immediately."

In 2012, France was charged with violating the terms of his probation. Following a hearing, the court revoked France's probation and ordered him to serve eight years of his previously suspended sentence. France did not seek leave to appeal that decision. On April 22, 2014, France filed a Motion to Correct an Illegal Sentence complaining that the judge who presided over the violation of probation proceeding was not the same judge who originally sentenced him. That motion was denied by the circuit court and the denial was upheld on appeal to this Court in our unreported opinion in *France v. State*, No. 1076, Sept. Term 2014 (filed Apr. 15, 2015). In that appeal, France argued, for the first time, that the sentence imposed in 2009 was illegal because it exceeded the terms of his plea agreement. *Id.* slip op. at 1. This Court declined to address that argument pursuant to Md. Rule 8-131(a). *Id.*

On June 6, 2014, France filed another motion to correct an illegal sentence, in which he contended that the original sentence was illegal because "a reasonable lay person in [France's] position could understand the court['s] comments . . . to mean that the court reserved the right to suspend a part of what, at most[,] would be [a three year] sentence."

The court denied the motion on July 2, 2014. France filed a notice of appeal from that decision on July 14, 2014.

Discussion

France contends that the court erred in denying the motion.[2] We disagree. The Court of Appeals has stated that "[a]ll that is relevant, for purposes of identifying the sentencing term of [a] plea agreement, is what was stated on the record at the time of the plea concerning that term of the agreement and what a reasonable lay person in [the defendant's] position would understand, based on what was stated, the agreed-upon sentence to be." *Cuffley v. State*, 416 Md. 568, 584 (2010). Here, the prosecutor stated at the hearing in front of France that he would recommend *a total sentence of ten years*, with *seven years suspended* and *three years "to serve*." Defense counsel stated, and the court confirmed, that the court "was open to consider less time to serve." The court then told France that the offense of second-degree assault "carries a maximum possible penalty of [ten] years incarceration," and that the amount of time "to serve" was "cap[ped]" at three years. Finally, the court told France that the court had discretion to impose suspended time and the terms and conditions of probation. We conclude that, based on this record, a reasonable lay person in France's position would understand that the maximum potential sentence was ten years, and the maximum potential executed sentence was three years.

[2] The argument presented in France's brief is identical to the argument presented in the motion.

France contends that *Cuffley* and *Matthews v. State*, 424 Md. 503 (2012), require reversal. We disagree. Cuffley

> entered a plea of guilty to the charge of robbery, at a hearing in the Circuit Court for Harford County on October 23, 2002. At the outset of the hearing, the [prosecutor] set forth the terms of the parties' plea agreement:
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> > . . . . As a consequence of the plea, the State will recommend a sentence within the guidelines as formulated by myself and . . . [defense counsel], we came up with four to eight years. The sentencing will be deferred [until disposition of a pending probation violation].
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> The court restated its understanding of the agreement: [Cuffley] would plead guilty to the charge of robbery, which "carries a maximum possibility [sic] penalty of 15 years incarceration[,]" and "[t]he plea agreement, as I understand it, is that I will impose a sentence somewhere within the guidelines. The guidelines in this case are four to eight years. Any conditions of probation are entirely within my discretion."
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> The [c]ourt engaged [Cuffley] in a colloquy to ensure that his plea was knowing and voluntary. The [prosecutor] then recited the factual basis for the plea. Following that, the [c]ourt accepted the plea agreement, bound itself to its terms, and deferred disposition.
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> At the sentencing hearing several months later, the court recalled correctly that "the guidelines in the case were four to eight years." The [prosecutor] asked the court to sentence [Cuffley] "within the guidelines" and to make the sentence consecutive to a six-year sentence that was imposed in the probation violation case that had precipitated the deferral of disposition in the present case. Defense counsel asked the court to sentence [Cuffley] at the "bottom of the guidelines," and "to consider at least part of that time to be concurrent to the time he is now serving . . . ." The court sentenced [Cuffley] to "15 years at the Department of Correction, all but six years suspended, consecutive to the sentence imposed by [the judge who presided over the probation violation]. . . . ."
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> Four-and-a-half years later, [Cuffley] filed a "Motion to Correct an Illegal Sentence," pursuant to Maryland Rule 4-345(a). The motion came on for a hearing before the sentencing judge. [Cuffley] argued that the sentence

> violated the plea agreement. He testified that he understood the agreement to call for a total sentence of no more than eight years, and "not to [his] knowledge" did the lawyer who represented him at the time tell him that he could receive suspended time above the eight-year sentencing guidelines cap.
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> The court denied the motion. . . . .
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> The Court of Special Appeals affirmed the judgment in an unreported opinion.

Cuffley, 416 Md. at 573-76 (footnote omitted).

On appeal to the Court of Appeals, Cuffley contended that the sentence was illegal. *Id.* at 577. Reversing our judgment, the Court stated:

> No mention was made at any time during [the plea] proceeding . . . that the four-to-eight-year sentence referred to executed time only. Neither counsel nor the court stated that the court could impose a sentence of more than eight years' incarceration that would include no more than eight years of actual incarceration, with the remainder suspended. Based on this record, a reasonable lay person in [Cuffley's] position would not understand that the court could impose the sentence it did.
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> * * *
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> [E]ven if the sentencing term of the plea agreement as expressed at the plea proceeding was ambiguous (a point [Cuffley] concedes), he is entitled to have the ambiguity resolved in his favor.
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> We therefore hold that, regardless of whether the sentencing term is clear or ambiguous, the court breached the agreement by imposing a sentence that exceeded a total of eight years' incarceration. The sentence is illegal and, upon [Cuffley's] motion, the [c]ourt should have corrected it to conform to a sentence for which [Cuffley] bargained and upon which he relied in pleading guilty.

Id. at 585-86 (citation and footnote omitted).

Approximately 15 months after issuing its opinion in *Cuffley*, the Court issued its opinion in *Matthews*. Matthews

> entered a plea of guilty to charges of attempted first-degree murder, two counts of first-degree assault, and unlawful use of a handgun in the commission of a felony or crime of violence. In exchange for that guilty plea, the [prosecutor] agreed to . . . argue, with respect to the charges to which [Matthews] was pleading guilty, "for incarceration within the – to the top of the guidelines range . . .[,] twenty-three to forty-three years." The [prosecutor] added that it would "be asking for incarceration of forty-three years . . . . That cap is a cap as to actual and immediate incarceration at the time of initial disposition." The sentencing court stated that it "agreed to cap any sentence." In addition, the court advised [Matthews] that "theoretically I can give you anything from the mandatory minimum on the one count, which is five years without parole, up to the maximum of life imprisonment."
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> At the sentencing proceeding several months later, the [prosecutor] asked the court to "impose a sentence of life imprisonment, suspend all but forty-three years of that." [Matthews] requested "a split sentence and a substantial period of incarceration" and argued that "ten years is appropriate." The court sentenced [Matthews] on the lead count of attempted first-degree murder to life imprisonment, with all but thirty years suspended, with concurrent sentences of twenty-five years for each of the two assault charges, and twenty years, with a mandatory five-year minimum, for the handgun charge. [Matthews] thereby received a total sentence of life imprisonment, with thirty years of it as executed time.
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> Approximately eighteen months later, [Matthews] filed a petition for postconviction relief . . . . . .
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> . . . . The postconviction court issued an order granting [Matthews] a new sentencing hearing.
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> [At the re-sentencing, t]he court re-imposed the original sentence of life, suspend all but thirty years, on the lead count of attempted murder, with concurrent sentences on each of the remaining three counts. . . . .

> [Matthews] thereafter filed [a] "Motion to Correct Illegal Sentence" . . . . [T]he motion was denied without a hearing, and [Matthews] appealed.
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> On appeal to the Court of Special Appeals . . . , [Matthews] supported his argument that his sentence was illegal with [citations to] *Cuffley*[.]
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> The Court of Special Appeals . . . affirmed the judgment of the Circuit Court.

Matthews, 424 Md. at 506-11 (citations omitted).

On appeal to the Court of Appeals, Matthews contended that "a reasonable defendant would have understood the trial court's agreement to 'cap' the sentence to mean that the trial court had bound itself to a maximum total sentence at the upper limit of the guidelines, forty-three years." *Id.* at 521. Reversing our judgment, the Court of Appeals stated:

> . . . . [T]he record of the plea hearing does not persuade us that [Matthews] "reasonably understood" (as that phrase is explicated in *Cuffley*) the maximum agreed-upon sentence to be. No one mentioned, much less explained to [Matthews] on the record, that a sentence greater than the forty-three year "cap" could be imposed, with a suspended portion of the sentence in excess of those forty-three years. Neither did the State, defense counsel, or the court explain for the record that the words "guidelines range" referred solely to executed time. . . . . [I]t is . . . possible that a lay defendant who, as in the case at bar, has just heard the State inform the court that it would be "asking for incarceration within the guidelines" might reasonably understand the State to be referring to the total years of incarceration to which the defendant would be exposed, including any suspended portion.
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> The trial court's statements concerning the sentence cap embodied in the agreement, when viewed through the prism of the objectively reasonable lay defendant, did not resolve the ambiguity. . . . . The court did not explain that the cap to which it agreed to be bound concerned only a non-suspended portion of the sentence. And the court's explanation of what "theoretically"

> could be imposed as the sentence did not add clarity to the court's statement that it would agree to the cap. If anything, the court's mention of the "theoretical[]" maximum sentence of life imprisonment, without clarification of the context in which that theoretical sentence was being mentioned, more likely confused further what already was unclear.
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> We are left to conclude that the sentencing term of [Matthews's] plea agreement, as placed on the record at the plea hearing, is ambiguous. . . . .
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> The ambiguity we discern in the sentencing term of the plea agreement must be resolved in [Matthews's] favor. Therefore, [Matthews] is entitled to have the plea agreement enforced, based on the terms as he reasonably understood them to be: a maximum sentence, including any suspended portion, of forty-three years. The sentence he received at re-sentencing following the grant of postconviction relief exceeded that agreed-upon term, creating a substantive illegality that inheres in the sentence.

Id. at 524-25.

Here, unlike in *Cuffley* and *Matthews*, the court and prosecutor unambiguously told France that the three-year sentence referred to executed time, and that the court could impose a sentence that included both actual incarceration and a suspended remainder. Also, unlike in *Matthews*, the court did not ambiguously tell France that its ability to impose the maximum potential sentence was "theoretical." Hence, *Cuffley* and *Matthews* do not require reversal, and the court did not err in denying the motion.

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