Circuit Court for Baltimore City
Case No. 101081036

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 576

September Term, 2016

TAVON WOOTEN

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 28, 2017

On November 16, 2001, Tavon Wooten pled guilty in the Circuit Court for Baltimore City to first-degree murder (Count 1) and use of a handgun in the commission of a crime of violence (Count 2). Pursuant to a plea agreement, the court imposed a sentence of life imprisonment with all but twenty-five years suspended for Count 1 and a concurrent sentence of five years without parole for Count 2, but didn't impose a period of probation. Over a decade later, the court resentenced Mr. Wooten for Count 1 to life imprisonment, with all but twenty-five years suspended, and added three years of supervised probation upon release. Mr. Wooten filed a Motion to Correct Illegal Sentence or Withdraw Guilty Plea (the "Motion") on March 17, 2015, which the circuit court heard and denied on March 22, 2016. He appeals and we affirm.

I. BACKGROUND

On January 25, 2001, Mr. Wooten and a co-defendant shot and killed Marcus Lynch. He was indicted on three charges: Count 1, Count 2, and wearing and carrying a handgun on his person (Count 3).

On November 16, 2001, Mr. Wooten pled guilty to Counts 1 and 2. Pursuant to "an A.B.A. binding plea," on January 18, 2002, the court imposed a sentence of life imprisonment with all but twenty-five years suspended for Count 1, and a concurrent sentence of five years without parole for Count 2. The plea agreement did not include a period of probation, and none was imposed. Mr. Wooten was advised of his right to appeal or ask for a modification of his sentence, and on February 15, 2002, he asked the court to

modify and reduce his sentence. The court denied Mr. Wooten's request on February 28, 2002, and he did not appeal.

On January 6, 2012, Mr. Wooten filed a *pro se* Petition for Post Conviction Relief, in which he asked the court to correct his Commitment Record and Docket Entries to reflect a sentence of twenty-five years because, "since the Court did not impose a sentence that included a period of probation, it is clear under *Cathcart* [*v. State*, 397 Md. 320 (2007),] that the sentence imposed is a 25-year sentence." The State filed a Response. While the petition was pending, the Court of Appeals held in *Greco v. State*, 427 Md. 477, 513 (2012), that a split sentence for murder must include a period of probation, else the sentence is illegal. Then, through counsel, Mr. Wooten filed a Motion to Modify Sentence, which requested that the court "modify his current sentence of life suspended all but 25 years . . . to 70 years all suspended but 25 years followed by 5 years of supervised probation upon release." The court held a hearing on June 20, 2013, and on July 1, 2013, denied Mr. Wooten's request for post-conviction relief and modified Mr. Wooten's sentence for Count 1 "to life imprisonment with all but twenty-five years suspended followed by three years of supervised probation." On August 16, 2013, pursuant to *Greco*, the court altered Mr. Wooten's sentence to impose probation beginning upon his release from incarceration. And on October 29, 2013, the court denied Mr. Wooten's Motion to Modify Sentence.

Mr. Wooten then filed a Motion for Reconsideration of Sentence on November 15, 2013, and the court denied that motion on November 22, 2013. He sent a letter to the court dated December 3, 2013, captioned "Re: Sentence Reduction Consideration" that the court

construed as a motion for modification of sentence and denied, without a hearing, as untimely.

On March 17, 2015, Mr. Wooten filed the Motion before us now. He argued that the court violated his November 16, 2001 plea agreement, which provided that there would be no probation, when it added a period of probation. He contended that the violation gave him the right to withdraw his guilty plea, and that his co-defendant had been allowed to withdraw *his* guilty plea on the same basis. The State opposed the Motion. The circuit court denied Mr. Wooten's Motion and stated that it "[wa]s satisfied that the issue before the Court was ripe at the time [Mr. Wooten] was sentenced in 2013" and that "[h]e failed to raise that issue before the sentencing court." The court also noted that Mr. Wooten waited "three years since" his sentencing "to raise the issue," and thus Mr. Wooten "failed to request relief in a timely manner." Mr. Wooten filed a timely appeal.

II. DISCUSSION

On appeal, Mr. Wooten challenges the circuit court's decision to deny his Motion.[1] He acknowledges that the sentencing court's failure to add a period of probation renders his original sentence illegal, *see Greco*, 427 Md. at 513, and contends that adding probation made his sentence illegal under Maryland Rule 4-243(c)(3).[2] He asks us either to enforce

[1] In his brief, Mr. Wooten phrases the Question Presented as "Was it error or an abuse of discretion to deny Appellant's motion to correct illegal sentence or to withdraw his guilty plea?"

[2] Maryland Rule 4-243(c)(3) states in relevant part: "If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement."

his plea agreement or allow him to withdraw his guilty plea, and cites due process concerns, the rule of lenity, and fundamental fairness. The State counters the circuit court properly added a probationary period of three years in order to correct Mr. Wooten's illegal sentence, citing *Greco*, 427 Md. at 505–13. Until recently, there had been some question about whether *Greco*—a case involving a sentence after trial rather than a guilty plea—covered this situation. But the Court of Appeals eliminated any doubt in *State v. Crawley*, ___ Md. ___, No. 65, Sept. Term 2016 (filed Aug. 2, 2017), and that case resolves this one.

Before we get to the merits, Mr. Wooten contends that the circuit court erred by finding that his Motion was untimely, and we agree. Maryland Rule 4-345(a) provides that "[t]he court may correct an illegal sentence at any time," and a sentence that is less than the statutory life minimum is illegal and subject to correction under Rule 4-345(a), *Greco*, 427 Md. at 511–12. Accordingly, and although Mr. Wooten could have challenged the illegality of his sentence in 2013, he was not barred from challenging it in 2015.

Nevertheless, the outcome is the same on the merits. We review the (il)legality of sentences *de novo*. *Bonilla v. State*, 443 Md. 1, 6 (2015); *see also* Md. Rule 4-345(a). In *Greco*—also a murder case, for which the statutory sentence was life (with or without parole)—the Court of Appeals reiterated that a split sentence must include a period of probation. 427 Md. at 513; *see also Cathcart*, 397 Md. at 327 (When a court imposes a split sentence, "it must comply with the requirements of [Md. Code (2001, 2008 Repl. Vol., 2016 Supp.), § 6-222 of the Criminal Procedure Article ("CP")], one of which is that there must be a period of probation attached to the suspended part of the sentence."). Importantly

for present purposes, *Greco* held that the circuit court did not abuse its discretion when it corrected a life sentence suspended without probation to follow by *adding* a period of probation, even though "the correction of an illegal sentence may result in an increase over the erroneous sentence previously imposed on the defendant." *Greco*, 427 Md. at 508 (quoting *Hoile v. State*, 404 Md. 591, 620 (2008)). It's true that *Greco* did not involve a guilty plea, as this case does, and Mr. Wooton (and others) have argued that that context matters. Where a plea agreement did not expressly include agreement to a period of probation, he contends, adding probation to correct a split sentence violates the agreement. But courts had rejected this argument as to non-murder cases, holding that probation is inherently part of a split sentence (and thus something a reasonable defendant would know is part of his agreement) because CP § 6-222 requires a period of probation to follow the suspended portion of a sentence. *Cathcart*, 397 Md. at 326; *see also Carlini v. State*, 215 Md. App. 415, 450 (2013) ("In accepting the risk of a suspended sentence, the appellant was necessarily accepting the imposition of probation."); *Rankin v. State*, 174 Md. App. 404, 410 (2007) (holding that "a probationary period was implicit in the terms of the plea agreement").

Crawley now has closed this loop. Like Mr. Wooten, the defendant entered a plea agreement that did not mention probation, and probation was not mentioned at any time during the sentencing hearing. *Crawley*, slip op. at 3–4. He later filed a motion to correct his illegal sentence because the circuit court's failure to impose a period of probation precluded his sentence from having the status of a split sentence, and the circuit court,

pursuant to *Greco*, determined that his sentence was illegal. *Id.*, slip op. at 8. At a resentencing hearing, the court corrected the illegal sentence by imposing a new sentence that included a period of supervised probation. *Id.* He appealed, and a split panel of this Court reversed. *Id.*, slip op. at 9–11.

The Court of Appeals reversed again, "hold[ing] that the rule established by *Greco* [that an illegal sentence can be corrected by adding a probationary period] applies regardless of whether the sentence was the product of a plea agreement or upon a conviction following trial." *Id.*, slip op. at 2. Following *Cathcart* and *Greco*, the Court reasoned that "a court, when imposing a split sentence, must impose a period of probation," and "a defendant cannot consent to an illegal sentence," *id.*, slip op. at 14 (citations omitted), then that the court could correct the sentence by adding probation:

> The principle that a substantively illegal sentence must be corrected applies regardless of whether the sentence has been negotiated and imposed as part of a binding plea agreement. Here, the negotiated split sentence to which Crawley agreed and the court imposed was the statutorily-mandated life imprisonment, with all but 35 years suspended. Because the suspended portion could not remain due to the lack of a probationary period, the sentence was converted by operation of law to an illegal term-of-years sentence, which could not stand. Crawley's sentence—unlawful as originally imposed—was properly remedied through the imposition of a period of probation.
>
> *Greco* instructs that a corrected sentence is "limited by the maximum legal sentence that could have been imposed, with the illegality removed." 427 Md. at 513. The circuit court followed the dictates of *Greco* by vacating the original unlawful sentence, reimposing the mandatory life sentence with all but 35 years suspended, and adding a period of probation to the suspended portion of that sentence. In doing

> so, the circuit court effectively removed the illegality created by the absence of a period of probation attached to the suspended portion of the life sentence. There is no dispute that the four-year probation period satisfied constitutional standards and statutory limits. *Meyer [v. State]*, 445 Md. [648,] 670 [(2015)] ("When imposing probation conditions, [a] judge is vested with very broad discretion . . . [in order] to best accomplish the objectives of sentencing—punishment, deterrence and rehabilitation[,] and is limited only by constitutional standards and statutory limits.") (citations and internal quotations omitted). The imposition of that period of probation, moreover, did not constitute an abuse of the circuit court's "very broad discretion." *Id.*

Id., slip op. at 15–16.

Crawley resolves this case too. Mr. Wooten's initial sentence was illegal for failing to include probation, and while a court cannot change, alter, or add terms to a plea agreement after accepting it, *Tweedy v. State*, 380 Md. 475, 488–89 (2004), it must do so where the plea agreement itself is illegal because a defendant can only consent to a valid plea agreement (*i.e.*, one permitted by statute). *Holmes v. State*, 362 Md. 190, 195–96 (2000). His plea agreement may not have discussed probation in so many words, but obviously sought to construct a split sentence, a sentence that includes probation inherently. Without probation, the split sentence was illegal, and the court correctly added probation in order to effectuate the agreement. *Crawley*, slip op. at 15–16; *see Greco*, 427 Md. at 507 ("a split sentence imposed without a period of probation to follow lacks the attributes of a split sentence"); *Cathcart*, 397 Md. at 330 (failing to impose a period of probation precludes a sentence from "having the status of a split sentence").

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.