UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 947

September Term, 2016

GARY RONALD WRIGHT

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 12, 2017

Gary Ronald Wright appeals from the Circuit Court for Montgomery County's denial of his motion to correct an illegal sentence. He presents two issues for our review:

> 1. "Whether the Circuit Court erroneously denied Mr. Wright's motion to correct an illegal sentence?
> 2. Whether the Circuit Court erroneously concluded that a waiver of the right to seek disposition under the Health-General Article of the Maryland Code, pursuant to an otherwise valid plea agreement, does not violate public policy?"

We shall answer both questions in the negative and affirm the circuit court's judgment.

I.

The Grand Jury for Montgomery County indicted appellant with two counts of possession of a controlled dangerous substance with intent to distribute, illegal possession of a firearm, and illegal possession of a regulated firearm. Count one charged cocaine; count two charged marijuana. Through counsel, the State and appellant reached a plea agreement, which was memorialized in a Plea Memorandum, dated February 3, 2014. The parties agreed to a disposition of the case on count one of the indictment on the following terms:

> "**Comments:** Pursuant to Rule 4-245(c) and Section 5-608(b) of the Criminal law Article, the State will seek imposition of **a mandatory minimum sentence of ten (10) years without the possibility of parole** and will forgo seeking the greater mandatory minimum sentence of twenty-five (25) years without the possibility of parole the defendant is also eligible for under Section 5-608(c) of the Criminal Law Article. The Court may, of course, impose an additional period of suspended incarceration.

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> As part of this plea agreement, **the defendant must waive his right under Rule 4-345 to reconsideration of his sentences, his right under Rule 4-344 to request review of his sentence in case 123137, and his right to request a disposition under the Health General Article for either case.** That is to say the spirit of this agreement is that the defendant's sentences are not to be altered once imposed by the sentencing judges.
>
> **Guidelines:** five (5) years to ten (10) years"

On February 18, 2014, the circuit court accepted appellant's guilty plea to Count One, possession with intent to distribute controlled dangerous substance (cocaine) and sentenced appellant to a term of incarceration of twenty years, all but ten years suspended, without the possibility of parole, and upon release, three years' probation. At the plea hearing, the following colloquy took place:

> "[THE STATE]: [T]he state is seeking a mandatory minimum sentence of 10 years without the possibility of parole, and that the cap for executed incarceration in this case is the same as the mandatory minimum sentence that this case is seeking . . . As part of this plea agreement, the defendant is waiving his right . . . to request a disposition under the health general article for either case.
>
> * * *
>
> [DEFENSE COUNSEL]: [D]o you understand that the maximum penalty for this offense is 20 years, but and that the state is seeking the mandatory minimum which would be 10 years, do you understand that?
>
> [APPELLANT]: Yes, sir.
>
> * * *

[DEFENSE COUNSEL]: Do you understand, sir, that if you are on probation, that your plea today could violate that probation and expose you to back up time or additional incarceration?

[APPELLANT]: Yes, sir.

* * *

THE COURT: And have you had enough time to discuss the matter with [defense counsel] in it's entirety [sic] to make sure you understand every single right that you have that you give up when you decide you want to enter a plea of guilty?

[APPELLANT]: Yes.

* * *

THE COURT: And do you understand that I could sentence you to *up to 10 years in prison* under the terms of this agreement.

[APPELLANT]: Yes, ma'am.

THE COURT: Anybody tell you that I would go easier on you if you decided to plead guilty?

[APPELLANT]: No, ma'am.

THE COURT: Okay. Are you presently, or have you ever been treated by any mental health professional?

[APPELLANT]: No, ma'am.

THE COURT: Okay, are you under the influence today of any drugs, alcohol, medication, anything at all that might be affecting your ability to understand what's going on here today?

[APPELLANT]: No, ma'am.

THE COURT: The decision to plead guilty is yours and yours alone, do you understand that?

[APPELLANT]: Yes."

Appellant filed a motion in the Circuit Court for Montgomery County to correct an illegal sentence. The court held an evidentiary hearing on May 27, 2016 and denied the motion, finding that he was cognizant of all of his rights and the terms of his plea agreement. The court explained that appellant was well-informed of the minimum mandatory sentence of ten years of executed incarceration, noting that he turned down repeatedly the opportunity to consult with his attorney. Additionally, appellant's only concerns were focused on parole and his ability to earn good time, not suspended time.

The court also rejected appellant's claim that his waiver to seek disposition under the Health-General Article was against public policy and therefore an illegal condition of his sentence. Denying the motion, the court explained that the opportunity under the Health-General Article is not an automatic right akin to the right to appeal, but rather an alternative that can be freely bargained for in a plea agreement. According to the court, far from being an absolute right, this waiver did not represent a violation of public policy.

Appellant noted this timely appeal, claiming that his sentence is illegal.

II.

Before this Court, appellant presents two arguments: first, that his sentence is illegal because it deviated from the plea agreement; and second, that his waiver to seek disposition under the Health-General Article violates public policy and is void.

Appellant's argument as to the legality of the term of years of his sentence is two-fold. His first argument is that the plea agreement is ambiguous because the agreement was "a mandatory minimum sentence of 10 years without the possibility of parole, and that the cap for executed incarceration in this case is the same as the mandatory minimum sentenced," but the sentencing court contradicted the State, telling appellant "[a]nd do you understand that I could sentence you *up to 10 years in prison* under the terms of this agreement." Appellant argues "the sentencing court, by its own colloquy with Mr. Wright indicated that Mr. Wright might possibly serve less than ten years." Appellant concludes that "Mr. Wright could not have reasonably understood that the executed portion of his sentence was to be ten years---no more, no less---and also ten years or less."

Appellant's second attack on the length of his sentence is that the sentencing court failed to advise him of the court's power to impose an additional period of incarceration, *i.e.*, the additional ten years which the court suspended. Appellant proffers that while everyone in the courtroom might have understood that the court could impose, but suspend, an additional period of incarceration, appellant did not. Neither the State nor the court explained on the record that the court could impose a sentence greater than the ten year cap with a portion suspended. In sum, appellant argues that no one explained to him that his maximum total sentence, including executed and suspended time, could be twenty years.

As to appellant's waiver of disposition under the Health-General Article §§ 8-505 and 507[1], he argues that the waiver violated Maryland public policy because "(a) legislation so provides or, (b) a public policy outweighs, in the circumstances, the parties' interest in enforcing it."

The State argues that the circuit court did not err in denying appellant's motion to correct an illegal sentence because (1) a reasonable person in appellant's position would have understood from the plea colloquy that he was subject to the sentence he received (twenty years, with all but ten suspended, and three years' probation); (2) a reasonable person in his position would have understood the plea agreement to permit a ten year suspended sentence in addition to the ten year prison term; and (3) a reasonable person in appellant's position would have understood that the plea agreement excluded the possibility of parole on the ten year executed prison term.

Finally, the waiver of the right to seek disposition under the Health-General Article is a legal condition of the plea agreement. The State agreed to seek a mandatory minimum sentence of ten years, instead of the twenty-five years he would have been exposed to absent a plea agreement. In exchange, appellant agreed to plead guilty to Count one and to waive post-sentencing rights, including the right to seek disposition under the Health-General Article.

[1] All subsequent statutory references herein shall be to Health-General Article.

III.

A court in Maryland may correct an illegal sentence at any time. Rule 4-345(a). Whether a sentence is illegal depends solely upon whether the illegality inheres in the sentence itself. *See Cuffley v. State*, 416 Md. 568, 581 (2010). Whether a sentencing court has violated the terms of a plea agreement is a question of law, which we review *de novo*. *LaFontant v. State*, 197 Md. App. 217, 225-26 (2011). If a court imposes a sentence that exceeds the agreed-upon sentence in a plea agreement, the sentence is illegal and falls under Rule 4-345(a), subject to correction. *Matthews v. State*, 424 Md. 503, 514 (2012). In determining whether a sentence falls within the boundaries of a binding plea agreement, we look *solely* to the record of the plea proceeding, *i.e.*, the representation in open court, in the defendant's presence. *Cuffley*, 416 Md. at 582. As the Court of Appeals explained in *Cuffley*:

> "The record of that proceeding must be examined to ascertain precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement, to determine what the defendant reasonably understood to be the sentence the parties negotiated and the court agreed to impose. The test for determining what the defendant reasonably understood at the time of the plea is an objective one. It depends 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 proceeding. It is for this reason that extrinsic evidence of what the defendant's actual understanding might have been is irrelevant to the inquiry."

Id. (internal footnote omitted).

IV.

On the merits of this appeal, we reject appellant's first argument that his sentence was illegal and hold that the circuit court imposed a sentence on the count of possession with intent to distribute a controlled dangerous substance in full compliance with the plea agreement. Our conclusion is based upon our well-developed jurisprudence that we resolve the terms of any plea agreement based on the record of the proceedings, without reference to any extrinsic evidence. *See, e.g.*, *Cuffley*, 416 Md. at 582 (stating that "any question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort *solely* to the record established by Rule 4-243 plea proceeding."); *Matthews*, 424 Md. at 520-21 (stating that an appellate court looks "solely to the record of the plea hearing" in determining whether a trial court breached the terms of a plea agreement).

Rule 4-243 governs plea agreements and the procedures a court should follow when the State and a defendant have entered into a plea agreement. The Rule provides, in pertinent part, as follows:

> (a) **Conditions for agreement.**
>
> (1) Terms. The defendant may enter into an agreement with the State's attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following:
>
> ***
>
> (F) That the parties will submit a plea agreement proposing a

> particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.
>
> ***
>
> (c) **Agreements of sentence, disposition, or other judicial action.**
>
> (1) Presentation to the court. If a plea agreement has been reached pursuant to subsection (a)(1)(F) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.
>
> (2) Not binding on the court. The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.
>
> (3) Approval of plea agreement. 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.

Rule 4-243 states expressly that the terms of the plea agreement are to be made plain, on the record, and in the presence of the defendant for the court to hear and accept or reject.

In interpreting the terms of a plea bargain, we follow contract principles to resolve disputes in sentencing. *See Solorzano v. State*, 397 Md. 661, 668 (2007) ("Because plea bargains are similar to contracts, 'contract principles should generally guide the

determination of the proper remedy of a broken plea agreement.'" (quoting *State v. Parker*, 334 Md. 576, 604 (1994))).

Appellant relies on a line of cases known as the "*Cuffley* Trilogy:" *Cuffley*, *Baines v. State*, 416 Md. 604 (2010), and *Matthews*. This Trilogy "recognized a binding plea bargain, agreed to by a judge, as an effective modality for establishing an upper limit on a sentence." *Ray v. State*, 230 Md. App. 157, 173 (2016). This approach in interpreting Rule 4-345(a) challenges to illegal sentences turns on an objectively reasonable understanding of the terms of a plea agreement. *See Cuffley*, 416 Md. at 582. This objective test inquires not into a defendant's actual knowledge or understanding of the plea agreement, but rather into a reasonable layperson's understanding of the agreement under the same conditions. *Id.* at 581.

Appellant suggests that because competing explanations of his sentence from the court and the State were ambiguous, he could not have had a reasonable understanding of the terms and therefore, his resultant sentence was illegal. We conclude, however, that the final sentence of twenty years with all but ten years suspended was legal because the sentencing court's instruction of "up to 10 years in prison" and the State's proffer of a ten-year "cap for *executed incarceration*" were congruous and unambiguous references to the executed portion of a split sentence (terms including both executed incarceration and suspended time). The court's use of the plain language "in prison" explicitly restricted the executed term in accordance with the State's proffer and did not conflict with the overall

"mandatory minimum sentence of 10 years." Additionally, defense counsel advised appellant of the maximum, or overall twenty-year penalty for his offense. Accordingly, a reasonable layperson would have understood from the terms of the plea hearing that the *executed* portion of his sentence could be up to ten years.

Appellant's second contention that the sentencing court imposed improperly an additional period of suspended incarceration also fails. Although the Court of Appeals invalidated split sentences in the *Cuffley* Trilogy, those cases involved "non-specific sentencing caps imposed on split sentences." *Ray*, 230 Md. App. at 186. Because there was no explicit indication as to whether those sentence caps applied to the executed or suspended portions of the plea agreement, ambiguity inhered in the sentences and required a finding of the defendants' objective understanding. *See, e.g., Cuffley*, 416 Md. at 574 (holding illegal sentence of fifteen years with all but six suspended when plea agreement provided guidelines of "four to eight years"); *Baines*, 416 Md. at 610 (holding illegal sentence of twenty years with all but thirteen suspended when plea agreement called for a guidelines range of "7 to 13 years' incarceration"); *Matthews*, 424 Md. at 522 (holding illegal life sentence with all but thirty years suspended when plea agreement contained a "guidelines range [of] twenty-three to forty-three years").

In *Ray*, a post-*Cuffley* case, the plea agreement dictated specifically a "cap of four years on any *executed incarceration*," without reference to any suspended sentence. 230 Md. App. at 186. There, in the absence of a separate cap on any suspended sentence, this

court affirmed an additional six years of suspended incarceration. The sentence caps in *Ray* and the instant case were "perspicaciously clear and unambiguous . . . mak[ing] no reference whatsoever to any suspended sentence and, indeed, distinguished themselves from it." *Ray*, 230 Md. App. at 186. Appellant was warned of potential "additional incarceration" or "back up time," as well as a maximum penalty of twenty years. Unlike the *Cuffley* Trilogy, there was no ambiguity as to the sentence cap of the plea agreement here, which only limited the parties to a cap on executed time, but not any suspended sentence. Much like the sentencing court in *Ray*, the court here was not prohibited from imposing a suspended sentence in addition to the ten year executed term.

Appellant also seeks resentencing with parole opportunity. Here, there was no ambiguity in the plea agreement. Nowhere in the plea hearing did the State, defense, or court inform appellant as to a term with the possibility of parole. In fact, appellant explicitly acknowledged the State's request for a "sentence of 10 years *without the possibility of parole*" (Appellant's Brief at 6). Neither did the court's proffer of "up to 10 years in prison" conflict with a sentence without the possibility of parole. Thus we find that the court's sentence of ten years executed incarceration without the possibility of parole is legal under Rule 4-345(a).

V.

We turn to appellant's final argument: that his sentence was illegal because the plea agreement's condition that he waive any right to seek treatment pursuant to §§ 8-505 and

8-507 is illegal and void as against public policy. We hold that the sentence is legal because the waiver is valid and does not run contrary to Maryland public policy.

The enforceability of appellant's waiver of his right to seek disposition under the Health-General Article as against public policy is a question of law and is reviewed *de novo*. *See Newton v. Rumery*, 480 U.S. 386, 392 (1987) ("The question whether the policies underlying [the statute at issue] may in some circumstances render that waiver unenforceable is a question of federal law."); *see also Stitzel v. State*, 195 Md. App. 443, 459 (2010) (reviewing *de novo* the validity of a contract through a public policy balancing test). The relevant test for the public policy claim is whether the interest in enforcing the term of the plea agreement outweighs any public policy interests that would be harmed by enforcement of the term. *Newton*, 480 U.S. at 392.

We reject appellant's argument that his sentence was illegal because of any public policy reason against enforceability of the plea agreement's waiver term. Courts have long evinced a strong public policy interest in furtherance of plea bargaining. *See Santobello v. New York*, 404 U.S. 257, 260 (1971) (describing plea bargains as an "essential component of the administration of justice"). The negotiation of a plea bargain allows for significant concessions, such as waivers of the right to a jury, right to counsel, right to remain silent, or right to a presumption of innocence. *See, e.g., Iowa v. Tovar*, 541 U.S. 77, 83 (2004), *Chaffin v. Stynchcombe*, 412 U.S. 17, 31 (1973).

The contractual nature of plea bargaining allows for parties to negotiate and often requires the surrender of certain rights, as mentioned above. Here, appellant's waiver is a benefit of the plea bargain, not a concession of a fundamental right. Significantly, appellant, as a third-time offender, was not entitled to seek disposition under the Health-General Article. At the time of sentencing, § 5-608 of the Criminal Law Article read as follows:

> **§ 5-608. Penalties -- Narcotic drug**
>
> (a) **In general. --** Except as otherwise provided in this section, a person who violates a provision of Sections 5-602 through 5-606 of this subtitle with respect to a Schedule I or Schedule II narcotic drug is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years or a fine not exceeding $25,000 or both.
>
> (b) **Second time offender. --**
>
> (1) A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 10 years and is subject to a fine not exceeding $100,000 if the person *previously has been convicted once*:
>
> * * *
>
> (4) A person convicted under subsection (a) of this section is not prohibited from participating in a drug treatment program under Section 8-507 of the Health – General Article because of the length of the sentence.

Md. Code Ann., Crim. Law § 5-608(b)(4) (2014). The Code did not provide a similar § 5-608(b)(4) provision for disposition under the Health-General Article to third-time

offenders. It was only through the plea bargain itself that appellant was prosecuted as a second-time offender and thus eligible to waive his "right" to disposition. In exchange for this waiver, *inter alia*, appellant received a reduction on his minimum mandatory sentence from twenty-five years as a third-time offender to only ten years as a second-time offender.[2]

We reject appellant's argument that the waiver is invalid as against public policy and hold it is a legal condition of the plea agreement.[3]

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

[2] Section (a) of the Health-General Article also provides the following terms:

> (a) **In general**. -Subject to the limitations in this section, *a court* that finds in a criminal case or during a term of probation that a defendant has an alcohol or drug dependency *may commit the defendant as a condition of release*, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment, to the Department for treatment that the Department recommends . . .

Md. Code Ann., Health-General § 8-507(a) (emphasis added). Under this section, whether a defendant is committed to treatment lies within the discretion of the judge.

[3] Appellant also relies on legislative enactments that would allow for the modification of mandatory minimum sentences and point towards an overriding public policy interest against his Health-General Article waiver, but this activity post-dates his sentencing and is applicable only prospectively, not retroactively.