

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0986

September Term, 2016

CHRISTOPHER WILLIAMS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 17, 2017

*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.

Appellant, Christopher Williams, was charged with first degree assault and related offenses. On April 25, 2014, Williams appeared before the Circuit Court for Cecil County and, pursuant to a plea agreement, entered a guilty plea. The plea was accepted and Williams was found guilty of first degree assault. On August 15, 2014, Williams was sentenced to twenty years' incarceration with all but six years suspended. On May 26, 2016, Williams filed a motion to correct illegal sentence, which was summarily denied on June 14, 2016. Williams timely appealed from that denial and presents three questions for our review, which we have condensed and reworded for clarity:¹

¹ In his brief, Williams asked:

1. When the plea agreement was announced in open court refers albeit only once to a sentence of “active time within the sentencing guidelines” and the written Plea Bargain agreement as prepared by the defense lawyer, signed by the defendant, and introduced as a Joint Exhibit memorializing the plea agreement does not make any mention of “active time,” has an ambiguity in the terms of the plea agreement been created such that it must be construed in the defendant’s favor and the agreement construed to limit the sentencing court to the imposition of no more than a total sentence within the sentencing guidelines as referred to in the sentencing memo?
2. Under the Court of Appeals decisions in *Cuffley v. State*, 416 Md. 568 (2010); *Baines v. State*, 416 Md. 604 (2010), and *Matthews v. State*, 424 Md. 503 (2012), which require that a plea agreement be construed according to what a reasonable lay person in the defendant’s position unaware of the niceties of sentencing law would understand it to mean, would a reasonable lay person understand “active time within the sentencing guidelines” to mean that the sentencing court could impose a sentence in excess of the sentencing guidelines but suspend all of it in excess of the maximum sentence under the guidelines in favor or probation?
3. Where the court has bound itself to an “active time within the sentencing guidelines” but the term “active time” was never explained to the defendant

1. Did the circuit court err in denying Williams's motion to correct an illegal sentence?

2. Did the circuit court err in sentencing Williams outside the sentencing guidelines when the term "active incarceration" was not adequately explained?

For the following reasons, we affirm Williams's conviction but vacate his sentence and remand for determination of the applicable sentencing guidelines and resentencing within the guideline calculation.

Facts

Williams pleaded guilty to first degree assault pursuant to his plea agreement on April 25, 2014. The prosecution announced the terms of the plea agreement as follows:

Upon disposition, Your Honor, the State is going to make a recommendation – the agreement is that the State will make a recommendation for active time within the sentencing guidelines. The defense is free to make any recommendation they deem appropriate.

The plea form signed by the defendant stated, among other things, that the plea agreement was: "State to recommend sentence within sentencing guidelines – Defense free to argue for less," and that the judge would bind herself to the plea agreement "not to exceed sentencing guidelines." The judge noted that "the Court agreed to be bound within the guidelines So I guess the proper way to say it is the Court won't exceed the guidelines, the top of the guidelines."

and he was never informed that the court could impose suspended time in addition to the active time within the sentencing guidelines and the court sentenced him to 20 years' incarceration with all but six years suspended, is the sentence imposed on the defendant illegal?

Williams was then examined to establish that he was knowingly, voluntarily, and intelligently entering a guilty plea, that he waived his right to a jury trial, and the State proffered facts sufficient to support a guilty finding. Thereafter, Williams was convicted of first degree assault.

On August 15, 2014, Williams appeared before the circuit court for sentencing. The defense argued for the court to sentence Williams below the guidelines and place him on a long period of probation with counseling. The sentencing guidelines submitted to the court indicated a calculation of five to ten years. Defense counsel suggested that the guidelines were improperly calculated and should actually show four to nine years. After hearing from the defense and the State, the circuit court responded “So noted. Well, I will reserve on that.” The court never made a finding on the record as to the proper calculation of the guidelines.

At the hearing, defense counsel reminded the circuit court that it agreed to sentence within the guidelines. The court then sentenced Williams to twenty years’ incarceration, with all but six years suspended, followed by five years’ probation.

Standard of Review

Whether a trial court has violated the terms of a plea agreement is a question of law which the court reviews *de novo*. *Solorzano v. State*, 397 Md. 661, 668 (2007). *See also Baines v. State* 416 Md. 604, 618-19 (2010) (Fact that defendant failed to object to the sentence at the time the court imposed it did not preclude him from arguing on appeal that the sentence breached the plea agreement). Pursuant to Md. Rule 4-345, “[t]he court may correct an illegal sentence at any time.”

Maryland Rule 4-243 sets out the procedures to be followed in order to establish a binding plea agreement. Subsection (a)(1)(F) requires that a guilty plea entered on conditions agreed upon by the State and the defense must be submitted “to a judge for consideration pursuant to section (c) of this Rule.” Section (c) provides:

(1) If a plea agreement has been reached pursuant to subsection (a)(1)(F) of this Rule for a plea of guilty . . . 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 and investigation as the judge directs.

Subsection (3) sets out what the court is then bound to do:

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.

If a court subsequently imposes a sentence in excess of the sentence agreed upon by the parties, such sentence is “an illegal sentence within the meaning of [Md.] Rule 4-345(a).” *Cuffley v. State*, 416 Md. 568, 575 n.1 (2010) (citing *Dotson v. State*, 321 Md. 515, 521-22 (1991)). Where the court breaches a binding plea agreement, the defendant is entitled to be resentenced subject to the plea agreement to which the judge committed himself. *Carlini v. State*, 215 Md. App. 415, 443 (2013).

Discussion

In his brief, Williams avers that his sentence of 20 years’ incarceration, with all but six years suspended, violated the plea agreement and is therefore illegal. Williams contends that because the term “active time” was mentioned only once, without adequate

clarification, and not memorialized in the plea agreement, the terms of the plea agreement are ambiguous and the ambiguity must be resolved in his favor. Williams further avers that Maryland law requires a plea agreement be construed according to what a reasonable lay person in the defendant's position would understand the agreement to mean, and that, in his case, a reasonable lay person would understand the plea agreement to cap the entire sentence within the guidelines. Williams concludes that he is entitled to specific performance of the plea agreement as he understood it: a maximum sentence of no more than 9 or 10 years, depending on the guideline calculation, with all but six years suspended.

The State responds that the circuit court correctly denied Williams's motion to correct an illegal sentence. The State avers that the cap in the plea agreement was expressly limited to "active time," and that the agreement was clear and unambiguous to Williams. As such, the State responds that Williams has no grounds for appeal.

The clarity of the terms of the plea agreement is of utmost importance because "when a plea agreement rests in any significant degree on a promise or agreement of the prosecutor . . . such promise must be fulfilled." *Cuffley*, 416 Md. at 580 (citation omitted). To this end, the prosecution or defense must make the terms of the agreement "absolutely clear on the record of the plea proceeding and [insure that] the term is fully explained to the defendant on the record before the court accepts the defendant's plea." *Id.* at 586.

Where a disagreement arises as to the terms of the plea agreement, such questions "must be resolved by resort *solely* to the record established at the [Md.] Rule 4-243 plea

proceeding.” *Id.* at 582 (emphasis in original). *Cuffley* sets out the standard for determining the defendant’s reasonable understanding of the terms of the agreement placed on the record:

[T]he test for determining what the defendant reasonably understood regarding terms 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.

Baines v. State, 416 Md. 604, 615 (2010).

Additionally, “[i]f examination of the terms of the plea agreement itself, by reference to what was presented on the record at the plea proceeding before the defendant pleads guilty, reveals what the defendant reasonably understood to be the terms of the agreement, then that determination governs the agreement.” *Id.* Finally, if there is ambiguity in the sentence agreed upon by the parties, it must be resolved in the defendant’s favor. *Id.*

Three opinions, *Cuffley*, 416 Md. 568, *Baines*, 416 Md. 604, and *Matthews v. State*, 424 Md. 503 (2012), establish the rule that the sentencing court is bound by the terms in the plea agreement, as a reasonably objective defendant would understand them, and that any ambiguity in sentencing must be resolved in the defendant’s favor.

In *Cuffley*, 416 Md. at 573, the record revealed that the agreement was said to call for a “sentence within the guidelines” which was four to eight years. The circuit court agreed to impose a “sentence somewhere within the guidelines” with “[a]ny conditions of probation . . . entirely within [its] discretion.” *Id.* at 574. During that

proceeding, no mention was made that the four to eight year span referred only to executed time, or that the court could impose a greater sentence so long as any portion greater than the guidelines was suspended. On appeal, the Court of Appeals found that Cuffley could have reasonably understood that he was to receive a total sentence not to exceed eight years. *Id.* at 585. For this reason, the Court found the imposed sentence illegal. *Id.* at 586.

In *Baines*, 416 Md. at 607, the defendant agreed to a plea in which the sentence would be “within the guidelines,” and the circuit court announced its agreement to impose such sentence “within Guidelines.” The plea signed by the defendant stated “[M]y sentence is to be within guidelines,” which was a range of seven to thirteen years. *Id.* at 609-10. At sentencing, the court imposed a sentence of twenty years’ incarceration for one of the charges, with all but six years suspended. *Id.* at 607. The Court of Appeals concluded that it was a violation of the plea agreement for the court to impose a sentence greater than the guidelines and suspend the portion falling outside the guideline range. *Id.* at 620. The Court stated:

We believe it plain from the record of the plea proceeding that Petitioner reasonably understood the plea agreement to call for a total sentence of no more than thirteen years. A reasonable lay person in the Petitioner’s position, moreover, would not have gleaned anything different from the court’s question: “And I just commit myself within [the] Guidelines?” to which the defense counsel answered “yes.” There was no indication, much less a plain statement, that the court, consistent with the agreement, 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. The sentence was vacated and the matter was remanded for resentencing in accordance with the agreement. *Id.*

In *Matthews*, 424 Md. at 507, the Court of Appeals interpreted a plea agreement which mentioned a “cap” and “actual incarceration.” There, the State informed the circuit court that the plea agreement was “for incarceration within the – to the top of the guidelines range . . . twenty-three to forty-three years.” *Id.* The State then added “[t]hat a cap [of 43 years] is a cap as to actual and immediate incarceration at the time of initial disposition.” *Id.*

The circuit court agreed to “cap any sentence,” but informed the defense: “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.” *Id.* At sentencing, the court sentenced the defendant to life imprisonment with all but thirty years suspended. *Id.* On a motion to correct illegal sentence, the Court of Appeals concluded that upon review of the plea agreement, despite the use of the words “actual and immediate” incarceration, and the court’s explanation of what sentence it could impose, it was not persuaded that Matthews “reasonably understood” what the maximum agreed upon sentence was to be:

No one mentioned, much less explained to Petitioner 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 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.

Id. at 524-25. The Court of Appeals concluded that the ambiguity in the plea proceeding must be construed in favor of the defendant and ordered that the defendant was “entitled to have the plea agreement enforced, based on the terms as he reasonable understood them to be: a maximum sentence, including any suspended portion, of forty-three years.” *Id.* at 525.

Taken together, *Cuffley*, *Baines*, and *Matthews* establish that the circuit court is bound to sentence a defendant within the bounds of the plea agreement, as a reasonably objective defendant would understand them to be.

We recently opined on this issue in *Ray v. State*, 230 Md. App. 157 (2016) *cert. granted*, 451 Md. 249 (2017). The facts of *Ray* are distinguishable from those of *Cuffley*, *Baines*, and *Matthews*. In *Ray*, this Court examined a plea agreement which placed a “cap of four years on any executed incarceration,” to determine the meaning of the “executed” portion of the sentence. *Id.* at 180. In *Ray*, the pronouncement of the plea in open court and the formal written memorandum of the plea agreement contain the same language. *Id.* at 185. Additionally, the plea agreement pronounced and memorialized used the words “executed time,” which the Court held to be clear and unambiguous.² *Id.* Furthermore, the defendant in *Ray* was seriously involved in clarifying the terms of the plea agreement. *Id.* at 193-94.

² “Executed” means “to carry out fully,” and “to perform what is required.” WEBSTER’S DICTIONARY 405 (10th ed. 1999). In this case, the court used the term “active,” which is defined as “producing or involving action or movement,” “marked by vigorous activity,” “having practical operations or results,” and “marked by present operation, transaction, movement or use.” *Id.* at 12.

Because the pronounced and memorialized plea agreements were consistent, the terminology used in the plea agreement was unambiguous, and the defendant was seriously engaged in clarifying the agreement, the *Ray* Court held that a reasonable lay person in the defendant's position would have understood the "cap on executed time" to allow for additional suspended sentencing outside the guideline range. *Id.* at 194.

In this case, as discussed, the State made a verbal recommendation for *active* time within the sentencing guidelines. Even if we equate "active time" with "executed time," there is an additional unsurmountable hurdle. The circuit court stated that it would be bound to sentence within the guidelines, and the plea agreement signed by Williams indicates plainly that the sentence would be within the guideline range. Neither the State, the court, nor defense counsel attempted to square the meaning of "active time" with the written plea agreement signed by Williams. It would be different, if for purposes of clarity, the court made mention of the possibility of a split sentence or the State argued for a split sentence. With this lack of clarification, a reasonable lay person in Williams's position could have understood the plea agreement to encompass a complete sentence within the guideline range, of either four to nine, or five to ten, years.

For the above stated reasons, Williams is entitled to specific performance of his plea agreement—a sentence of no more than nine or ten years, with all but six years suspended. Additionally, because the circuit court did not make a finding on the record

of the correct guideline calculation, we remand this case so that it can make a determination of the applicable guidelines and resentence accordingly.

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY AFFIRMED.
SENTENCE VACATED AND REMANDED
FOR DETERMINATION OF THE
GUIDELINES AND RESENTENCING
PURSUANT THERETO. COSTS TO BE
PAID BY CECIL COUNTY.**