Circuit Court for Charles County
Case No. K07-467

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1846

September Term, 2016

ANTHONY DELLACQUA

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 7, 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.

Pursuant to a binding plea agreement, in 2007, Anthony Dell'Acqua, appellant, entered an *Alford* plea to first-degree burglary in the Circuit Court for Charles County and was sentenced to a term of twenty years' imprisonment, all but two years suspended, to be followed by a five-year period of supervised probation. In 2015, his probation was revoked and appellant was ordered to serve ten years of his previously suspended sentence. In 2016, appellant filed a motion to correct an illegal sentence in which, apparently for the first time, he maintained that the sentence imposed in 2007 was illegal because a reasonable person in his position would have understood that the maximum sentence he would receive, including any suspended time, was two years. The circuit court denied the motion, prompting this appeal. We affirm.

In 2007, appellant was charged with first- and third-degree burglary, theft of property having a value over $500, unlawful taking of a motor vehicle, and malicious destruction of property having a value of $500 or less. On December 11, 2007, a written plea agreement was submitted to the court which provided that appellant would enter an *Alford* plea to first-degree burglary. The sentencing terms of the written agreement were specified as follows:

> The court will impose a sentence, the active portion of which will begin on December 11, 2007, and not exceed two years. Suspended sentence, fine, and terms and conditions of probation are within the court's discretion.

The written plea agreement included the following definition: "Active Time = any unsuspended portion of any sentence imposed by the Court." The agreement was signed by the prosecutor, appellant, defense counsel, and the presiding judge, and it was submitted

to the court at the plea hearing. The plea was entered and appellant was sentenced on the same day that the agreement had been signed.

The transcript of the plea hearing indicates that appellant was 19 years old at the time of the plea, had completed high school, and could read and write the English language. The plea colloquy included the following:

> THE COURT: Understand you're gonna plead guilty to Count 1, which is a first degree burglary. And that's pursuant to the doctrine of *Alford v. North Carolina*. Is that your understanding?
>
> APPELLANT: Yes, Your Honor.
>
> THE COURT: All right. **And that charge carries a maximum penalty of 20 years incarceration.**
>
> DEFENSE COUNSEL: It does, Your Honor.
>
> THE COURT: And I'm not sure about a fine.
>
> DEFENSE COUNSEL: I think it's a $25,000 fine.
>
> THE COURT: Twenty-five thousand dollar fine, or both. So, you understand that sir?
>
> DEFENSE COUNSEL: That's correct.
>
> APPELLANT: Yes, Your Honor.
>
> THE COURT: Also pursuant to this agreement, **the Court would agree that a sentence would be, the active portion of which to begin today, would not be any more than two years.** Is that your understanding?
>
> APPELLANT: Yes, Your Honor.
>
> THE COURT: **The Court could give you 20 years, suspend all but two,** and place you on a period of probation of five years of supervised probation upon your release. Do you understand that?
>
> APPELLANT: Yes, Your Honor.

(Emphasis added.)

After accepting the plea, the court imposed a sentence of twenty years' imprisonment, suspending all but two years, to be followed by a period of five years of supervised probation upon release. No one objected, and appellant did not seek leave to appeal. As noted, nine years later, appellant filed a motion to correct an illegal sentence in which he maintained that the sentence imposed in 2007 was illegal because a reasonable person in his position would have understood that the maximum sentence he would receive, *including any suspended time*, was two years. The circuit court disagreed, as do we.

Based on our examination of the record of the plea proceeding, we are convinced that a "reasonable lay person" in appellant's position, and "unaware of the niceties of sentencing law," would have understood that the court could impose a twenty-year sentence, with all but two years suspended. *See Cuffley v. State,* 416 Md. 568, 582 (2010). In *Cuffley,* the Court of Appeals established that the "test for determining what the defendant reasonably understood at the time of the plea is an objective one." *Id.* "We make an independent determination of whether the trial court breached the terms of the [defendant's] plea agreement." *Matthews v. State,* 424 Md. 503, 520 (2012).

Here, we readily conclude that a reasonable person in appellant's position would have understood that the plea agreement provided that only the "active portion" of the sentence "would not be any more than two years." A reasonable person would have understood that "active portion" was equivalent to "active time," which the written plea agreement defined as "any unsuspended portion of any sentence imposed by the Court." Moreover, a reasonable person in appellant's position would have no trouble

comprehending the court's advisement that, under the terms of the plea agreement, "[t]he Court could give you 20 years, suspend all but two, and place you on a period of supervised probation upon your release." Accordingly, we hold that appellant's sentence was lawful and the circuit court did not err in denying his motion to correct an illegal sentence.

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