UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2480

September Term, 2013

LOUIS G. GONZALEZ,

v.

STATE OF MARYLAND

Meredith,
Graeff,
Raker, Irma S.
(Senior Judge, specially assigned),

JJ.

Opinion by Raker, J.

Filed: February 10, 2017

Louis G. Gonzalez**,** appellant, entered an Alford Plea[1] pursuant to a plea agreement in the Circuit Court for Washington County to the offense of robbery with a dangerous and deadly weapon. Appellant asks us to decide the following question:

> "Whether the circuit court err in denying appellant's motion to correct an illegal sentence, where appellant was sentenced in violation of his plea agreement, and where appellant was unrepresented at his sentencing hearing?

We shall hold that the circuit court did not err in denying appellant's motion to correct his sentence because it was not illegal in any way, and the sentence was not in violation of any plea agreement. Because appellant's sentence in not inherently unlawful, and his counsel discharge argument does not even so allege, we do not reach his argument that his sentence was illegal because he was unrepresented at his sentencing hearing.

I.

On September 24, 2009, appellant appeared in the Circuit Court for Washington County and entered his Alford plea of guilty to one count of armed robbery. On February 18, 2010, the court sentenced appellant to a term of incarceration of 20 years. Appellant filed a timely Application with Leave to Appeal to this Court, pursuant to Maryland Rule

[1] An Alford plea is one where a defendant offers a plea to the court pursuant to *Alford v. North Carolina*, 400 U.S. 25 (1970), wherein the defendant does not admit guilt but enters the plea to avoid the threat of greater punishment. *See Rios v. State*, 186 Md. App. 354, 369, n.1 (2009).

4-345(a).[2] This Court affirmed the trial court, holding that appellant had breached the plea agreement. *Louis G. Gonzalez v. State*, No. 259, Sept. Term, 2010 (filed May 4, 2012).

On December 16, 2013, appellant filed a Motion to Correct an Illegal Sentence. On January 6, 2014, without a hearing, the circuit court denied the motion. Appellant noted this appeal. Below, appellant relied on four points to support his argument that his sentence was illegal: (1) that the State had agreed in a plea agreement to recommend a sentence of 10 years and failed to do so; (2) that the circuit court judge agreed to be bound by 10 years as the maximum permissible sentence and that the circuit court violated the plea agreement by sentencing appellant to a term of incarceration of 20 years; (3) that the circuit court erred in permitting appellant's trial counsel to withdraw his appearance in violation of Maryland Rules 4-214 and 4-215(a); and (4) that appellant was sentenced without legal counsel in violation of the Maryland Rules and Constitution.

The State and appellant disagree as to the terms of the plea agreement. The agreement was negotiated with the prosecutor on appellant's behalf by his counsel. The two attorneys purportedly met, off the record, in the trial judge's chambers. The day after the plea was negotiated, appellant appeared in the circuit court and entered his plea to armed robbery. The following colloquy, in relevant part, took place:

> THE COURT: The State's Attorney has said that if your plea is accepted, the State would dismiss all of the other counts in

[2] In *Chaney v. State*, 397 Md. 460, 466 (2007), the Court of Appeals made clear that under Rule 4-345(a) a "sentence may be attacked on direct appeal, but it also may be challenged collaterally and belated [per Rule 4-345(a)], and, *if the trial court denies relief in response to such a challenge, the defendant may appeal from that denial and obtain relief in an appellate court.*" *Id.* (emphasis added).

> this [case] and would ask that: sentencing be deferred in this matter with the expectation that you will testify fully, freely in the matter of Anthony Caldwell and that any sentence imposed by this court will be, to great extent, determined by the level of cooperation that you present in the other matter. *Has anyone made any other promise, commitment, understanding or inducement to you to get you to enter this plea?*
>
> [DEFENSE COUNSEL]: Has anyone promised anything other than that?
>
> [APPELLANT]: *Oh, no, no.*
>
> [DEFENSE COUNSEL]: That's what he said. You will be treated more favorably—
>
> [APPELLANT]: Yeah, yeah, yes sir.
>
> THE COURT: Do you understand that the *maximum possible sentence* that can be imposed for . . . this offense, armed robbery, *is 20 years in prison*?
>
> [APPELLANT]: Yes sir.

The court found that appellant tendered his plea knowingly and voluntarily, accepted appellant's plea and deferred sentencing until after appellant testified at the trial of appellant's co-defendant, Anthony Caldwell. Part of the plea agreement was that appellant agree to testify truthfully when called by the State as a witness at the trial of Caldwell. Appellant testified at Caldwell's trial and the trial ended in a mistrial when the jury failed to reach a unanimous verdict. At Caldwell's retrial, appellant refused to testify, exercising his right against compulsory self-incrimination under the Fifth Amendment to the United States Constitution. Caldwell's second trial ended in a mistrial and subsequently, he entered a guilty plea.

On December 28, 2009, appellant's counsel filed a motion to withdraw as counsel. Counsel provided appellant with written notice of his intention to withdraw more than 10 days prior to filing the withdrawal motion. The court permitted counsel to withdraw. On February 18, 2010, appellant appeared before the court for sentencing, without counsel. Appellant requested to withdraw his guilty plea, asserting that he entered his plea under duress and that his counsel had made promises to him. He also asked the court for a continuance to enable him to hire counsel, stating that he had received ineffective assistance from his counsel. The court denied his request to withdraw his guilty plea and denied a continuance. The following colloquy took place:

> THE COURT: Okay, [appellant] . . . the file does not reflect that anyone has entered their appearance on your behalf. We've been through this. I think that it is clear that you have been advised of your rights to counsel. I've even continued this mater from a couple of weeks ago to allow you the opportunity to resolve the matter regarding an attorney and here we are on today's trial date. You do not have . . . counsel, and I find that you have [e]ffectively waived your right to counsel at this time.
>
> So, we have your Motion to Remove the Guilty Plea. Do you wish to be heard on the matter?
>
> [APPELLANT]: Yes, Your Honor, plus I've got a question. Um the day that I came here, the same day that I came to court two weeks ago, that same day my dad was in the hospital; and, he got released for like four days; and, we could get paperwork on that from the Washington County Hospital. And also . . . the storm with the weather, there was nothing that my family could do. You see that my family is back there. . . . [T]hey couldn't get no lawyers. Like it was hard, impossible. Everything was like shut down.

> THE COURT: All right [appellant], I do not find that to be a meritorious reason at this point. . . . [T]he file reflects that you appeared before the court in September. You entered a plea at that time to armed robbery. Thereafter, and Mr. Salvatore's appearance was stricken on December the 30th. Here we are on February the 18th. I would be glad to hear you on your Motion to Withdraw the Guilty Plea if you wish to be heard on that.
>
> [APPELLANT]: Yes sir.
>
> THE COURT: What do you want to tell me?
>
> [APPELLANT]: That I, I'd like to withdraw my plea due to the fact that I had ineffective counsel.
>
> THE COURT: Because?
>
> [APPELLANT]: Due to the fact that–what he was promising, the way that he was coming at me I was in duress. I was just, the way everything happened, I don't know really how to explain myself the proper way to you, Your Honor, but–I just like to withdraw the plea.
>
> THE COURT: So you're saying that you were in duress? You entered into it in duress–under duress? Is that what you're telling me?
>
> [APPELLANT]: Yes sir.
>
> THE COURT: Okay. Anything else on the issue?
>
> [APPELLANT]: No sir, I really don't know how to–you know what I mean? How to explain myself about this stuff.

The court explained as follows:

> THE COURT: Mr. Gonzalez, the Motion to Withdraw your plea is denied. This matter uh, I conducted the guilty plea voir dire of you at the time that the plea was tendered. Uh, I've covered the bases with you. I find that the plea that you entered into was freely and voluntarily made at that time. It was

> contingent upon your cooperation. Uh, the outcome, the sentencing was contingent upon your out–or your cooperation with the State in the matter, I believe with was Mr. Caldwell. But the plea that you entered was feely and voluntarily made. It is through your own actions that you no longer have counsel in this matter. It is through your own actions that you do not have counsel today. Under the circumstances and considering the pluses and minuses, the factors involved in this matter, uh, I decline to allow you to withdraw your guilty plea at this time so your Motion is denied. . . .

In imposing sentence, the court explained to appellant that it found the State's request for 20 years appropriate. The judge told appellant that his counsel had negotiated a "sweetheart deal" for him in return for appellant's cooperation– that he would receive 5 years if he testified at his codefendant's trial. The judge found that he abrogated his agreement with the State and sentenced appellant to a term of incarceration of 20 years.

Appellant filed an application for leave to appeal to this Court. He attacked his sentence, asking this Court to decide whether the circuit court erred in imposing a sentence of 20 years imprisonment where (in his view) the plea agreement called for a sentence of 5 years imprisonment, and in any event, no more than 10 years. The Court added a question, asking whether the trial judge erred in ruling that appellant had breached the plea bargain by appellant's refusing to testify at his codefendant's second trial. In an unreported opinion, filed on May 4, 2012, this Court held that by not testifying at the second trial, appellant had breached his plea agreement with the State. We held "that appellant breached the plea agreement by invoking the Fifth Amendment and refusing to testify as the second trial." *Louis G. Gonzalez v. State*, No. 259, Sept. Term, 2010 (slip op. at 18). Notably, the Court did not reach the question of the maximum term of years contemplated by the plea

agreement, but only addressed whether appellant breached the agreement. As to whether appellant breached the plea agreement, this holding is the law of the case.

Appellant noted his appeal to this Court from the trial court's denial of his motion to correct an illegal sentence.

II.

Before this Court, appellant presents four arguments: two related to his plea agreement and the terms of that agreement; and two related to his self-representation. Appellant maintains that the trial court agreed to a cap of 10 years incarceration and that the State violated this agreement by recommending 20 years incarceration. He states that the plea agreement provided that if appellant entered a plea to armed robbery, even if he did not testify against the codefendant, the State would recommend a sentence of 10 years and that if appellant cooperated, the State would recommend a sentence of 5 years. By asking for 20 years, appellant continues, the State breached the plea agreement.

As to his self-representation, appellant argues that he did not waive his right to counsel by inaction and the court erred in finding that he did so. He argues that the court erred in granting defense counsel's motion to withdraw as counsel, leaving appellant unrepresented at sentencing.

As a threshold matter, the State maintains that this appeal is improper and should be dismissed because appellant's sentence is not an illegal sentence and is not cognizable under Maryland Rule 4-345(a). The State argues that the scope of a challenge to the

illegality of a sentence under Rule 4-345(a) is narrow and limited, and that the Rule applies only to sentences that are "inherently illegal." On the merits, the State presents two arguments: that the sentence was lawful in that it was within the statutory limit, and that the sentence was within the plea agreement; and that the law of the case doctrine bars this claim. In appellant's prior appeal, this Court held that appellant breached the plea agreement by invoking the Fifth Amendment and refusing to testify at the second trial, and that this breach was not immaterial. *Louis G. Gonzalez v. State,* No. 259, Sept. Term, 2010 (slip op. at 18).

III.

We review the denial of a motion to correct an illegal sentence de novo. *Carlini v. State*, 215 Md. App. 415, 443 (2013). We make a "de novo determination, as a question of law, as to what the terms of a plea agreement actually were." *Ray v. State*, 230 Md. App. 157, 189 (2016). On the merits, whether the trial court has violated the terms of a plea agreement is a question of law that we review de novo. *LaFontant v. State*, 197 Md. App. 217, 225-26 (2011).

IV.

We address first the State's argument that this appeal is barred by the doctrine of law of the case. Under that doctrine, once an appellate court rules upon a particular question presented in an appeal, the parties are bound by that ruling as it is considered to

be *the law of the case. See Scott v. State*, 379 Md. 170, 183 (2004). The State's argument is that because this Court "ruled on and confirmed the legality of Gonzalez's twenty-year sentence in the context of his negotiated *Alford* plea case, Gonzalez's current claim of sentence illegality is unfounded and not subject to further consideration." Appellee's brief at 18. As such, the State continues, his appeal should be dismissed.

Appellant refutes the State's law of the case argument, maintaining that the doctrine is inapplicable here because law of the case doctrine applies only where the same issue is involved. Here, according to appellant, the issue presented herein is different from the issue this Court decided in the prior appeal.

We agree with appellant that the law of the case doctrine does not bar this appeal. In *Gonzalez v. State*, we considered and decided that appellant did breach the plea agreement with the State. *Louis G. Gonzalez v. State*, No. 259, Sept. Term, 2010. We did not decide the substance of the plea agreement and the maximum sentence the trial court could impose in the event the agreement was breached. Appellant maintains in this appeal that the trial court agreed to impose no more than a term of incarceration of 10 years; the State maintains that there was no such agreement and that, based upon the record, the maximum term of incarceration was 20 years, the statutory maximum penalty for the crimes. We hold that this issue was not presented nor decided in a prior case and the issue, properly before this Court, is not barred by the doctrine of law of the case.

V.

We turn next to the State's argument that appellant's sentence was not "inherently illegal" and therefore, is not cognizable under Rule 4-345(a), is not properly before this Court and should be dismissed. The State asserts that an inherently illegal sentence is one where there had been either no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed thereby making the sentence intrinsically and substantively unlawful. Because appellant's sentence fits into neither category, the State argues, it does not fall within Rule 4-345(a).

We hold that appellant's argument that the trial court imposed a sentence in violation of the plea agreement is cognizable under Rule 4-345(a) and is considered properly as potentially an illegal sentence. *See Bonilla v. State*, 443 Md. 1, 12 (2015) (holding that "[c]onsidering *Dotson*, *Cuffley*, *Matthews*, and *Chertkov*, we conclude that when a sentencing court violates Rule 4-243(c)(3) by imposing, without consent, a sentence that falls below [or exceeds] a binding plea agreement, the resulting sentence is inherently illegal under Rule 4-345(a).").

VI.

Turning to the merits of this appeal, we reject appellant's argument that his sentence was illegal and hold that the trial court imposed a sentence on the robbery with a dangerous weapon charge 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 upon the record from the plea proceedings, without regard to extrinsic evidence. *See*

Cuffley v. State, 416 Md. 568, 582 (2010) (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 v. State*, 424 Md. 503, 520-21 (2012) (stating that an appellate court looks "solely to the record of the of the plea hearing" in determining whether a trial court breached the terms of a plea agreement).

We look to Rule 4-243, which governs plea agreements and the procedures a court should follow when the State and a defendant have entered into a plea agreement. That 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 expressly states that the terms of the plea agreement are to be made plain on the record, in the presence of the defendant, for the court to hear and accept or reject.

In the instant case, the parties do not dispute that the terms of a plea agreement are to be construed "according to the reasonable understanding of the defendant when he pled guilty" or whether those agreed upon terms are enforceable. The parties disagree, however, about whether extrinsic evidence, that is, evidence outside the "four corners" of the plea agreement itself, may be considered in determining the defendant's reasonable understanding of the agreement's terms.

Here, appellant urges this Court to consider extrinsic evidence to support his argument that the trial judge agreed, in chambers and off the record, to impose a sentence of incarceration of no more than 10 years. He directs us to a document captioned Exhibit 1, a memo to the file by a one "Jill Ritter, Victim/Witness Unit, State's Attorney's Office,"

dated September 23, 2009, regarding "Meeting w/victim-Bruce Jones, Viki, Alicia and Myself." The State, relying on Rule 4-243(c), argues that determining appellant's reasonable understanding of a term of a plea agreement must be confined to what the Rule itself expressly mandates be placed on the record at the court proceeding when the plea agreement is offered and accepted, and that, in keeping with the Rule's requirements, extrinsic evidence of what the Petitioner did or did not understand about the agreement cannot be considered.

By its express terms, Rule 4-243 mandates that, before the court accepts the defendant's guilty plea, defense counsel and the State's Attorney, *on the record and in the presence of the defendant*, "shall advise the judge of the terms of the agreement."

Rule 4-243 requires strict compliance. *Cuffley*, 416 Md. at 582. Rejecting resort to or any consideration of extrinsic evidence, the Court of Appeals concluded that "as the natural consequence of requiring strict compliance with the Rule, 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 at the Rule 4-243 plea proceeding." *Id.* The Court explained as follows:

> "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. (emphasis added).

In *Baines v. State*, 416 Md. 604, 619-20 (2010), the Court of Appeals again made clear that extrinsic evidence of defendant's actual understanding of a plea agreement is not relevant to the determination of the plea agreement's terms.[3] *Id.* The Court reiterated that "the only relevant facts concerning the sentencing term of the plea agreement are those that are manifest from the record of the plea proceeding." *Id.* at 619.

In this case, the transcript of the plea proceeding is clear, unequivocal and unambiguous. Appellant told the court that there were no promises made to him other than any sentence imposed by the court would be determined by his level of cooperation "in the other matter" and that the maximum sentence the court could impose was 20 years in prison. *See Ray v. State*, 230 Md. App. 157, 192-93 (2016) (finding that a reasonable man would conclude that defendant acquiesced to the "common understanding of . . . the words of the agreement" when the lower court described the terms of the agreement to the defendant and then asked the defendant whether "those [are] the complete terms of the statement?"). We do not and cannot consider appellant's extrinsic evidence contained in his exhibit 1.

[3] Whether extrinsic evidence would be admissible where the record shows the plea terms are ambiguous is not before us and we do not address it. *See, e.g., United States v. Harvey*, 791 F.2d 294 (4th Cir. 1986).

The law of the case doctrine does apply here in so far as this Court held previously that by refusing to testify at Caldwell's second trial, appellant violated his plea agreement with the State. *Louis G. Gonzalez v. State*, No. 259, Sept. Term, 2010 (slip op. at 18). By breaching the plea agreement, the trial court was free to impose any sentence within the statutorily permissible range, *i.e.*, within 20 years.

VII.

We turn to appellant's final argument: that his sentence was illegal because he was unrepresented by counsel at the sentencing hearing. We decline to address this issue because it is not cognizable in a motion to correct an illegal sentence. The illegality of any sentence subject to review and correction at any time under Rule 4-345(a) applies only to sentences that are *inherently illegal. Bryant v. State*, 436 Md. 653, 662 (2014). A sentence that is inherently illegal is one that inheres in the sentence itself, i.e., either where there had been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed, and for either reason, is intrinsically and substantively unlawful. *Id.* at 662-63. A "sentence, proper on its face, [does not] become an 'illegal sentence' because of some arguable procedural flaw in the sentencing procedure." *Wilkins v. State*, 393 Md. 269, 273 (2006) (quoting *Corcoran v. State*, 67 Md. App. 252, 255 (1986)). *See also Hoile v. State*, 404 Md. 591, 621 (2008) (stating that a sentence is not illegal "merely because a required procedure was not followed prior to the court imposing the sentence."). The sentence the circuit court imposed is not

substantively unlawful; at best, appellant argues a procedural violation—one not cognizable under Rule 4-345.

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