UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2879

September Term, 2015

ARTHUR LAMAR RODGERS

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: March 13, 2017

In 2012, the State charged Arthur Rodgers, appellant, with robbery, second-degree assault, and theft following an incident that occurred in Baltimore County (Case Number 03-K-12-002336; hereinafter "Case 2336"). A few months later, appellant was charged with robbery, second-degree assault, and theft following a separate incident that also occurred in Baltimore County (Case Number 03-K-12-004599; hereinafter "Case 4599"). Appellant subsequently pleaded guilty, in the Circuit Court for Baltimore County, to the charge of robbery in Case 2336. Pursuant to a plea agreement, the State entered a *nolle prosequi* to each of the remaining charges in Case 2336 and to every charge in Case 4599 (hereinafter the "first plea agreement").

Prior to sentencing, appellant withdrew his plea, and the State reinstated all charges in both Case 2336 and Case 4599. Appellant then pleaded guilty, pursuant to a different plea agreement, to the charge of robbery in Case 2336 and the charge of robbery in Case 4599. In exchange, the State proffered a sentencing recommendation totaling thirty years' imprisonment (hereinafter the "second plea agreement"). Appellant was thereafter sentenced to a term of 15 years' imprisonment in Case 2336 and a consecutive term of 10 years' imprisonment in Case 4599.

Several years later, appellant filed a Motion to Correct an Illegal Sentence, arguing that his sentence in Case 4599 is illegal because the State had already entered a *nolle prosequi* to each of those charges. The circuit court denied the motion. In this appeal, appellant presents the following question for our review:

> Did the circuit court err in denying appellant's motion to correct an illegal sentence?

For reasons to follow, we answer appellant's question in the negative and affirm the judgment of the circuit court.

BACKGROUND

At the plea hearing held on April 16, 2013, the following colloquy ensued:

[STATE]: Your Honor, it's my understanding that [appellant] will be proceeding by way of a guilty plea in case number K-12-2336. The State has previously filed notice of intention to seek enhanced penalties based on prior convictions for the same offenses.

Your Honor, pursuant to the plea should your Honor make a factual finding supporting [appellant's] guilt to the robbery in K-12-2336, the State will in turn nol pros[1] K-12-4599…It is my understanding that counsel is stipulating that his client, in fact, meets the criteria for a [sentence of 25 years without the possibility of parole] based on his prior record. I have previously served that notice already to counsel.

[DEFENSE]: That's our understanding, your Honor.

[THE COURT]: All right. Mr. Rodgers…[y]ou're entering a guilty plea to the first count which is robbery, the maximum sentence is 15 years. If the State were to in fact provide the necessary information that you are a repeat offender, the Court would have no alternative but to sentence you to 25 years without the possibility of parole. I have agreed to order an evaluation of the Department of Health and Mental Hygiene prior to sentencing, but I will not guaranty that I will do that if, in fact, they accept you. Your attorney is free to argue. Do you understand what the plea agreement is?

[APPELLANT]: Yes, sir.

[1] Maryland Rule 4-247(a) provides that the State "may terminate a prosecution on a charge and dismiss the charge by entering a nolle prosequi on the record in open court." *Id.* "Nol pros" is a commonly-used term for *nolle prosequi*. To "nol pros" means to enter a *nolle prosequi* to a charge or charges.

The court then questioned appellant regarding the nature of the plea and the various rights appellant would be foregoing by pleading guilty. Upon doing so, the court accepted appellant's guilty plea and found "that his waiver is knowingly, voluntarily and intelligently given." The State then read the statement of facts into the record, after which the court found appellant guilty of robbery and ordered "an evaluation by the Department of Health and Mental Hygiene."[2] A sentencing hearing was set for July 10, 2013.

During the scheduled sentencing hearing, the following colloquy ensued:

> [STATE]: Your Honor, in K-12-2336, that case had previously proceeded by way of a guilty plea, and [appellant] was anticipating receiving 25 years without the possibility of parole, but I knew that he was entering that plea with the understanding that he would be allowed to file an 8-505 and 8-507 – or 8-505 evaluation.
>
> Unfortunately, I found out afterwards that [appellant] wasn't eligible for an 8-505 or 8-507. Therefore, your Honor, it's my understanding that [appellant] wishes to withdraw his plea. That plea on 2336 was dependent on his being found guilty, and that I had nol prossed 4599 with the understanding that it was only a final finding of guilty that that would happen.
>
> So, I believe if he withdraws his plea, that he is, again, charged with K-12-2336 and K-12-4599. Does [defense counsel] agree?
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> [DEFENSE]: I agree.
>
> [STATE]: All right. Your Honor, it's my understanding as well that [appellant] at this time is willing to enter guilty

[2] The court appears to be referencing its power under Section 8-505 of the Health-General Article of the Maryland Code, which provides that "the court may order the [Department of Health and Mental Hygiene] to evaluate a defendant to determine whether, by reason of drug and alcohol abuse, the defendant is in need of and may benefit from treatment[.]" Md. Code, Health-General § 8-505(a)(1).

pleas to both cases. I will be – which charges simple robbery in each. I'll be recommending that the 15 years on each be consecutive to each other, that would be…a total of 30 years. Defense is free to argue. Obviously that then leaves open the possibility of an 8-507, and that's obviously within your Honor's discretion. Pursuant to this plea, I will withdraw the notice of the 25 without.

THE COURT: All right. Mr. Rodgers…[y]ou're entering two guilty pleas now, each to one count of robbery which carries up to 15 years for a total of 30 years. The State is asking for 15, plus 15 consecutive. [Defense counsel] is free to argue. I could give you anything from probation directly up to the maximum of 30 years. Do you understand what the plea agreement is?

[APPELLANT]: Yes, sir.

The court then questioned appellant regarding the nature of his guilty pleas and the various rights appellant would be foregoing by pleading guilty. As it had before, the court accepted appellant's guilty pleas and found "that his waiver is knowingly, voluntarily and intelligently given." The State then read the new statement of facts into the record, and the court found appellant guilty of one count of robbery in Case 2336 and one count of robbery in Case 4599. Following a brief presentation of evidence, the court sentenced appellant to a term of 15 years' imprisonment in Case 2336 and a consecutive term of 10 years' imprisonment in Case 4599.

Several years later, appellant filed a Motion to Correct an Illegal Sentence, in which he argued that his sentence in Case 4599 was "impermissible" because the State had previously entered a *nolle prosequi* to each of those charges. The court denied the motion.

DISCUSSION

Appellant contends that the circuit court erred in denying his motion to correct an illegal sentence. Appellant maintains that the State's entry of a *nolle prosequi* to the robbery charge in Case 4599 was "unconditional" and, as a result, the State breached the terms of the first plea agreement when it reinstated the charges at the sentencing hearing held on July 10, 2013. This breach, according to appellant, rendered his subsequent sentence in Case 4599 illegal.

The State contends that appellant's claim should be dismissed because Maryland Rule 4-345(a), which embodies the court's power to correct an illegal sentence, "pertains to substantive law, not trial error, which is subject to waiver." As such, the State avers that appellant's sentence is not "illegal" because he pleaded guilty to the charge of robbery "by consent" and because his "current claim is a procedural attack on his sentence that could have been presented by way of an application for leave to appeal the entry of his plea, which he did not pursue." The State further avers that, even if appellant's claim is cognizable under Rule 4-345(a), the circuit court did not err in denying his motion because the State's dismissal of the charges was conditioned upon appellant actually pleading guilty; thus, when appellant subsequently withdrew his guilty plea, the State's dismissal of the charges became "a nullity."

We first address the State's assertion that appellant's claim is not cognizable under the Maryland Rules. Maryland Rule 4-345(a) allows a trial court to "correct an illegal sentence at any time." *Id.* A sentence is considered "illegal" if the sentence is not permitted by law, such as when "there either has 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[.]" *Chaney v. State*, 397 Md. 460, 466 (2007). Moreover, "the illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding." *Matthews v. State*, 424 Md. 503, 512 (2012). For this reason, the Court of Appeals has "denied relief pursuant to Rule 4-345(a) because the sentences imposed were not inherently illegal, despite some form of error or alleged injustice." *Id.* at 513.

On the other hand, Maryland Rule 4-243(a)(1)(F) provides that a defendant may plead guilty on the condition 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." *Id.* The judge then may accept or reject the plea, and any agreement "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." Md. Rule 4-243(c)(2). 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[.]" Md. Rule 4-243(c)(3) (emphasis added). In light of this rule, the Court of Appeals has held that "Rule 4-345(a) is an appropriate vehicle for challenging a sentence that is imposed in violation of a plea agreement to which the sentencing court bound itself." *Matthews*, 424 Md. at 506.

In appellant's case, the court accepted the first plea agreement and agreed to embody in its judgment certain "judicial actions," which necessarily included not rendering a verdict or sentence on the dismissed charges. In other words, if the State agreed to enter a *nolle prosequi* to a charge as part of a binding plea agreement with appellant, and if the

court accepted the agreement but sentenced appellant on that charge anyway, then that "judicial action" would likely be a violation of the terms of the plea agreement and the sentence could be considered illegal. It matters not that appellant's claim could have been presented by way of an application for leave to appeal, as Rule 4-345(a) makes plain that an illegal sentence may be corrected at any time. Nor does it matter that appellant ultimately pleaded guilty to the count he now challenges, as "[a] defendant cannot consent to an illegal sentence." *Holmes v. State*, 362 Md. 190, 196 (2000).

That said, we are not suggesting that the court committed any error or that appellant's sentence is necessarily illegal based on the aforementioned case law. Rather, we merely reject the State's argument that appellant's claim should be dismissed. We now turn to the merits of appellant's claim.

As previously discussed, appellant maintains that his first plea agreement included a term by which the State agreed to enter a *nolle prosequi* on all charges in Case 4599. Appellant avers that the State later breached the agreement by reinstating these charges at appellant's sentencing hearing. Appellant further asserts that the State's reason for reinstating the charges – that appellant was ineligible for treatment for substance abuse with the Department of Health and Mental Hygiene – was not valid because appellant's eligibility for treatment was not a condition of the first plea agreement. Appellant avers, therefore, that the State's entry of the *nolle prosequi* was "unconditional," which meant that the State was barred from reinstating these charges under the same charging document. Consequently, any sentence based on the robbery charge in Case 4599 is illegal because, according to appellant, such a sentence would be in excess of the terms of the first plea

agreement, which did not contemplate the imposition of a sentence on the charges that were nol prossed.

"Whether a trial court has violated the terms of a plea agreement is a question of law, which we review de novo." *Cuffley, v. State*, 416 Md. 568, 581 (2010). "Plea agreement terms 'are to be construed according to what a defendant reasonably understood when the plea was entered.'" *Falero v. State*, 212 Md. App. 572, 581 (2013) (*quoting Tweedy v. State*, 380 Md. 475, 482 (2004)). "The test for determining what the defendant reasonably understood is an objective one." *Cuffley*, 416 Md. at 582. "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 [the] law would have understood the agreement to mean, based on the record developed at the plea proceeding." *Id.* "Additionally, ambiguous terms are resolved in favor of the defendant." *Falero*, 212 Md. App. at 582.

According to the record of the April 16 plea hearing, the terms of the first plea agreement were that appellant would plead guilty to one count of robbery in Case 2336, and in return the State would enter a *nolle prosequi* to the remaining counts in Case 2336 and to all counts in Case 4599. In addition, the agreement called for a sentence of 25 years' imprisonment without the possibility of parole, based on defense counsel's stipulation that appellant was a repeat offender. Finally, the court agreed to "order an evaluation of the Department of Health and Mental Hygiene prior to sentencing," but the court cautioned that it would "not guaranty" that it would "do that if, in fact, they accept you."

At the subsequent sentencing hearing, the State informed the court that appellant was not eligible for substance abuse treatment through the Department of Health and Mental Hygiene. The State then informed the court that appellant wanted to "withdraw his plea" and, as a result, the State would be reinstating all charges in Case 2336 and Case 4599. The State also informed the court that appellant wished to plead guilty to the robbery charges in both cases and, in exchange, the State would recommend a sentence of 15 years' imprisonment on each charge. The court then reiterated the terms of the second plea agreement to appellant, who affirmatively acknowledged his understanding of the agreement's terms.

From this, it appears that appellant is correct in his assertion that his eligibility for substance abuse treatment was not a part of the first plea agreement and had no bearing on the State's agreement to nol pros the charges in Case 4599. On the other hand, appellant is incorrect in his assertion that this was the reason why the State reinstated the charges in Case 4599. The State reinstated the charges because appellant withdrew his guilty plea. Consequently, it was appellant, not the State, who breached the original plea agreement, as the record clearly indicates that the State agreed to nol pros the charges in Case 4599 in exchange for appellant actually pleading guilty. In short, appellant's assertion that the nol pros was "unconditional" is misleading. Although the nol pros was not conditioned on appellant's eligibility for substance abuse treatment, it was conditioned upon appellant following through with his promise to plead guilty to the charge of robbery, as contemplated by the parties under the terms of the first plea agreement.

Under these circumstances, it would be fundamentally unfair to require the State to uphold its end of the original plea agreement, *i.e.*, to require that the State nol pros all charges in Case 4599 as originally promised. Appellant should not be allowed to eschew his obligations under the original plea agreement and gain the benefit of the bargain at the same time. As we explained in *Falero, supra*:

> [A] defendant whose guilty plea has been accepted by the court, should not be entitled to the benefit of his bargain if he or she breaches a plea agreement. This is true even when the plea agreement does not expressly specify consequences of a breach. Just as allowing a defendant to rescind a plea agreement while holding the State to its terms…would be a disincentive for prosecutors to enter into plea agreements, so too would allowing the defendant to breach plea agreement terms without repercussion. Additionally, courts would have the same disincentive to accept guilty pleas.

Falero, 212 Md. App. at 593.

For these reasons, we hold that appellant's sentence in Case 4599 is legal. Although the State originally agreed to nol pros those charges, this agreement was conditioned upon appellant pleading guilty, which he ultimately did not do. As a result of appellant's breach, the court had the authority to vacate the original plea agreement and appellant's guilty plea and return the parties to their original positions, which included a reinstatement of the charges in Case 4599. *See, e.g., Id.* at 595-96; *LaFaivre v. State*, 338 Md. 151, 157 (1995) ("Where the accused breaches a plea agreement, a court, at the option of the State, will consider the parties restored to their positions prior to the breach, and, in that way, the nol prossed charges may be revived."). This remedy is particularly appropriate here, given that the State was not entitled to specific performance; that is, the State could not force appellant to abide by his end of the bargain and plead guilty. *See Rojas v. State*, 52 Md. App. 440,

443 (1982) ("[W]hen a material term of a sentence based upon a plea agreement is unenforceable, the appropriate remedy is to vacate the entire sentence and the corresponding plea agreement.").

In fact, even if we accepted appellant's contention that the State breached the terms of the original agreement, appellant's sentence would still be legal. When a plea agreement is breached, and the breach is not caused by the defendant, "the general remedy for the breach is to permit the defendant to choose either specific performance or withdrawal of the plea." *Solorzano v. State*, 397 Md. 661, 668 (2007); *See also Beverly v. State*, 349 Md. 106, 128 (1998) ("If there was a plea agreement from which Beverly was forced to withdraw because of an error of law, then Beverly should be able to receive the benefits of that bargain."). Aside from being permitted to withdraw his plea, which he did, appellant's other option would have been specific performance, which would have resulted in a prison sentence of 25 years without the possibility of parole. Given that appellant's current sentence – a total term of 25 years' imprisonment – was not in excess of this sentencing term, appellant's current sentence would not be illegal, regardless of any purported breach by the State. *See Matthews*, 424 Md. at 519 ("[A] sentence imposed in violation of **the maximum sentence identified in a binding plea agreement**…[is] an inherently illegal sentence.") (emphasis added).

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