Circuit Court for Baltimore County
Case No. 03-K-13-000177

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2337

September Term, 2015

EDWARD JACKSON, III

v.

STATE OF MARYLAND

Leahy,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 18, 2019

From the denial by the Circuit Court for Baltimore County of a motion to correct an illegal sentence, Edward Jackson, III ("Appellant"), raises a single question on appeal, which we have rephrased:

> 1. Did the court err in sentencing Appellant to a greater sentence than what was agreed upon in the plea agreement?

For the reasons that follow, we answer the question in the affirmative, reverse the judgment, vacate Appellant's sentences, and remand for re-sentencing.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2013, Appellant pleaded guilty to two counts of armed robbery, specifically, the First and Eleventh Counts of the indictment. When the parties appeared for the plea, the prosecutor stated that they had reached an agreement under which the State would "ask [] for 20 years," and "defense counsel would be free to argue for what she felt was appropriate." The prosecutor asked if the court would "entertain a binding cap" of twenty years. The court asked: "Can I give him probation?" Defense counsel stated: "Well, we ask 20 to serve." The prosecutor stated: "Yes." The court stated: "Okay. All right." The court then addressed Appellant and stated that the court was "being asked to bind [it]self to imposing a cap of 20 years to serve." The court stated that the prosecutor was "not gonna ask for more than 20 years," and that if the court "agree[s] to do that, you know right now that you can't get [any more] than 20 years to serve." Appellant replied that he understood.

During the plea colloquy, defense counsel told Appellant that he was "charged with robbery which impose[s] a penalty of up to 20 years." Later, defense counsel again stated that the judge "has explained to you that if he agrees to bind yourself to a 20-year cap, that

means that he couldn't give you more than 20 years," and that if the judge "said that he would bind himself to 20 and then gave you more than 20, then that would be an illegal sentence." Appellant replied that he understood.

During the sentencing phase, defense counsel told the court: "I know they're asking for 20 years for this, I'm asking you to consider 10 to 15 years." The prosecutor subsequently stated: "I would ask the [c]ourt to impose the 20-year sentence in this case." The court stated that "the binding cap, that is, the binding nature of this plea agreement, the [c]ourt finds reasonable." Before Appellant allocated, the court told him: "Sir, now, you know right this second that I'm not gonna give you a sentence of more than 20 years to serve. I've agreed to bind myself to that."

The court sentenced Appellant to a term of twenty years' incarceration for the First Count, "consecutive to any previously imposed and unserved sentence." For the Eleventh Count, the court sentenced Appellant to a term of twenty years' incarceration, "consecutive, [and] that sentence is suspended." The court clerk recorded the sentence for Count 11 as running "consec[utive] to" the sentence for Count 1. The court's commitment record states that the sentence for the Eleventh Count is to run "[c]onsecutive to the jail sentence imposed" for the First Count, and the docket entries reflect that order.

In October 2015, Appellant filed a motion to correct an illegal sentence. In the motion, Appellant contended that the total term of incarceration was impermissibly ambiguous, because he "was not told a sentence greater than the agreed 'cap' could be imposed by imposing a suspended portion." The court denied the motion. It is from this denial that Appellant appeals.

DISCUSSION

A. Parties' Contentions

On appeal, Appellant contends that the court erred in denying the motion because the court breached the plea agreement by imposing a total term of incarceration of more than twenty years.

The State primarily argues that Appellant's failure to provide a transcript leaves this Court without an adequate record of the plea hearing, and as such, should be dismissed for failing to provide the Court with a record on which it is to rely. Additionally, the State contends that our opinion in *Ray v. State*, 230 Md. App. 157 (2016), is instructive. We disagree. We conclude that the total term of incarceration is impermissibly ambiguous.

B. Standard of Review

"We review the legal issue of the sentencing in this case as a matter of law. Whether a trial court has violated the terms of a plea agreement is a question of law, which we review de novo. We shall address the legal issue of the sentencing in the case at bar under a *de novo* standard of review." *Bonilla v. State*, 443 Md. 1, 6 (2015) (internal citations and quotations omitted).

C. Analysis

Briefly addressing the State's contention that Appellant's case should be dismissed for his lack of providing an adequate record by way of a transcript, the Court of Appeals has stated that in the criminal law context, "we 'construe liberally filings by *pro se* inmates, particularly when the statute involved is remedial.'" *State v. Hunt*, 443 Md. 238, 251 (2015)

(citing *Douglas v. State*, 432 Md. at 156, 180 (2011). Additionally, we have received the necessary transcripts. Accordingly, we will not dismiss Appellant's case and proceed on the issues.[1]

The Court of Appeals has stated that "[t]he 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 the 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." *Ray v. State*, 230 Md.App. 157, 189 (2016) (citing *Cuffley v. State*, 416 Md. 568, 584 (2010)). "[I]f the sentencing term of [a] plea agreement as expressed at the plea proceeding [is] ambiguous . . . , [the defendant] is entitled to have the ambiguity resolved in his favor." *Id.* at 586 (internal citation omitted).

In the present case, the trial court failed to specify whether the sentence for the Eleventh Count was to run consecutive to "any previously imposed and unserved sentence," or to the sentence for the First Count. If the sentence is interpreted to run consecutive to the sentence for the First Count, the total term of incarceration would be forty years, all but twenty years suspended. This term would be illegal. Defense counsel advised the court that the plea agreement called for a sentence of no more than twenty years

[1] It is important to note that the State does not contest that the court bound itself to the twenty year cap at the plea hearing.

"to serve." Neither the court nor defense counsel explained further what the parties meant by that term. The court then recognized that it was "being asked to bind [it]self to imposing a cap of 20 years to serve," and that if the court "agree[s] to do that, you know right now that you can't get [any more] than 20 years to serve." The court did not mention that the sentence referred to executed time only. Neither defense counsel nor the court stated that the court could impose a sentence of more than twenty years' incarceration that would include no more than twenty years of actual incarceration, with the remainder suspended. Based on this record, a reasonable lay person in Appellant's position would not understand that the court could impose a total term of incarceration of forty years, all but twenty years suspended.

The State relies on this Court's decision in *Ray v. State,* 230 Md. App. 157 (2016). In *Ray,* Ray was charged with conspiracy to commit theft of property with a value of at least $1,000 and making a false statement when under arrest. *Id.* at 161. Ray

> On March 2, 2011, the defense attorney for Ray and the Assistant State's Attorney for Montgomery County, having reached an agreement, submitted to the Assignment Office of the circuit court, a signed memorandum indicating…
>
> "The defendant agrees to proceed by way of an agreed statement of facts on count one, amended to allege conspiracy to commit theft of property having a value at least $1,000 but less than $10,000 and on count four, alleging false statement when under arrest.
>
> **"CAP OF FOUR YEARS ON ANY EXECUTED INCARCERATION."**

Id. at 179 (Emphasis supplied).

> At the outset of the August 11, 2011 sentencing hearing, the Assistant State's Attorney reminded the judge of the plea bargain to which the judge had earlier given his approval.
>
> "In this case, Your Honor agreed to a cap of four years of any executed incarceration."

(Emphasis supplied).

> [T]he court pronounced [Ray] sentence in this case [stating]:
>
> "Now, on the first Count, conspiracy to commit theft, the Court will impose a sentence of 10 years to the Maryland Department of Corrections; I'll suspend all but four years and that will be concurrent with the sentence in the Hagerstown case.

(Emphasis supplied).

Id. at 178-80.

In 2015, Ray filed a motion to correct illegal sentence, which the court subsequently denied. *Id.* at 161. On appeal, Ray contended that "that the 'cap of four years on any executed incarceration' meant a cap of four years on the entire sentence, unsuspended and suspended portions alike, and that the total sentence of 10 years was, therefore, an illegally excessive sentence." *Id.* at 180-81. Affirming the judgment, we stated:

> that the meaning of those words is perspicaciously clear and unambiguous. They mean four years to be served in jail. They mean four years of "hard time." They make no reference whatsoever to any suspended sentence and, indeed, distinguished themselves from it. They could not reasonably be interpreted by anyone to make such reference. Indeed, the term "executed incarceration" negates any reference to unexecuted incarceration.
>
> In the present case, there was no such ambiguity and no reason to turn to any extrinsic evidence to resolve ambiguity. One does not need to resolve non-ambiguity.

Id. at 186-87.

The Court of Appeals subsequently affirmed our judgment in *Ray v. State*, 454 Md. 563 (2017). The Court noted that

> [i]n addition to the agreement memorandum, the record reflects a form entitled "GUILTY PLEA—VOIR DIRE[.]" . . . . The form, signed by [Ray] and his counsel, outlines the elements of the conspiracy and false statement counts, and states that "[t]he maximum penalty for the offense you are offering to plead guilty is: 10 years + 6 months[.]"

Id. at 567.

The Court agreed with our conclusion that "[t]he plain language of the disputed provision of the agreement was clear and unambiguous." *Id.* at 579. The Court further concluded

> that because [Ray] acknowledged that he was subject to a maximum sentence of ten years and six months, his argument that he did not understand that his "executed" incarceration would be limited to four years to be "carried out" or "performed," *Ray*, 230 Md. App. at 186-87, 146 A.3d 1157, was refuted by the record. Here, it was clear, based on the maximum penalty, of which [Ray] was informed, that a reasonable person in [Ray's] position would have understood that he or she could be subject to an additional but unexecuted period of incarceration imposed as a suspended sentence.

Ray, 454 Md. at 580.

Here, unlike in *Ray*, Appellant was never told that his sentence would be more than twenty years. In fact, the trial court agreed to bind itself to not exceed the 20 year cap to serve. Additionally, Appellant was not told that the cap was only on executed incarceration, nor was the term "executed" used in any other context. Appellant, unlike Ray, was not advised in writing or orally, and did not acknowledge that the maximum potential penalty

was forty years. Hence, the conclusions of this Court and the Court of Appeals in *Ray* are inapplicable. Instead, this case is analogous to the *Cuffley* trilogy, where the Court of Appeals considered whether a trial court "may impose a sentence that involves a term of incarceration that exceeds the guidelines but suspends all but part of the sentence that falls within the guidelines." There, the appellant's sentences were to be capped generally with no express indication as to whether the cap was only on the extended portion of the sentence or also on the suspended portion. The trial court stated that Cuffley's plea "carried a maximum possibility [sic] penalty of 15 years' incarceration[,]" and "[t]he plea agreement, as I understand it, is that I will impose a sentence somewhere within the guidelines. The guidelines in this case are four to eight years. Any conditions of probation are entirely within my discretion." *Cuffley*, 416 Md. at 574. After the guidelines were set for four to eight years, and the appellant was under the understanding that he could receive no more than the eight years set per the guidelines and the agreement, the trial court "accepted the plea agreement, bound itself to the terms, and deferred disposition." *Id*. Months later at the appellant's sentencing hearing, the court sentenced Cuffley to "15 years at the Department of Correction, all but six years suspended, consecutive to the sentence imposed by [the judge who presided over a [previous] probation violation]." *Id*. The Court of Appeals held that the trial court bound itself to a total sentence of no more than eight years. And that "regardless of whether the sentencing term is clear or ambiguous, the court breached the agreement by imposing a sentence that exceeds a total of eight years' incarceration." *Cuffley*, 416 Md. at 586. Accordingly, Cuffley was "entitled to have the ambiguity resolved in his favor."

Likewise, in the case *sub judice*, the ambiguity in the sentence for the Eleventh Count must be resolved in Appellant's favor, and upon Appellant's motion, the court "should have corrected it to conform to a sentence for which [he] bargained and upon which he relied in pleading guilty." *Cuffley*, 416 Md. at 586. Furthermore, Md. Rule 4-243 (c)(2) and (3) governing plea agreements states that

> (c)(2) 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) 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.

Accordingly, the trial court was bound to embody the agreement, as pleaded, in Appellant's judgment. Therefore, we reverse the judgment of the circuit court, vacate the sentences, and remand with instructions to re-sentence Appellant to a total term of incarceration of no more than twenty years.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. SENTENCES VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR RE-SENTENCING CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE COUNTY.