UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2555

September Term, 2013

MARVIN EDMONDS

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: July 9, 2015

In December 1997, after pleading guilty to two counts of first-degree murder, Marvin Edmonds, appellant, was sentenced to two concurrent life sentences, with all but 40 years suspended. No probation was imposed at that time.

Sixteen years later, in January 2014, the State challenged appellant's sentences. Citing *Greco v. State*, 427 Md. 477, 513 (2012), the State moved to correct what it believed to be an illegality in those sentences, claiming that, without a probation period, appellant's partially suspended life sentences effectively became concurrent terms of 40 years, in violation of the statutory requirement that a sentence for first-degree murder must be life imprisonment. *See* Md. Code, § 2-201(b) of the Criminal Law Article ("Crim.") (penalty for first-degree murder is either life or life without the possibility of parole). The Circuit Court for Prince George's County agreed and corrected appellant's sentences by adding a five-year period of supervised probation. *See* Md. Code, § 6-222(a) of the Criminal Procedure Article ("C.P.") (authorizing circuit court to "impose a sentence for a specified time and provide that a lesser time be served in confinement," "suspend the remainder of the sentence," and "order probation" for up to five years).

Appellant contends that the belated addition of probation to his sentences was "fundamentally unfair." We disagree and affirm.

FACTUAL BACKGROUND

Pursuant to a plea agreement, appellant pleaded guilty to participating in two murders. One victim was shot when a group of robbers broke into a residence, and the second was later executed to ensure his silence about that robbery and murder. In entering guilty pleas

to two counts of first-degree murder, appellant admitted that he acted as the "lookout" and driver while his co-conspirators committed the robbery and murders.

After accepting appellant's pleas, the judge presided over the trial of one of appellant's co-conspirators. At appellant's subsequent sentencing hearing, the judge stated that, knowing "the facts a lot better now, . . . if you had been convicted of this crime in front of me, you would not have the opportunity to receive the sentence that you will receive today." In accordance with the plea agreement, the court imposed concurrent sentences of life with all but 40 years suspended. During the sentencing hearing, neither the court nor counsel mentioned probation.

In 2012, the Court of Appeals held, in *Greco*, 427 Md. at 513, that a sentence for first-degree murder, of life with all but 50 years suspended, was illegal without an accompanying period of probation. The *Greco* Court explained that when a life sentence is partially suspended without probation, it effectively becomes a sentence for a term of years, in violation of Crim. § 2-201(b), which establishes life as the minimum sentence for first degree murder. *Id.* The remedy for such illegality is a corrected sentencing, with the proviso that "the Circuit Court is limited by the maximum legal sentence that could have been imposed, with the illegality removed." *Id.*

Invoking *Greco*, the State filed a Motion to Correct Illegal Sentence in September 2013. After a January 29, 2014 hearing, the trial court granted the motion and added five years of supervised probation to appellant's sentence.

DISCUSSION

Challenging his corrected sentence, appellant contends that "this Court need not decide whether the technical merits are governed by *Greco* . . . because the imposition of a period of probation 17 years[1] after the negotiation and implementation of [his] bargain was fundamentally unfair." Appellant's brief states:

> The question of basic fairness was taken up by both [a]ppellant and the trial court in the proceedings below. As [a]ppellant personally stated, "But my understanding, it seems like it is unfair that for me to wait 17 years before me to come back before this Court, and have anything added to my sentence. I don't understand how that can be when I did nothing wrong." The judge herself expressed two interrelated fairness-based concerns: whether [a]ppellant had been unfairly denied the opportunity to negotiate the terms and duration of probation as part of the overall deal 17 years earlier, and whether the imposition of probation would affect parole eligibility.
>
> The plea colloquy and allocution establish that at the time of the negotiations, [a]ppellant was a young man with a GED whose desperate poverty led him to agree to participate in a robbery. He could not possibly have understood that the State, after an unexplained delay of 17 years redolent of laches, during which he behaved well in prison and certainly hoped for the earliest-possible parole and return to normal life, could ask a court to make his sentence more onerous than that contemplated. And if he had, it would be reasonable to expect him to have demanded some quid pro quo, such as a shorter period of executed prison time.

[1] The actual interval between the original sentencing on December 5, 1997 and the sentencing correction on January 29, 2014 was not seventeen years, as appellant contends, but sixteen years and less than two months.

Asserting that "*Greco* resolves the issue," the State contends that "the circuit court had authority pursuant to Maryland Rule 4-345(a) to reimpose the original sentence with a period of probation." With respect to the validity of appellant's plea deal, the State points out that appellant did not preserve this issue because he "did not call into question his plea before the circuit court." In any event, the State maintains, there is "no authority suggesting that his guilty plea was infirm based on the subsequent correction of his illegal sentence."

We conclude that appellant's complaint during the hearing on the State's motion to correct the sentencing illegality, asserting that it was "unfair . . . to wait 17 years . . . to come back before this Court," was sufficient to preserve a fairness challenge. For the reasons explained below, however, we are not persuaded there is any merit to appellant's position.

Appellant relies on the following principles articulated by the Court of Appeals in *Jackson v. State*, 358 Md. 259, 275 (2000):

> The basic ground rules governing the negotiation and enforcement of plea agreements were set out in [*State v.*] *Brockman* [277 Md. 687, 697 (1976)], as to which the Court summarized: "the standard to be applied to plea negotiations is one of fair play and equity under the facts and circumstances of the case, which, although entailing certain contract concepts, is to be distinguished from . . . the strict application of the common law principles of contracts." Thus, it is now well settled in this State that "when a plea bargain has been agreed to by both a proper representative of the State and a defendant, **and is not in violation of any law** or public policy of this State, it would be a grave error to permit the prosecution to repudiate

> its promises in a situation in which it would not be fair and equitable to allow the State to do so." *Id.* at 698.

(Emphasis added.)

Jackson is particularly instructive in this matter, not because it presents a similar factual scenario, but because it presents a fact pattern quite different from the one before us and thus, as we shall explain, mandates a different result than that reached by the *Jackson* Court. In *Jackson*, the defendant agreed to postpone his trial date on child molestation charges, to a date beyond the *Hicks* deadline,[2] so that the State could obtain DNA results on a specified bedsheet, in exchange for the State's promise to dismiss all charges if he was not a match. *Id.* at 263, 277. Although the defendant waived his rights under *Hicks*, and the DNA results were exculpatory, the State refused to dismiss the charges, on the ground that it had since learned that the tested sheet was not on the alleged victim's bed when the alleged sexual assaults occurred. *Id.* at 263. The *Jackson* Court held that it was unfair for the State to repudiate its promise to dismiss the charges. *Id.* at 275. In doing so, the Court reviewed cases recognizing that an agreement calling for the defendant to enter a guilty plea raises even stronger fairness concerns than an agreement calling only for the defendant's

[2] In *State v. Hicks*, 285 Md. 310, 318 (1979), the Court of Appeals enforced the requirement that the State must bring a defendant to trial within 180 days after the earlier of his first appearance in circuit court or the appearance of defense counsel, established by C.P. § 6-103(a) and Md. Rule 4-271(a). The *Hicks* Court held that, unless there is good cause for postponing a trial date beyond that "*Hicks* deadline," the court must dismiss the charges. *Id.*

cooperation, because such a plea-inducing bargain rests on "'a pledge of the public faith'" that the public "'justifiably expects the State, above all others, to keep[.]'" *Id.* at 276-77 (citations omitted).

In contrast to *Jackson* and the plea agreement cases discussed therein, here there is no suggestion that the State made any promises regarding probation. During appellant's sentencing hearing, neither the court nor counsel mentioned probation, indicating that the subject was likely overlooked. Appellant does not now contend before this Court, that the State promised there would be no probation if he pleaded guilty. Nor could such an agreement be enforced under the fairness principles articulated in *Jackson*, because that would violate the law requiring a period of probation to follow the executed portion of a partially suspended life sentence. *See id.* at 275.

In the absence of any enforceable promise regarding probation, the sole basis for appellant's fairness challenge is the passage of time between his 1997 sentencing and the 2014 correction. Because an illegal sentence may be corrected "at any time," Md. Rule 4-345(a), appellant's "laches" claim has no merit. In accordance with *Greco*, we hold that the circuit court did not err in correcting appellant's concurrent sentences of life with all but forty years suspended, by adding a term of probation to each.

CONCURRENT SENTENCES OF LIFE IMPRISONMENT WITH ALL BUT FORTY YEARS SUSPENDED, PLUS FIVE YEARS SUPERVISED PROBATION, AFFIRMED. COSTS TO BE PAID BY APPELLANT.