UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0486

September Term, 2015

DAVID CLIFTON PARKS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: March 16, 2016

This appeal concerns the Circuit Court for Wicomico County's denial of a motion to correct an illegal sentence, filed by David Clifton Parks, appellant.

On July 24, 2006, Parks entered a guilty plea to first- and second-degree arson and two counts of reckless endangerment. The court sentenced him to 20 years in prison, with all but eight years suspended, for first-degree arson; a concurrent term of eight years for second-degree arson; and five years for each of the two counts of reckless endangerment, to be served concurrently with the sentence imposed for first-degree arson. The court imposed supervised probation for a period of 36 months upon Parks's release from incarceration.

More than seven years later, on December 12, 2013, Parks pled guilty to violating the terms of his probation. The circuit court revoked his probation and sentenced him to a 12-year period of incarceration.

On August 21, 2014, Parks filed a motion to correct an illegal sentence, which the court denied after a hearing. This timely appeal followed.

QUESTION PRESENTED

Parks presents the following question:

> Did the circuit court err in failing to correct Parks's sentence where the parties entered into a binding plea agreement, calling for a sentence with "a cap of eight years in the Division of Corrections," and Parks subsequently received a sentence of twenty years' incarceration, with all but eight years of that term suspended in favor of probation?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

Parks was charged in the Circuit Court for Wicomico County with setting fires to four different buildings and a vehicle on the evening of January 24, 2006. At a hearing on July 24, 2006, Parks entered a guilty plea to four counts, which charged him with first- and second-degree arson and two counts of reckless endangerment in connection with fires at two of the four locations. The State agreed that if the court accepted the plea agreement, it would enter a *nolle prosequi* as to the remaining counts in the indictment.

In describing the plea agreement to the court, the State said that "the sole part that we are presenting to the Court as a binding plea is a cap of eight years in the Division of Correction." The State also said that Parks's counsel would argue for less than eight years of incarceration and that the State would request the full eight-year term. The State added that "[t]he Court is free to impose an additional sentence and suspend all but that time." Finally, the State said that "[t]he Court is free to impose whatever period of probation is appropriate." Parks's counsel agreed that the State had accurately described the agreement.

In a colloquy with Parks, the court confirmed Parks's understanding that the court could impose any sentence up to the maximum penalty, but would be required to suspend anything over eight years. The court also confirmed Parks's understanding that he would be on probation for some time after being released with a suspended sentence and that, if he violated the terms and conditions of his probation, he could be ordered to serve the rest of the sentence.

Thereafter, the court accepted the plea agreement and sentenced Parks, as set forth above, to a total term of incarceration of 20 years, with all but eight years suspended, followed by three years of supervised probation.

Nearly seven years later, on July 3, 2013, Parks was charged in the Circuit Court for Worcester County with second-degree arson in connection with an incident that occurred while he was on probation in the Wicomico County case. On the Worcester County charge, Parks entered a plea of guilty, and the court sentenced him to 20 years, with all but 12 years suspended.

As a result of the Worcester County conviction, the State charged Parks with violating the terms of his probation in the Wicomico County case. On December 12, 2013, at a hearing in the Circuit Court for Wicomico County, Parks admitted that he had pled guilty and been convicted of second-degree arson in the Worcester County case, thereby violating the terms of his probation by failing to follow all laws. The Wicomico County court revoked Parks's probation and "impose[d] the balance of the sentence" which was 12 years.

On August 21, 2014, Parks filed, in proper person, a motion to correct an illegal sentence. He argued that the 2006 plea agreement in the Circuit Court for Wicomico County anticipated a maximum sentence of eight years, but that the trial court illegally imposed a sentence of 20 years. As a result, Parks maintained, the Circuit Court for Wicomico County had imposed an illegal sentence when it ordered him to serve the 12-year balance of his earlier sentence.

After a hearing, the court, in a written order, denied Parks's motion to correct an illegal sentence. In pertinent part, the court reasoned as follows:

> In this case, the record reflects that the attorneys were clear on the record that the eight year binding plea referred only to the period of active incarceration imposed on July 24, 2006. The trial court was free to impose an additional period of suspended time, and place the Defendant on probation. Under the terms of the Defendant's probation, he could be charged with a violation that could result in imposition of the suspended portion of the sentence. In fact, as noted above, the Defendant signed the Probation Order stating that upon violation, the Court could proceed as if the Defendant was not placed on probation. Therefore, a reasonable lay person in the Defendant's position would understand that the binding nature of the plea agreement did not bar imposition of the suspended portion of the sentence if the Court found that conditions of probation were violated. Based on the above discussion, the Court finds that the Defendant's Motion to Correct an Illegal Sentence lacks merit.[1]

DISCUSSION

Parks contends that the circuit court erred in denying his motion to correct an illegal sentence because he claims that his agreement required "a cap of eight years in the Division of Correction." We disagree.

A. Standard of Review

Maryland Rule 4-345(a) provides that a "court may correct an illegal sentence at any time." A sentence's illegality under that Rule depends solely on whether the illegality inheres in the sentence itself. *Matthews v. State*, 424 Md. 503, 519 (2012). If

[1] Parks appeared in proper person at the initial hearing on his motion to correct an illegal sentence. At the conclusion of that hearing, he requested an opportunity to obtain the assistance of a public defender. The court held the case *sub curia*. Thereafter, Parks obtained counsel, and, at a hearing on April 16, 2015, counsel indicated that she did not have any additional argument.

the trial court imposes a sentence that exceeds what the parties agreed, then it is illegal and subject to correction under Rule 4-345(a). *Id.* at 514.

Whether a sentencing 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). In determining whether a sentence falls within the boundaries of a binding plea agreement, we look solely to the record of the plea proceeding. *Id.* at 582. As the Court of Appeals has explained:

> 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.

Cuffley, 416 Md. at 582 (footnote omitted).

B. Plea Proceeding

At a hearing on July 24, 2006, the prosecutor explained the plea agreement as follows:

> *[T]he sole part that we are presenting to the Court as a binding plea is a cap of eight years* in the Division of Corrections. Counsel for Mr. Parks will certainly ask for less than that and make other recommendations. The State will be requesting the Court impose as part of the active sentence the full eight years. *The Court is free to impose an additional sentence and*

suspend all but that time. The Court is free to impose whatever period of probation is appropriate.

(Emphasis added.)

In response to a question from the court, defense counsel agreed that the State had accurately described the plea agreement.

The court then turned to Parks:

THE COURT: Now, you understand that your attorney and the State's Attorney have entered into a plea agreement that is binding between counsel under the terms of which, *if I accept your pleas of guilty, I could impose any sentence up to the maximum penalty provided by law; however, pursuant to the plea agreement, I would be required to suspend at least a sentence, anything over eight years*, your attorney would have the right to request that I suspend more, that you serve less than eight years, but *under the terms of the plea agreement you would only serve a maximum of eight years[']* *active incarceration*; do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You also understand, though, that *you would be on probation for some period of time after you are released with a suspended jail sentence, the amount of that suspended sentence to be solely in the discretion of the Court. If you violated the terms and conditions of your probation, then you could be ordered to serve the rest of the sentence.* Do you understand that?

THE DEFENDANT: Yes, Your Honor.

(Emphasis added.)

After the prosecutor presented a statement of the facts, which defense counsel accepted, the Court sentenced Parks, stating, in part:

Under the circumstances the Court is going to accept the plea agreement. On the charge of first degree arson, the Court will impose a sentence of 20 years in the jurisdiction of the Commissioner of Corrections. I will suspend all but eight years of that sentence. I will place the Defendant on 36 months supervised probation upon his release. . . .

> On the charge of reckless endangerment, under count five, the Court will impose a sentence of five years in the jurisdiction of the Commissioner of Corrections to run concurrent with the sentence under count one.
>
> The sentence of reckless endangerment, under count nine, the Court will impose a sentence of five year[s] in the jurisdiction of the Commissioner of Corrections, to run concurrent with the sentence in count one and five.
>
> And under count ten, the charge of second degree arson, the Court will impose a sentence of eight years in the jurisdiction of the Commissioner of Corrections to run concurrent with the sentence under count one.

C. Reasonable Layperson Analysis

Parks contends that a reasonable person in his position would have understood the guilty plea to subject him to a sentence that did not exceed eight years. In support of that contention, Parks cites *Matthews v. State*, 424 Md. 503 (2012).

In that case, Matthews entered a guilty plea to charges of attempted first-degree murder, two counts of first-degree assault, and unlawful use of a handgun in the commission of a felony or crime of violence. In exchange, the State agreed to the dismissal of other charges and to argue for a sentence of 43 years. *Matthews*, 424 Md. at 506-07, 522. At the plea hearing, the State explained:

> The State is going to be asking for incarceration of forty-three years. Defense counsel is free to argue for whatever disposition they deem appropriate. That cap is a cap as to actual and immediate incarceration at the time of initial disposition.

Id. at 522.

The court addressed Matthews, stating:

> Your guidelines are twenty-three to forty-three years. The State is asking for a sentence of forty-three years to be served. The Court has agreed to cap any sentence and your defense attorneys are free to argue. And theoretically I can give you anything from the mandatory minimum on the one count, which is five years without parole, up to the maximum of life imprisonment.

Id. at 522-23.

At the sentencing hearing, the State asked the court for a sentence of life imprisonment with all but 43 years suspended. *Id.* at 507. The court imposed a sentence of life imprisonment with all but 30 years suspended. *Id.* Even though he would not be required to serve more than 30 years of executed time, Mathews contended that the court had violated the plea agreement by imposing a sentence of life imprisonment – *i.e.*, a sentence that, including the suspended time, exceeded the agreed term of 43 years.

In the Court of Appeals, the parties agreed that the court bound itself to the sentencing cap of 43 years, but disagreed about what the cap meant. *Id.* at 523. According to the State, the court could impose a sentence of more than 43 years, but agreed to cap the sentence at 43 years of executed time and to suspend the rest. According to Mathews, however, the agreement was ambiguous as to whether the court could sentence him to more than 43 years (*e.g.*, to life imprisonment) while suspending all but 43 years (or less). The conflicting interpretations made a difference, because if the court could sentence Mathews to no more than 43 years, he would become eligible for parole after serving half of that time; whereas if the court could sentence Mathews to life imprisonment while suspending all but 43 years, he would be eligible for parole only with the Governor's approval. *See id.* at 508 n.2.

The Court of Appeals was not persuaded that Matthews "reasonably understood" what the maximum agreed sentence was to be. *Id.* at 524. "No one mentioned, much less explained to [Matthews] on the record, that a sentence greater than the forty-three year 'cap' could be imposed, with a suspended portion of the sentence in excess of those forty-three years." *Id.* "Neither did the State, defense counsel, or the court explain for the record that the words 'guidelines range' referred solely to executed time," and did not include a suspended sentence in excess of that range. *Id.* Accordingly, the Court agreed with Mathews that the sentencing term of the plea agreement was ambiguous. *Id.* at 525. Because the ambiguity had to be resolved in Matthews's favor, he was entitled to have the terms of the agreement enforced as he would reasonably have understood them to be – "a maximum sentence, including any suspended portion, of forty-three years." *Id.* Because Mathews received a sentence that exceeded that agreed term, the sentence was illegal. *Id.*

Unlike in *Matthews*, the record of the plea hearing in the case before us reveals no ambiguity. Although the State agreed to a cap of eight years of incarceration, it explicitly stated that the court was "free to impose an additional sentence and suspend all but that time." Viewed in context, the phrase "all but that time" could only mean the cap of eight years. Consequently, a reasonable lay person in Parks's position would have understood that the court could impose a sentence of more than eight years, and up to the maximum penalty, but that it would be required to suspend any part of the sentence that exceeded the eight-year cap if it did.

Moreover, in ensuring that Parks understood the agreement, the court clearly stated that the maximum penalty for first-degree arson was 30 years; that it could impose any sentence up to that maximum penalty; but that if it imposed a sentence greater than eight years, it was required to suspend "anything over eight years." In addition, the court clearly advised Parks that after he was released from serving his sentence, he would have a "suspended jail sentence," the amount of which would be determined by the court. The court also advised Parks that after his release he would be on probation and that, if he violated the terms and conditions of that probation, the court could order him to serve the "rest of his sentence," which was a clear reference to the "suspended jail sentence."[2]

In summary, the record before us reveals that in the instant case the prosecution and the court provided the clarity that was missing in *Matthews*. In *Matthews*, no one clearly explained that the court could impose a sentence in excess of the cap, as long as the court suspended the portion above the cap. By contrast, a reasonable layperson in Parks's position could not have failed to understand that the plea agreement empowered the court to impose a sentence of up to the maximum penalty, provided that it suspended any portion over eight years; that the court could place Parks on probation after his

[2] In its decision, the circuit court relied on the probation order, which states, just above Parks's signature, that if he violated the conditions of probation, the court could enter judgment against him and proceed with disposition as if he had not been placed under probation. The probation order does not specify what it would mean for the court to "proceed with disposition as if [Parks] had not been placed under probation." In particular, the probation order does not specify that if Parks violated the conditions of probation, the court could impose the suspended portion of his sentence. Consequently, we do not rely on the probation order in upholding the circuit court's decision. Nor did the State in its brief in this appeal.

release from prison; and that if Parks violated his probation, the court could impose the balance of his suspended sentence. As a result, the circuit court did not err in denying Parks's motion to correct an illegal sentence.

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