

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0596

September Term, 2015

DON LOWELL GUTRICK

v.

STATE OF MARYLAND

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 13, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On February 1, 1995, after entering an *Alford* plea¹ to one count of first-degree murder and one count of use of a handgun in the commission of a crime of violence, Don Lowell Gutrick, appellant, was found guilty of both crimes. He was sentenced, pursuant to a plea agreement, to life with all but forty years suspended for the first degree murder conviction and a concurrent term of twenty years for the handgun conviction.

More than fourteen years later, on October 29, 2014, the State of Maryland, appellee, filed in the Circuit Court for Prince George’s County a motion to correct an illegal sentence on the ground that appellant’s split sentence for the murder conviction required a period of probation. After a hearing on April 17, 2015, the circuit court granted the State’s motion and re-sentenced appellant to life imprisonment with all but forty years suspended, to be followed by a one-year period of probation. The sentence originally imposed for appellant’s use of a handgun conviction was not changed. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether adding probation to appellant’s sentence violated his plea agreement, thereby rendering his sentence illegal. For the reasons set forth below, we shall affirm.

¹ In *North Carolina v. Alford*, 400 U.S. 25 (1970), the United States Supreme Court held that when there was a factual basis for a guilty plea, a State could permit an individual accused of a crime to enter a guilty plea without admitting his or her participation in the crime.

PROCEDURAL BACKGROUND²

At the February 1, 1995 hearing, defense counsel explained that appellant was entering *Alford* pleas to the first-degree murder and use of a handgun charges to take “advantage of the State’s recommendation, which is life, suspend all but 40 years[.]” After examining appellant about the crimes to which he was entering an *Alford* plea, the court stated:

Again, the plea agreement here is [that] I’m going to give you life, suspend all but 40 years for everything. That’s the maximum you’re going to get, so no matter what I give you in the handgun offenses, it won’t be added to the life sentence.

At the end of the hearing, the court accepted appellant’s *Alford* plea and imposed sentence as follows:

[T]he sentence of the Court, count one, is Don Lowell Gutrick, having pled guilty to murder in the first degree, is hereby sentenced to the rest of his natural life ... [in the] jurisdiction of the Division of Corrections. All but 40 of those years is hereby suspended.

Count five, he’s sentenced to the jurisdiction of the Division of Corrections for 20 years. Both sentences ... are running concurrent, one to the other.

More than fourteen years later, the State moved to correct Gutrick’s sentence, which was illegal pursuant to the decision in *Greco v. State*, which will be discussed below, and asked the court to impose a period of probation on appellant’s murder sentence. Defense counsel opposed the imposition of a period of probation because it was not part of the

² Because the issue before us deals solely with appellant’s plea agreement and sentencing, we need not discuss the underlying facts of the offenses with which he was charged.

original plea agreement and would constitute an increase in appellant’s sentence. The court disagreed and re-sentenced appellant on the first-degree murder conviction, stating:

I’m going to re-sentence Mr. Gutrick pursuant to the direction of the Court of Appeals. I now sentence Donald Gutrick to life imprisonment, suspend all but 40 years, with a period of probation of well, at his age, it’s a waste of time to give him five years. One year period of probation.

DISCUSSION

Appellant contends that the addition of probation to his sentence violated his plea agreement with the State and, thereby, rendered his sentence illegal. He maintains that his sentence should convert to a term of years or, alternatively, a new sentence should be imposed that “comes as close as possible to adhering to the plea agreement that the circuit court originally accepted.” We disagree and explain.

Although appellant is correct in noting that when a trial court accepts a plea agreement it is required to fulfill the terms of that agreement, there was no error in this case. *Solorzano v. State*, 397 Md. 661, 669-70 (2007). Maryland law clearly establishes that the statutorily prescribed penalty for first degree murder is, at a minimum, life imprisonment. Md. Code (1992 Repl. Vol.), Art. 27, §412(b)³; *Greco v. State*, 427 Md. 477, 505 (2012). A sentencing court may, in its discretion, suspend a portion of a life sentence for murder, but for the court to impose such a split sentence, it must impose a

³ Article 27, §412(b) provided, in relevant part, that “a person found guilty of murder in the first degree shall be sentenced to death, imprisonment for life, or imprisonment for life without the possibility of parole.” This provision, with the possibility of the death penalty removed, is now codified at Md. Code (2012 Repl. Vol., 2013 Supp.), §2-201(b)(2) of the Criminal Law Article.

period of probation. Md. Code (1992 Repl. Vol.), Art. 27, §641A⁴; *Cathcart v. State*, 397 Md. 320, 326-27 (2007) (explaining split sentences). Absent a period of probation, “there would be no ability for the court ever to direct execution of the suspended part of the sentence,” and the sentence would become a mere term of years that is less than the required minimum sentence of life imprisonment. *Cathcart*, 397 Md. at 329-30. *See also Greco*, 427 Md. at 504-05 (although “a split sentence approach may be used in connection with a life sentence, ... there must be a period of probation attached to the suspended part of the sentence.”) (internal quotations omitted).

In the instant case, a sentence of less than life imprisonment for appellant’s first-degree murder conviction would constitute an illegal sentence. *See id.* at 327. The appropriate remedy, therefore, was to impose a sentence of life imprisonment with all but forty years suspended, to be followed by some period of probation. *Greco*, 427 Md. at 513 (2012).

That the sentence imposed on appellant included the right to impose a period of probation is beyond cavil. In *Rankin v. State*, 174 Md. App. 404 (2007), we explained that because a period of probation must be attached to a suspended sentence, we hold that the right to impose a period of probation is included in any plea

⁴ Art. 27, §641A provided, in relevant part, that the sentencing court “may impose a sentence for a specified period and provide that a lesser period be served in confinement, suspend the remainder of the sentence and grant probation for a period longer than the sentence but not in excess of 5 years.” This provision is now codified at Md. Code (2008 Repl. Vol., 2015 Supp.), §6-222(a) of the Criminal Procedure Article.

agreement that provides for a suspended sentence. If we were to hold otherwise, the imposition of a suspended sentence would be meaningless.

Id. at 411-12 (footnote omitted).⁵

Under the plea deal, appellant agreed to a sentence of life imprisonment, with all but forty years suspended. Such a sentence was not permitted absent a term of probation. Because, pursuant to *Rankin*, the right to impose a term of probation was included in the plea agreement, the circuit court did not err in granting the State’s motion to correct an illegal sentence and imposing a one-year period of probation.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**

⁵ Because *Rankin* concludes that a period of probation is implied in every split sentence, we need not concern ourselves with Gutrick’s subjective understanding of his plea deal.