UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0802

September Term, 2015

JUDONNE DEANGELO STEPHENS

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 4, 2016

Judonne Stephens was accused of shooting another man during an altercation in 2009 and was charged with attempted murder. He pled guilty to first-degree assault in the Circuit Court for Prince George's County and was sentenced to fifteen years' incarceration with all but five years suspended, plus five years' probation. In a Motion to Correct an Illegal Sentence filed in 2015, Mr. Stephens contended that his plea agreement capped his "executed time" at the bottom of the sentencing guidelines range, five years, and that the court breached the agreement by including suspended time beyond that. The outcome turns on whether the sentence is consistent with Mr. Stephens's plea agreement, as a reasonable layperson would have understood it from the record developed at his plea hearing. We agree with the circuit court that the sentence is consistent with the agreement.

I. BACKGROUND

Because, as we will explain, the outcome of this appeal turns on the terms of the plea agreement as reflected in the record at the time Mr. Stephens pled guilty, we focus on that proceeding, which occurred on November 18, 2009. The parties had appeared that morning for trial, but there had been some complications with witnesses, and they adjourned to seek a continuance of the trial date. When they returned, they announced the plea:

> [PROSECUTOR]: It's the State's understanding that this is going to be a guilty plea to the first-degree assault of Darius Ridley. A PSI needs to be ordered. The State has agreed to cap itself, *as far as executed time*, at the bottom of the guidelines. There is the issue of restitution. The amount is still not determined and, at the sentencing date, the State will have the appropriate documentation as to the restitution.

> THE COURT: Okay. [Defense counsel], is that your understanding of the plea agreement?
>
> [DEFENSE COUNSEL]: It is, Your Honor.
>
> THE COURT: Sir, please stand.

(Emphasis added).

After ensuring that Mr. Stephens was pleading voluntarily and hearing the facts supporting Mr. Stephens's guilty plea, the court found "that the State ha[d] proven an adequate factual basis for [it] to accept Mr. Stephens' plea of guilty, and [found] that his plea of guilty [was] given freely and voluntarily and understandingly." But the court reporter immediately reminded the court that the terms of the guilty plea were not on the record, so the court asked the prosecutor to "put the terms of the guilty plea on the record":

> [PROSECUTOR]: Your Honor, it's the State's understanding that a PSI will be ordered and that the parties are unaware of the actual guideline range. The State agreed to cap at the bottom. The court agreed that it would bind itself.
>
> We agreed that he would get two points for permanent injury and two points for use of a firearm.
>
> *The State is free to ask for any suspended time over the top*. The State said it would not oppose a defense request to Patuxent.
>
> There is restitution in this matter, and the State is unaware of the actual amount and that it will know the amount at the time of sentencing, and that it is to be part of his probation once he is released from confinement.
>
> THE COURT: Mr. Stephens, do you understand that the maximum penalty for first degree assault is 25 years?
>
> [MR. STEPHENS]: Yes, sir.

> THE COURT: And do you understand that this Court and your attorney have yet to agree as to what the sentencing guidelines in this case actually are?
>
> [MR. STEPHENS]: Yes, sir.
>
> THE COURT: Do you also understand that this Court has agreed to bind itself to the bottom of the guidelines, whatever that calculation comes back to be?
>
> [MR STEPHENS]: Yes, sir.
>
> THE COURT: Understanding *all of those things*, do you still wish to plead guilty here today?
>
> [MR. STEPHENS]: Yes, sir.

(Emphasis added).[1]

At sentencing on February 2, 2010, the parties agreed that the minimum sentence under the guidelines was five years. The State requested ten years, all but five suspended, and five years of probation. Mr. Stephens requested a sentence below the guidelines. The circuit court sentenced Mr. Stephens to "be incarcerated for a period of 15 years, suspend all but five years, with five years supervised probation."

On April 22, 2015, Mr. Stephens filed a Motion to Correct an Illegal Sentence. Citing the transcript from his plea hearing, Mr. Stephens argued that the State had agreed to limit itself to the bottom of the sentencing guidelines and the court agreed to bind itself to that agreement. From there, Mr. Stephens asserted that a fifteen-year sentence, all but

[1] Some additional colloquy followed on the question of whether the guidelines calculation would assume a permanent injury and the date of sentencing, but nothing bearing on the terms at issue here.

five suspended, breached his plea agreement, and requested specific performance of the agreement. The court found that the plea proceeding made it clear "that the actual amount of time that [Mr. Stephens] would serve would be at the bottom of the guidelines and that [he] would have a suspended portion hanging over [his] head for the purpose of violation of probation," and denied the motion. Mr. Stephens filed a timely Notice of Appeal.

II. DISCUSSION

There is no dispute that Mr. Stephens wanted to and did plead guilty. He contends, however, that his sentence was illegal because it was not consistent with his court-accepted plea agreement (there is no argument, for example, that the sentence exceeded the court's statutory sentencing authority for first-degree assault).[2] Mr. Stephens's Motion to Correct an Illegal Sentence under Maryland Rule 4-345(a) was the appropriate vehicle for him to challenge his sentence. *Matthews v. State*, 424 Md. 503, 519 (2012) ("And, again to be clear, a sentence imposed in violation of the maximum sentence identified in a binding plea agreement and thereby 'fixed' by that agreement as 'the maximum sentence allowable by

[2] Mr. Stephens phrased the Question Presented as follows:

> Where appellant entered a guilty plea, pursuant to an agreement in which the State "agreed to cap itself, as far as executed time, at the bottom of the guidelines," and the Court "agreed to bind itself to the bottom of those guidelines, whatever that calculation comes back to be," and the bottom end of Mr. Stephens' sentencing guidelines was determine to be five years incarceration, is a sentence of fifteen years incarceration, with all but five years of that term suspended, illegal?

law,' is, as [the Court of Appeals] held in *Dotson* [*v. State*], an inherently illegal sentence. 321 Md. [515,] 524 [(1991)].") Everybody agrees that the parties and the circuit court bound themselves to the bottom of the guidelines range with regard to the *executed* portion of the sentence and that the guidelines calculation yielded a five-year bottom. The dispute lies in whether the agreement allowed the court to structure the executed time component as it did, with suspended time.

Rule 4-243(c)(3) provides that[3] "if the trial judge 'approves' a plea agreement, the trial court is required to fulfill the terms of that agreement if the defendant pled guilty in reliance on the court's acceptance." *Solorzano v. State*, 397 Md. 661, 669-70 (2007). "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). We determine the terms of the plea agreement from the record developed at the plea hearing:

> [A]ny question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort *solely* to the record established at the Rule 4-243 plea proceeding. The record of that proceeding must be examined to ascertain precisely what was presented to the court, in the defendant's presence . . . to determine what the defendant

[3] Rule 4-243(c)(3) states:

> (c) **Agreements of sentence, disposition, or other judicial action.**
>
> (3) Approval of plea agreement. 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.

> 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.

Id. at 582 (emphasis in original).

Mr. Stephens focuses on identifying the point at which the agreement was accepted. This matters, he argues, because the court's acceptance of the plea locked in the terms as of that moment. And in his view, the court accepted the plea when it made the following finding:

> THE COURT: This Court is satisfied that the State has proven an adequate factual basis for me to accept Mr. Stephens' plea of guilty, and I find that his plea of guilty is given freely and voluntarily and understandingly.

So because, at that point, the discussion of sentencing included only a statement that "[t]he State has agreed to cap itself, as far as executed time, at the bottom of the guidelines," Mr. Stephens contends that the agreement capped the court's sentencing authority at the bottom of the guidelines. The State responds that if Mr. Stephens is right about when the court accepted the plea, the State's agreement "to cap itself, as far as executed time, at the bottom of the guidelines," didn't bind the court to any particular sentence, and thus left the court free to impose whatever sentence it wished (within, of course, the statutory range).

Both of these arguments strike us as overly formalistic. It's true that in *Tweedy v. State*, 380 Md. 475, 486 (2004), the Court of Appeals stated that "[w]hile terms and

consequences may be imposed as a condition of accepting a guilty plea, it may be done only before the plea is accepted, not after." But we don't read *Tweedy*, or any other case, to identify a point-of-no-return moment in the life of the hearing that freezes the words spoken to that point into Carbonite. In *Tweedy*, the trial court erred by adding a new condition, beyond those to which the parties agreed, *id.* at 486, not simply because words relating to the sentence were uttered after the point at which the court accepted the plea agreement.

The governing cases focus on the substance of the agreement, and specifically what the defendant understood at the time he and the State entered the agreement and the court approved it. As the Court of Appeals recognized in *Cuffley*, "[p]lea bargains are likened to contracts," 416 Md. at 579, and "'[d]ue process concerns for fairness and the adequacy of procedural safeguards guide any interpretation of a court approved plea agreement.'" *Id*. at 580 (quoting *Solorzano*, 397 Md. at 668). Mr. Stephens relies, understandably, on *Matthews*, *Cuffley*, and *Baines v. State*, 416 Md. 604 (2010), all cases in which the Court of Appeals held that a sentence was illegal because it violated the terms of the approved plea agreement. And those cases do contain some factual parallels to this one—in *Matthews*, for example, the Court of Appeals reversed a sentence that exceeded an agreed-upon cap in totality even though it complied with regard to executed time:

> when the record of a plea proceeding reflects that a defendant reasonably could have understood that the sentencing court agreed to be bound to a certain maximum sentence, inclusive of any suspended portion, then the court that imposes a sentence in excess of that maximum breaches the plea agreement. In that circumstance, the original sentence is illegal and the court must re-sentence the defendant, if that is the

> defendant's wish, in accordance with the terms of the plea agreement. *See Cuffley*, 416 Md. at 586 . . . ; *Baines*, 416 Md. at 620 . . . .

Matthews, 424 Md. at 511. The specific issue in *Baines* as well was "whether a judge who agrees to be bound to the terms of a plea agreement that calls for a sentence 'within the guidelines' may impose a 'split sentence' that exceeds the guidelines and suspends all but the part of the sentence that falls within the guidelines." 416 Md. at 607.

In each of those cases, though, the defendant was left with uncertainty about what was included (or what wasn't included) in the agreed sentence. In *Matthews*, for example, the Court concluded that a layperson who heard the phrases "actual and immediate incarceration" and "incarceration within the guidelines" could believe that the plea agreement either implicated only the executed portion of the sentence or the total sentence. *Id.* at 524. The trial court's mention of theoretical sentences and failure to explain[4] that the sentencing cap applied only to the executed portion of the sentence did not clarify the ambiguity. *Id.* at 525. Because "ambiguities must be resolved in the defendants' favor," *id.* at 523 (citations omitted), the Court held that the sentencing cap applied to the total

[4] In *Cuffley*, the Court explained that plea agreements allowing for a suspended sentence in excess of the agreed-upon cap "are entirely permissible, *if* . . . either the State or defense counsel makes that term of the agreement absolutely clear on the record of the plea proceeding and the term is fully explained to the defendant on the record . . . ." 416 Md. at 586 (citing *Solorzano*, 397 Md. at 674 n.2). *Rankin v. State* provides an example of a sufficient explanation: "[T]he active portion of the sentence, that's the portion that's not suspended, cannot exceed three years. The Court could, however, as part of the sentence, impose the sentence where the suspended portion exceeds three years." 174 Md. App. 404, 406 (2007).

sentence, *not* the executed portion, and therefore the imposed sentence was illegal because it exceeded that cap. *Id.* at 525.

None of these cases stand for the proposition that an agreed sentence can't include suspended time, only that suspended time (or other terms or conditions) must in fact be part of the agreement. This gets us back to the core question, which is what Mr. Stephens understood were the terms of the agreement he entered and that the court approved. It obviously would be cleaner if every plea hearing followed a neat linear progression in which the full discussion of the agreements terms preceded an express finding from the court accepting and approving the agreement. But real life in trial courts doesn't always follow a tidy script, and the important fairness and due process principles articulated in *Matthews, Cuffley*, and *Baines* can, we think, be fulfilled in the course of a hearing that covers the bases in a less tightly choreographed manner.

Viewing the hearing as a whole, we agree with the circuit court that the sentence complied with the plea agreement, and that a lay person would understand that the plea agreement permitted the State to ask the court to impose suspended time in addition to the cap on executed time and that the court could impose such suspended time. After the court's statement that Mr. Stephens was freely and voluntarily pleading guilty, the court reporter reminded the court that the terms needed to be put on the record, and they were. After reiterating that "[t]he State agreed to cap at the bottom" and "[t]he Court agreed that it would bind itself," the State described three further terms: (1) "*[t]he State is free to ask for any suspended time over the top*"; (2) "[w]e agreed that he would get two points for a permanent injury and two points for the use of a firearm"; and (3) "[t]he State said it would

not oppose a defense request to Patuxent." (Emphasis added). Then, after some further colloquy that included a mention of "probation once he is released from confinement," the court queried Mr. Stephens again:

> THE COURT: Mr. Stephens, do you understand that the maximum penalty for first degree assault is 25 years?
>
> [MR. STEPHENS]: Yes, sir.
>
> THE COURT: And do you understand that this Court and your attorney have yet to agree as to what the sentencing guidelines in this case actually are?
>
> [MR. STEPHENS]: Yes, sir.
>
> THE COURT: Do you also understand that this Court has agreed to bind itself to the bottom of those guidelines, whatever that calculation comes back to be?
>
> [MR. STEPHENS]: Yes, sir.
>
> THE COURT: Understanding all of those things, do you still wish to plead guilty here today?
>
> [MR. STEPHENS]: Yes, sir.

At that point, Mr. Stephens had been advised, among other things, that his executed time was capped at the bottom of the guidelines range, whatever that would be and that the State was free to request suspended time "over the top." And although he didn't object to any of these terms, the discussion still wasn't over: after Mr. Stephens restated his wish to plead guilty, his counsel raised further questions about whether the parties had actually agreed to treat the victim's injury as permanent for sentencing purposes. As a result, the court decided that everyone would wait for the presentence investigation and that either party would be free to challenge the report's recommendations on the injury point as well.

Again, someone sitting at a computer with the benefit of time and hindsight could write out the back-and-forth in a more compact manner. We nevertheless are comfortable that Mr. Stephen's sentence complied with the plea agreement set forth on the record at his plea hearing and that a lay person hearing the terms of that agreement would understand that the court was authorized to include suspended time "over the top" of executed time in his total sentence.

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