

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 258

September Term, 2016

ROGER F. WEIGLE

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 3, 2017

*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.

In 2010, Roger F. Weigle, appellant, was charged, in the Circuit Court for Anne Arundel County, with second-degree rape, child abuse, and fifteen related offenses based on allegations that he had sexually abused a thirteen-year-old girl over a period of two years beginning in 1999. In 2011, pursuant to a plea agreement with the State, Weigle pleaded guilty to one count of second-degree rape and was later sentenced to a term of twenty years' imprisonment, with all but ten years suspended. The State nol prossed the remaining counts. Weigle did not seek leave to appeal the judgment, and his subsequent petition for post-conviction relief was denied.

In 2016, Weigle filed a motion to correct an illegal sentence in which he alleged that his trial counsel coerced him into accepting the plea agreement. Because he did not allege that the sentence imposed was illegal, the circuit court denied the motion. Weigle appeals that decision. He first asserts that the court erred in denying his motion without a hearing. A court, however, is not required to hold a hearing before *denying* a motion to correct an illegal sentence. *See* Rule 4-345(f) (requiring a hearing before a court may “modify, reduce, correct, or vacate a sentence”) and *Scott v. State*, 379 Md. 180, 190 (2004) (acknowledging that the “hearing requirement found in Rule 4-345 ordinarily applies only when the court intends to ‘modify, reduce, correct, or vacate a sentence.’”).

Weigle next asserts that his sentence is illegal because he “entered into a plea agreement” for “a certain sentence being five to ten years” and, at sentencing, “the State strayed from the original agreement” and “pushed for” a sentence within the revised sentencing guidelines of twelve to eighteen years of active time. Weigle’s contention has no merit.

Weigle’s plea agreement, as placed on the record of the plea hearing, indicates that, in exchange for Weigle pleading guilty to one count of second-degree rape, the State would nol pros the remaining charges. As to sentencing, the prosecutor informed the trial court that the State “was not binding itself” to any particular sentence and that sentencing would be left to the court’s discretion. When examining Weigle before accepting his plea, the court ensured that he understood that he was facing a maximum sentence of twenty years’ imprisonment. The court further confirmed that Weigle understood that the court had the discretion to impose any sentence up to the maximum permitted by statute, and that the sentencing guidelines were merely “a recommendation” and were “not binding on the court” and thus, the court could impose a sentence “either below or above or between the guidelines.” Moreover, at the subsequent sentencing hearing, the prosecutor did not recommend any particular penalty and reiterated that the State was “leaving the appropriate sentence to the discretion of the court based upon the facts, the victim impact statements that have been submitted, and some additional points” the prosecutor intended to make.

In short, the State did not promise to recommend a sentence within the guidelines (or any specific term of years), and the court did not bind itself to any particular sentence. Because the sentence imposed did not breach the terms of the plea agreement nor exceed the penalty permitted by statute, Weigle’s sentence is legal.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**