Circuit Court for Prince George's County
Case No.: CT200543X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 164

September Term, 2023

KEVIN YOUNG

v.

STATE OF MARYLAND

Friedman,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

On May 16, 2022, Kevin Young, appellant, appeared before the Circuit Court for Prince George's County and, in accordance with a plea agreement with the State, pleaded guilty to first-degree assault and use of a handgun in the commission of a crime of violence. On September 14, 2022, the court sentenced Mr. Young to consecutive terms of imprisonment totaling 45 years, with all but 25 years suspended, to be followed by a five-year term of supervised probation. Mr. Young then filed an application for leave to appeal in which he asserted that the court had agreed to impose no more than 20 years' active time and, therefore, the court "committed error" when imposing 25 years' active time. After considering the application, and the State's opposition thereto, this Court granted the request for an appeal and transferred the matter to the direct appeal docket. In this appeal, the State concurs with Mr. Young's contention that the court breached the sentencing terms of the plea agreement, and that he should be resentenced to no more than 20 years' active time for first-degree assault and to a concurrently run sentence for the handgun offense.

For the reasons to be discussed, we shall vacate the sentences and remand for resentencing.

BACKGROUND

Plea Hearing

At the plea hearing, the prosecutor informed the court that the State had tendered and Mr. Young had accepted a plea offer whereby Mr. Young would plead guilty to first-degree assault and use of a handgun in the commission of a crime of violence – two of the charges in the 10-count Indictment. The prosecutor stated that he had calculated the sentencing guidelines himself—based on "an NCIC report"—and was very confident that

the guidelines were 15 to 25 years. In exchange for the guilty pleas, the State agreed to seek a sentence of 20 years' active time, with the defense free to allocute for lesser time. When queried by the court as to the State's recommendation in the event that "the guidelines come back different than what" the prosecutor had calculated, the State responded that whether higher or lower the State would nonetheless request an executed sentence of 20 years.

Defense counsel then explained to Mr. Young that the Division of Correction would conduct "a long-form preliminary sentencing investigation" and calculate the sentencing guidelines range, which "could come back with a lower sentencing guideline range or [a] higher sentencing guideline range" than that determined by the State, but in any event, "the State is still capping at a 20-year maximum sentence[.]" Mr. Young responded that he understood.

The court then gave Mr. Young its "explanation of guidelines[,]" pointing out that they are recommendations "but the judge doesn't have to stay within those guidelines." The court briefly described how the guidelines are calculated, and then continued:

> THE COURT: So while the attorneys believe your guidelines are 15 to 25, say, they could come back higher. It could be 20 to 40 years, or they could come back lower and be, like, 10 to 20 years, okay? And then the attorneys will both have an opportunity to tell me what they believe is the correct calculation of guidelines. It will be my decision to make the final decision which guidelines range is correct. Do you understand that?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: So if the guidelines come back different from the 15 to 25 years - - or 15 to 25 years, the State's Attorney has agreed to cap, meaning he's agreed to ask for no more than an overall sentence of 20 years in jail executed. When we say "executed," that means, like, upfront jail time.

And then there will be a that [sic] can be suspended, like I said, that can hang over your head. If you get on probation, if you were to violate, then you can get the rest of that time.

So the State's Attorney has agreed instead of asking for the top end of the guidelines of 25, he's agreed to ask for no more than 20. Your attorney would be free to ask for what - - she has no limitation of what she can ask for, but if the guidelines come back different, if they come back lower, 7 to 15, he says he's still going to ask for 20 years in jail. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And if they came back higher, you know, they came back 20 to 40, he still would only ask for 20. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: **And I'm going to sentence you within the guidelines. If they come back as I believe, then I don't have a problem with capping myself at 20 years - - no more than the 20. I'm not saying I'm giving you 20; I'm just saying I would agree to give you no more than 20**. Do you understand that? [1]

THE DEFENDANT: Yes.

THE COURT: However, if they come back different, then my sentence is going to stay within the guidelines, okay?

THE DEFENDANT: Okay.

THE COURT: So if they come back lower and your - - came back lower and the guidelines were 7 to 15, although the State is going to ask for 20, I'm just going to stay within the guidelines based upon the plea -- do you understand that – which means 15 in that scenario?

THE DEFENDANT: Yes.

[1] The court did not indicate what it believed the guidelines would be, but as noted, the prosecutor expressed confidence to the court that his calculation of 15 to 25 years was accurate. The defense did not proffer a different guidelines range or dispute the prosecutor's calculation.

> THE COURT: But if they came back higher, like, if it was 30 to 40 years, the State may – although they're asking for 20, I'm going to stay within the guidelines on that scenario. I would give you no less than 30. Do you understand that?
>
> THE DEFENDANT: Yes.

(Emphasis added.)

Defense counsel then clarified that the maximum penalty for first-degree assault is 25 years and, therefore, Mr. Young could not be subject to more than 25 years' imprisonment for that offense. The court agreed, telling Mr. Young that it was "giving [him] a general understanding of what the guidelines are, but anything is based upon the maximum sentence." The court informed Mr. Young that "the maximum you can get, period, no matter how bad your guidelines are would be no more than 25 years."

Later in the proceeding, the court confirmed, again, that Mr. Young understood that the maximum penalty for first-degree assault is 25 years' imprisonment and the maximum penalty for the handgun offense is 20 years, the first five years without the possibility of parole. The court continued:

> THE COURT: So if these two sentences were to run consecutive, you could be looking at 45 years in jail, however, **the agreement of the parties is that you receive what we call concurrent time, meaning that you will serve both charges at the same time**. Meaning, overall, **you go forward with the plea, you would not receive any more than 25 years in jail**.[2]
>
> THE DEFENDANT: Yes.

[2] We see nothing in the record—that is, in the transcript of the plea hearing or in the written plea agreement submitted to the court at that hearing—indicating that the parties had agreed to concurrently run sentences. However, neither the State nor the defense objected to or sought to correct the court's statement that the parties had agreed that the two sentences would run at the same.

THE COURT: Do you understand what I'm saying?

THE DEFENDANT: Yes, Your Honor.

(Emphasis added.)

After further examination of Mr. Young regarding the rights he would be waiving by pleading guilty, and after hearing the State's proffer of facts in support of the pleas, the court found that Mr. Young knowingly and voluntarily entered the pleas. Sentencing was deferred.

Sentencing Hearing

Four months after entering the guilty pleas, Mr. Young returned to court for sentencing. The court informed the parties that it had received the presentence investigation report. Both the State and the defense agreed that there were "no issues" with the report's sentencing guidelines of 15 to 25 years—the same range the prosecutor had calculated for the plea hearing. Also, the court recalled that it had agreed to "bind itself to stay within guidelines."

The State recommended a sentence of 25 years, all but 20 years suspended, for first-degree assault and 20 years, all but five years suspended, for the handgun offense. The prosecutor requested that the handgun sentence "run, as per the plea offer," concurrent with the assault sentence.

The court then engaged the prosecutor in a discussion of Mr. Young's use of the handgun during the incident, with the court recalling from the plea hearing that it had discharged accidentally when used to bang on the window of the victim's vehicle. The

prosecutor did not necessarily agree with that, and he noted that at the time of the incident there was "an active protective order from Charles County" prohibiting Mr. Young from being near the victim. The court responded that it had "totally missed that part during [the] plea."[3]

In her impact statement, the victim testified about the "pure and utter torture" she had experienced from Mr. Young's "stalking" of her; his violation of the protective order she had secured; the incident leading to the charges in this case; and the gunshot wound she suffered and the medical issues she continues to deal with as a result of the shooting.

Defense counsel reviewed with the court Mr. Young's personal history, including childhood trauma, substance abuse, and mental health issues, and urged the court to impose a sentence at the bottom of the guidelines. The court also heard from Mr. Young himself.

The court indicated that the facts about the incident discussed at sentencing were not the facts it had recalled from the plea hearing. The court had assumed that Mr. Young had a drug problem and that in the midst of an attempted theft, the gun went off by accident and he then took this "stranger" to the hospital. "So that's what I came prepared to - - my mind was set for sentence today. So clearly it's not at all what happened." The court also noted that, given the "permanent injury" the victim sustained, the sentencing guidelines could have been higher, but affirmatively stated that it was "not changing the guidelines." The court also took into consideration Mr. Young's criminal history, and from a

[3] The proffer of facts at the plea hearing did not mention that Mr. Young was the subject of a protective order involving the victim in this case.

"mitigation" viewpoint, the fact that he had probably saved the victim's life by taking her to the hospital following the shooting.

After stating it had considered "the facts in this case, the guidelines of this case, and the representation today," the court sentenced Mr. Young to 25 years, all but 15 years suspended, for first-degree assault and to a consecutive term of 20 years, all but 10 years suspended and the first five years without the possibility of parole, for the handgun offense—a total term of 45 years with all but 25 years suspended. The court imposed a five-year term of probation upon release. The court awarded Mr. Young credit for three years, 168 days for time served pre-sentencing, with the credit to be applied to the first-degree assault sentence.

DISCUSSION

"If a trial court approves [a plea] agreement reached by the parties, 'the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement[.]'" *Ray v. State*, 454 Md. 563, 572 (2017) (quoting Md. Rule 4-243(c)(3)) (other citations omitted). Consequently, a sentence imposed in violation of the maximum sentence identified in a binding plea agreement is an inherently illegal sentence. *Id*. (quotation marks and citations omitted). "'Whether a trial court has violated the terms of a plea agreement is a question of law, which we review *de novo*.'" *Id*. (quoting *Cuffley v. State*, 416 Md. 568, 581 (2010). We also review *de novo* the "[i]nterpretation of an agreement as to sentencing, including the question of whether the agreement's language is ambiguous[.]" *Ray*, 454 Md. at 573.

In *Ray*, the Supreme Court of Maryland[4] set forth a framework for reviewing whether a court breached the sentencing terms of a plea agreement. The Court explained:

> First, we must determine whether the plain language of the agreement is clear and unambiguous as a matter of law. If the plain language of the agreement is clear and unambiguous, then further interpretive tools are unnecessary, and we enforce the agreement accordingly. (Citations and footnote omitted.) Second, if the plain language of the agreement is ambiguous, we must determine what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be, based on the record developed at the plea proceeding. (Citations omitted.) Third, if, after we have examined the agreement and plea proceeding record, we still find ambiguity regarding what the defendant reasonably understood to be the terms of the agreement, then the ambiguity should be construed in favor of the defendant. (Citation omitted.)

454 Md. at 577-78.

Here, Mr. Young asserts that he and the State had reached an agreement whereby, in exchange for his guilty pleas to first-degree assault and use of a handgun in the commission of a crime of violence, the State would recommend a sentence of no more than 20 years' executed time, with the defense free to allocute for whatever sentence it deemed appropriate. In fact, the parties' agreement was set forth in writing, signed by the parties, and submitted to the court during the plea hearing.

The written plea agreement provided that, in exchange for the guilty pleas to those aforementioned offenses, the "State will cap at 20 years executed sentence and the defendant, through counsel, is free to allocute." These are the same terms related by the prosecutor at the plea hearing. The written plea agreement stated, as did the prosecutor at

[4] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

the plea hearing, that the "defendant's anticipated guidelines as calculated by the State are 15Y – 25Y."

Appellant, however, maintains that "in colloquies with the prosecutor and Mr. Young, the court clarified and expanded on the terms of the agreement." First, at the prompting of the court, the State confirmed that, although it was confident that the guidelines were 15 to 25 years, it was committing itself to a recommending a sentence of 20 years' executed time even if the guidelines came back higher or lower. Second, Mr. Young asserts that the court made "a promise" to him when the judge advised him that the court would sentence him within the guidelines and "[i]f they come back as I believe, then I don't have a problem with capping myself at 20 years - - no more than the 20. I'm not saying I'm giving you 20; I'm just saying I would agree to give you no more than 20." And third, the court informed Mr. Young that it would run the sentences concurrently, explaining to him that meant that he would "serve both charges at the same time."

Accordingly, Mr. Young maintains that "if the guidelines turned out as expected, [he] could reasonably expect the State to argue that he should receive 20 years of executed incarceration and the court to impose no more than 20 years with his sentences running concurrently." He contends that, given that the guidelines were in fact 15 to 25 years, the court violated the terms of the plea agreement when it sentenced him to 25 years of executed time and ran his sentences consecutively. The State agrees with Mr. Young.

We concur with the parties. Although the court repeatedly stated it would impose a sentence within the guidelines, whatever they might ultimately be, it also clearly informed Mr. Young that if the guidelines were as anticipated, the court would cap his sentence at

20 years of executed time. The court also undisputedly advised Mr. Young that it would run the two sentences concurrently, explaining that meant he would serve the sentences at the same time. The sentences imposed violated that agreement. We, therefore, vacate the sentences and remand for resentencing. Upon resentencing, the court shall impose a sentence of no more than 20 years' active time, and shall run the two sentences concurrently with each other.

SENTENCES VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR RESENTENCING.

COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.