Circuit Court for Baltimore County
Case No. 03-K-12-004100

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 293

September Term, 2017

BERNARD MEEHAN

v.

STATE OF MARYLAND

Meredith,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: January 25, 2019

After the Circuit Court for Baltimore County denied a motion to correct illegal sentence filed by Bernard Meehan, appellant, Meehan appealed, and raises a single question:

> Did the [circuit] court err in denying Mr. Meehan's motion to correct illegal sentence where the sentence imposed by the court exceeded the maximum sentence authorized by the plea agreement?

For the reasons that follow, we reverse the court's judgment, vacate Meehan's sentences, and remand for re-sentencing.

Background

In July 2012, Meehan was charged by indictment with six counts of sexual abuse of a minor, eight counts of second degree sexual offense, three counts of second degree rape, and related offenses. In October 2012, the prosecutor sent a letter to defense counsel in which the prosecutor stated:

> This letter is written to extend the following . . . plea offer for the above-captioned case.
>
> In return for a plea of guilty to Count One, charging Mr. Meehan with Sexual Abuse to a Minor, Count Six, charging Mr. Meehan with Second Degree Sexual Offense, Count Ten, charging Mr. Meehan with Sexual Abuse to a Minor, and Count Eleven, charging Mr. Meehan with Rape in the Second Degree, **the State agrees to cap Mr. Meehan's sentence at 60 years to the Division of Corrections. The State will be recommending that Mr. Meehan receive a sentence of 60 years** and as counsel for Mr. Meehan, you will be able to request any sentence you feel is appropriate.

(Emphasis added.)

In August 2013, the parties appeared before the court for consideration of the proposed plea agreement, and the following colloquy occurred:

[PROSECUTOR]: Your Honor, I believe that we have reached a resolution and if I could summarize it for the Court. I'll start by first referencing an October 5th, 2012, plea letter. [I]t does encapsulate what the agreement is. I know I provided a copy to the Court and if the Court could just mark that as, as the exhibit.

But the summary of it is that Mr. Meehan will be pleading by way of an *Alford* plea to count one of the indictment K-12-4100. It charges Mr. Meehan with sexual abuse to a minor. Count six which charges Mr. Meehan with second degree sex offense. Count 10 is sexual abuse to a minor and count 11 is rape in the second degree.

The State agrees to a cap of 60-year – a 60-year cap on the sentence. The State will be recommending to the Court that Mr. Meehan receive a sentence of 60 years, however, counsel for Mr. Meehan is, of course, free to recommend or request any sentence he feels is appropriate. **The Court is not bound by any sentence other than we would obviously be asking the Court, with the Court's permission, to cap the time served by Mr. Meehan to be 60 years.** And we are both aware that of course the Court has to agree to that before that happens.

* * *

Did I encapsulate everything, [defense counsel]? Do you have something?

* * *

[DEFENSE COUNSEL:] . . . I do want to memorialize more to assure Mr. Meehan who was not a party to our discussions in chambers that the Court did indicate – now, this is the – as [the prosecutor] did say, this is a very old plea letter and this has been kicking around for a while.

But as **per our discussions in chambers today, the Court did indicate to myself and I did then further that information on to Mr. Meehan that the Court would look very positively on him not – for lack of a better word – forcing the victims in this case to testify and that the Court did characterize that benefit would be a substantial benefit.** I don't want to put words in your mouth but I would, you know, since Mr. Meehan wasn't there, I do want the Court to or at least make a record that was an assurance made that his – there is an incentive for him to plead basically is the bottom line, Your Honor.

* * *

> THE COURT: Yeah, I appreciate your raising it because we did have a conversation with both attorneys in chambers this morning and, Mr. Meehan, just so you understand, I mean, I have to decide what's the right sentence in this case. I have to be fair all around, all right. I obviously don't know much about this case other than bits of what I have heard and bits of what I have seen. I know virtually nothing about you other than your age and that you have one prior offense. That's the sum and substance of it.
>
> Before I decide what the sentence would be, I need to get an evaluation done and I need to listen to what other evidence the State has disclosed to your attorney that I don't know about. I need to hear what the State's Attorney has to say. I did say and I do believe that there is – I think you get credit for taking responsibility and deciding not to put children through testifying and I take that benefit seriously and it will be a factor that I weigh in deciding what the appropriate sentence should be. **I'm not promising anything but it is a factor that will reduce the sentence from what it would have been had you not done that. All right.**
>
> [MEEHAN]: Yes, ma'am.

(Italics and bold emphasis added.)

Meehan subsequently entered an *Alford* plea to Counts 1, 6, 10 and 11. During the plea colloquy, the court gave Meehan the following advisements regarding the maximum penalties for the offenses as to which he would be entering the *Alford* plea:

> THE COURT: . . . Counts 1 and Counts 10 charge you with a sexual abuse of a minor child.
> Do you understand that?
>
> [MEEHAN]: Yes, ma'am.
>
> THE COURT: And the maximum penalty that you can receive for that offense is a period of incarceration of up to 25 years.
> Do you understand that?
>
> [MEEHAN]: Yes, ma'am.

THE COURT: Count 6 charges you with a second degree sex offense. The maximum penalty for which is up to 20 years.

Do you understand that?

[MEEHAN]: Yes, ma'am.

THE COURT: And count 11 charges you with second degree rape. The maximum penalty for which is up to 20 years.

Do you understand that?

[MEEHAN]: Yes, ma'am.

THE COURT: In addition to those penalties, because these are sex offense charges, there is a requirement that you would be required to register as a sex offender if convicted of these offenses. . . .

Do you understand that?

[MEEHAN]: Yes, ma'am.

* * *

THE COURT: Has anyone promised you anything other than **there is an agreement which I have agreed to bind myself to[,] that the sentence to serve, the time to serve will not exceed 60 years.** Other than that, as I told you earlier, I have not yet decided what the sentence will be, and will only decide after hearing much more from both the State, from you and your attorney, and from the evaluations that I'm going to have done.

Do you think anyone has promised you anything other than that?

[MEEHAN]: **No, ma'am.**

(Emphasis added.)

The court subsequently found Meehan "guilty as to those four counts."

In December 2013, the parties appeared for sentencing. At that point, the court summarized the sentencing agreement as follows: "[T]he agreement was the sentence would be capped at 60 years to serve and I agreed to bind myself to that cap." The court

heard argument from defense counsel and the prosecutor, including the following comments on the appropriate sentence to be imposed:

> [DEFENSE COUNSEL]: I mean, unfortunately, the Court – this Court and the Court before it is hampered by the, by the restrictions on probation in this State, the short durations of probation.
>
> * * *
>
> I would ask the Court to make all of the conditions of the mental health evaluation mandatory upon his release, and Your Honor, what we are asking the Court, the Court has agreed to cap itself at 60 years and the Court has also indicated that, you know, the Court would give Mr. Meehan the benefit under that 60 if he did not have a trial. We never discussed what that number would be but I have no reason to believe the Court wouldn't stick to its word as I have explained to Mr. Meehan many times since that plea.
>
> I would ask the Court to consider obviously a split sentence with significant time over his head. I know the cap on incarceration is 60. I know his guidelines on the offenses are – they're somewhat higher than that. The 60 was just the negotiation we worked out with the State. With the Court's available sentence that they can give Mr. Meehan on a split is higher than that. And I think the 60 is what we contemplated was the period of all incarceration.
>
> So what I would ask the Court to do is consider something in the neighborhood of – I think the low end of his guidelines as calculated by Mr. [Prosecutor] are 72 years – I would ask the Court to consider something in the neighborhood of 70 and suspend all but 20 years and let Mr. Meehan, not let him – make him abide by all these conditions upon his release and recommend him for mental health treatment while he is incarcerated.
>
> * * *
>
> Like I said, I would ask the Court to consider 70 years total, suspend all but 20, recommend the Patuxent program so that he can get psychiatric help before he is – and no matter what sentence you give him, Your Honor, quite frankly, I think that a recommendation of Patuxent for mental health would be very appropriate because he is going to be – I mean, anybody could die in time – but if you do a math in your head you say there is pretty good odds that he will be released no matter what the sentence the Court gives.

* * *

[PROSECUTOR]: . . . [T]hese children . . . will think about what he did to them every single night every moment of every day for the rest of their lives. . . .

. . . [I]t would hurt them, it would hurt them a lot. That was pain. That's the pain that he caused.

But everything else that they are going to have to deal with for the rest of their lives, that's the suffering. That's why 60 years is appropriate. It's punishment. Punishment for everything that he did to those children. That alone makes it appropriate, 60 years.

* * *

The guidelines for this Defendant as calculated by – through his PSI are 60 to 90. So if you calculated using the guidelines from the, the author of the PSI, 60 years is the bottom of the guidelines. That's his consideration. If you calculate the guidelines as I, as I have calculated them, they are 72 years to 90 years. So that 60-year sentence would be below the guidelines to serve. That still is consideration.

* * *

THE COURT: In sentencing I believe that one of the most important things for me in a case of this nature is the public safety piece of it.

For that reason, the sentence of the Court is as follows:

On count one, it is 25 years.

On count six it is 20 consecutive.

On count 10 it is twenty-five consecutive.

On count 11 it is 20 consecutive.

So the total to serve is – the total sentence is the 90. I will suspend all but 60 which was the cap. He's to be placed on five years' probation.

The court's commitment record reflects four sentences: (1) twenty-five years' incarceration for the first count of sexual abuse of a minor; (2) twenty years' consecutive incarceration for the second degree sexual offense; (3) twenty-five years' consecutive incarceration, all but fifteen years suspended, for the second count of sexual abuse of a minor; and (4) twenty years' consecutive incarceration, all suspended, for the second degree rape.

Over three years later, in February 2017, Meehan filed the motion to correct illegal sentence that is the subject of this appeal. In the motion, Meehan contended that the total sentence "as understood by a reasonable lay defendant[,] was ambiguous" because he "was not told that a sentence greater than the agreed 'cap' could be imposed by imposing a suspended portion." The court denied the motion. This appeal followed.

Discussion

Meehan contends that the court erred in denying the motion because the total sentence "exceeded the maximum sentence authorized by the agreement between [him] and the State." Based upon our review of the transcript from the plea hearing, we must agree.

In *Cuffley v. State*, 416 Md. 568, 584 (2010), the Court of Appeals held that, "for purposes of identifying the sentencing term of [a] plea agreement," "[a]ll that is relevant . . . is **what was stated on the record at the time of the plea** concerning that term of the agreement and what a reasonable lay person in [the defendant's] position would understand, based on what was stated, the agreed-upon sentence to be." (Emphasis added.) Here, the prosecutor agreed to "recommend[] that . . . Meehan receive a sentence of 60

years," and asked the court "to cap *the time served*" at 60 years." (Emphasis added.) But neither the court, the prosecutor, nor defense counsel explained further on the record what the parties meant by that term. The court then "agreed to bind [it]self to[,] that the sentence to serve, the time to serve will not exceed 60 years." There was no mention during the plea hearing of suspended time that could be imposed in addition to the 60 years. Moreover, neither defense counsel nor the court stated that the court could impose a sentence of more than sixty years' incarceration but suspend a portion of that sentence. The court did not specify that the cap on the sentence referred to executed time only. Based on the statements made on the record at the plea proceeding, we conclude that a reasonable lay person in Meehan's position would not understand that the court could impose a total term of incarceration of ninety years, all but sixty years suspended. [1]

[1] We recognize that our conclusion would probably have been different if we had also considered the transcript of the sentencing hearing. The comments made by defense counsel at that hearing indicate that counsel understood that the court could impose a split sentence of greater than 60 years so long as the court suspended enough to make the executed portion 60 years or less. But, in *Cuffley*, the Court of Appeals was emphatic in holding that the *sole* source the appellate courts will consider to interpret a plea agreement is the transcript of the plea proceeding: "We further conclude, as the natural consequence of requiring strict compliance with the Rule [4-243], that any 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." 416 Md. at 582 (emphasis in original). "[E]xtrinsic evidence of what the defendant's actual understanding might have been is irrelevant to the inquiry." *Id*. As we observed in *Ray v. State*, 230 Md. App. 157, 177-78 (2016), the *Cuffley* Court limited its source for interpreting the plea agreement to the transcript of the plea proceeding even though, at the hearing on the motion to correct Cuffley's sentence, there was testimony from other participants in the plea negotiations: "The judge, the prosecuting attorney, and even the defense attorney [all] believed that the upper limit of eight years established by the guidelines referred to unsuspended or 'hard time.'"

(continued)

Nevertheless, the State, relying on *Ray v. State*, 454 Md. 563 (2017), contends that "it was clear, based on the maximum penalties that Meehan acknowledged he was subject to, that Meehan understood that there could be an additional but unexecuted portion imposed in his sentence." We disagree.

In *Ray*, the defendant agreed to proceed by way of a plea of not guilty with an agreed statement of facts. The agreement was written, signed by the prosecutor and Ray's attorney, and included this statement: "Cap of four years on any executed incarceration." At the hearing at which Ray pleaded not guilty and was tried on the agreed statement of facts, the circuit court read into the record the terms of the agreement, including: "There's a cap of four years [on executed] incarceration." 454 Md. at 568 (alteration in original; footnote omitted). The court found Ray guilty, and imposed the following sentence:

> Now, on the first count, conspiracy to commit theft, the Court will impose a sentence of 10 years to the Maryland Department of Corrections; I'll suspend all but four years and that will be concurrent with the sentence in [a previous] case.
>
> Now, with the false statement . . . , the Court will impose a sentence of six months, which is the maximum sentence in that particular case, and that will be concurrent with the sentence in Count 1.
>
> Upon release, [Ray] will be on a period of probation of four years supervised probation.

Ray filed a motion to correct illegal sentence and argued that the sentence exceeded the four-year cap in the agreement. The circuit court denied the motion, and we affirmed

Similarly, here, whatever the defense counsel may have understood about the possibility of a split sentence cannot overcome the lack of explicit explanation on the record *to Meehan* before the court accepted Meehan's plea.

in a reported opinion. *Ray v. State*, 230 Md. App. 157 (2016). We concluded that, as a matter of law, "the meaning of" the words "cap of four years on any executed incarceration":

> is perspicaciously clear and unambiguous. They mean four years to be served in jail. They mean four years of "hard time." They make no reference whatsoever to any suspended sentence and, indeed, distinguished themselves from it. They could not reasonably be interpreted by anyone to make such reference. Indeed, the term "executed incarceration" negates any reference to unexecuted incarceration.

Id. at 186.

The Court of Appeals agreed with our conclusion that "[t]he plain language of the disputed provision of the agreement was clear and unambiguous." 454 Md. at 579. The Court further concluded:

> [B]ecause [Ray] acknowledged that he was subject to a maximum sentence of ten years and six months, his argument that he did not understand that his "executed" incarceration would be limited to four years to be "carried out" or "performed," *Ray*, 230 Md. App. at 186-87, 146 A.3d 1157, was refuted by the record. Here, it was clear, based on the maximum penalty, of which [Ray] was informed, that a reasonable person in [Ray's] position would have understood that he or she could be subject to an additional but unexecuted period of incarceration imposed as a suspended sentence.

Ray, 454 Md. at 580.

In our view, the statements made at the hearing on Meehan's plea are more similar to the comments made at the plea hearing in Cuffley's case. In that case, the prosecutor summarized the parties' plea agreement, and stated that "the State will recommend a sentence within the guidelines" which had been determined to be "four to eight years." 416 Md. at 573. The judge taking the plea responded:

> "[t]he plea agreement, as I understand it, is that I will impose a sentence somewhere within the guidelines. The guidelines in this case are four to eight years. Any conditions of probation are entirely within my discretion."

Id. at 574.

Several months later, the court sentenced Cuffley to "15 years at the Department of Correction, all but six years suspended." *Id*. Four years later, Cuffley filed a motion pursuant to Rule 4-345(a) to correct an illegal sentence. Cuffley testified that he had understood that he would receive a total sentence of no more than eight years. *Id*. at 575. The circuit court noted that it was the court's "standard procedure" to impose suspended time and conditions of probation, and the court was "certain" that Cuffley's counsel "advised him that there would be suspended time." *Id*. at 576.

Although this Court affirmed that ruling, the Court of Appeals reversed and remanded for resentencing. The Court of Appeals observed that Rule 4-243 "expressly states that the terms of the plea agreement are to be made plain on the record, in the presence of the defendant . . . *before* the guilty plea is accepted." *Id*. at 579 (internal quotation marks and citation omitted). Noting that "[t]he parties do not dispute that the terms of a plea agreement are to be construed 'according to the reasonable understanding of the defendant when he pled guilty,'" *id*. at 581, quoting *Solorzano v. State*, 397 Md. 661, 668 (2007), the Court held that extrinsic evidence could not be considered:

> The record of that [plea] 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 (emphasis added; footnote omitted).

The Court emphasized that it was "irrelevant" what the court and defense counsel understood the phrase "within the guidelines" to mean. *Id*. at 584. And it was similarly "irrelevant" that the circuit court found that defense counsel "actually explained to Petitioner sometime before the on-the-record plea proceeding that the court retained the discretion to impose a split sentence exceeding the sentencing guidelines." *Id*. (footnote omitted). "All that is relevant, for purposes of identifying the sentencing term of the plea agreement, is what was stated on the record at the time of the plea concerning that term of the agreement and what a reasonable lay person in Petitioner's position would understand, based on what was stated, the agreed-upon sentence to be." *Id*. The Court in *Cuffley* further stated: "If examination of the record leaves ambiguous the sentence agreed upon by the parties, then the ambiguity must be resolved in the defendant's favor." *Id*. at 583.

The Court observed that its review of the record of Cuffley's plea proceeding disclosed:

> No mention was made at any time during that proceeding – much less before the court agreed to be bound by the agreement and accepted Petitioner's plea – that the four-to-eight-year sentence referred to executed time only. Neither counsel nor the court stated that the court could impose a sentence of more than eight years' incarceration that would include no more than eight years of actual incarceration, with the remainder suspended. Based on this record, a reasonable lay person in Petitioner's position would not understand that the court could impose the sentence it did.

Id. at 586.

The Court in *Cuffley* emphasized that a split sentence is "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 before the court accepts the defendant's plea**." *Id*. (bold emphasis added; italics in original).

In *Baines v. State*, 416 Md. 604 (2010), decided the same day as *Cuffley*, the Court of Appeals held that, under a plea agreement that called for the judge to impose a sentence "within the guidelines," where there was no mention at the plea proceeding of suspended time in addition to executed time within the guidelines, the imposition of a sentence greater that the guidelines was illegal even though the court suspended all time in excess of the upper range of the guidelines. *Id.* at 607. The *Baines* Court concluded: "There was no indication, much less a plain statement, that the court, consistent with the agreement, was free to impose a sentence beyond the guidelines so long as the court suspended all but the part of the sentence that was within the guidelines. Finally, even assuming for the sake of argument that the sentencing term was ambiguous . . . the ambiguity must be resolved in Petitioner's favor." *Id*. at 620.

The Court of Appeals reached a similar conclusion in *Matthews v. State*, 424 Md. 503 (2012). In exchange for Matthews's guilty plea, the State had agreed to seek incarceration within the guidelines range of 23 to 43 years. At the plea proceeding, the State said that:

> it would "be asking for incarceration of forty-three years. . . . **That cap is a cap as to actual and immediate incarceration at the time of initial disposition**." The sentencing court stated that it "agreed to cap any sentence." In addition, the court advised Petitioner that "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."

424 Md. at 507 (emphasis added).

At sentencing, the court sentenced Matthews to life, with all but 30 years suspended. *Id*. Matthews sought, and was granted, postconviction relief because his counsel did not object to the sentence imposed. Upon resentencing, the same sentence was imposed, and Matthews then filed a motion to correct an illegal sentence. By the time the case reached this Court, the Court of Appeals had decided *Cuffley* and *Baines.* We nevertheless affirmed. But the Court of Appeals reversed, expressly holding that "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 law,' is . . . an inherently illegal sentence," *id*. at 519, which could be addressed pursuant to Rule 4-325(a).

With respect to the merits of Matthews's motion to correct his sentence, the Court of Appeals held that neither the State's reference to a "cap as to actual and immediate incarceration" nor its reference to "forty-three years to be served," nor the judge's advisement that he could give Matthews "up to the maximum of life imprisonment" adequately explained that Matthews could receive a sentence of life with all but thirty years suspended. *Id*. at 524-25. The Court pointed out: "No one mentioned, much less explained to Petitioner 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.

Neither did the State, defense counsel, or the court explain for the record that the words 'guidelines range' referred solely to executed time." *Id*. at 524. The Court stated: "We are left to conclude that the sentencing term of Petitioner's plea agreement, as placed on the record at the plea hearing, is ambiguous." *Id*. at 525. "The ambiguity we discern in the sentencing term of the plea agreement must be resolved in Petitioner's favor. Therefore, Petitioner is entitled to have the plea agreement enforced, based on the terms as he reasonably understood them to be: a maximum sentence, including any suspended portion, of forty-three years." *Id*.

Here, unlike in *Ray* – and, as in *Cuffley* and *Matthews* – Meehan was not told on the record during the plea proceeding that the cap was only on "executed incarceration," nor was the term "executed" used in any other context. Moreover, when Meehan was advised orally of the maximum potential penalties he was facing, it was not clear from what the judge stated at the plea proceeding that he was facing two separate terms of 25 years for sexual abuse of a minor.[2]

[2] As quoted above, during the plea colloquy, Meehan was apprised that he was facing **a** maximum penalty of 25 years for the offense of sexual abuse of a minor child:

> THE COURT: . . . Counts 1 and Counts 10 charge you with **a** sexual abuse of **a** minor child.
> Do you understand that?
>
> [MEEHAN]: Yes, ma'am.
>
> THE COURT: And the maximum penalty that you can receive **for that offense** is **a period** of incarceration of up to 25 years. (Emphasis added.)

Based on the statements made on the record at the plea proceeding, a reasonable lay person in Meehan's position, "unaware of the niceties of sentencing law," would not have understood that the court could impose a sentence of 90 years, partially suspended. *See Cuffley, supra*, 416 Md. at 582, 585. Accordingly, we reverse the judgment of the circuit court, vacate the sentences, and remand with instructions to re-sentence Meehan to a total term of incarceration of no more than sixty years. *See Matthews, supra*, 424 Md. at 525.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AS TO MOTION TO CORRECT ILLEGAL SENTENCE REVERSED. SENTENCES VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR RE-SENTENCING CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE COUNTY.