Circuit Court for Prince George's County
Case No. CT07-0942X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1274

September Term, 2016

ERIC REYES

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 2018

In 2007, Eric Reyes pleaded guilty to sexual offense in the first-degree and was sentenced to life imprisonment, with all but twenty-five years suspended, to be followed by five years of supervised probation. In 2015, he filed a motion to correct an illegal sentence claiming that the sentence imposed "exceeded the maximum sentence allowed by [the] binding plea agreement." The circuit court denied the motion. Reyes appeals that ruling. For the reasons to be discussed, we affirm.

BACKGROUND

Plea & Sentencing Hearings

By indictment filed in the Circuit Court for Prince George's County, Reyes was charged with seventeen offenses, including first-degree rape and first-degree sexual offense. The charges arose after Reyes and two companions repeatedly sexually assaulted a woman, whom they encountered as she was walking home from a bus stop. DNA evidence from the victim and the crime scene matched Reyes's DNA.

On September 7, 2007, Reyes appeared in court for a hearing. Defense counsel advised the court that a plea agreement had been reached with the State whereby Reyes would plead guilty to one count of first-degree sexual offense and the court would be asked to bind itself to a sentence within the "sentencing guidelines." Defense counsel indicated that the parties believed the guidelines would be fifteen to twenty-five years. As pertinent to this appeal, the colloquy continued:

> THE COURT: Okay. And the agreement is the sentence within guidelines - -
>
> [DEFENSE COUNSEL]: Sentence within guidelines - -

THE COURT: - - does that mean the executed - -

[DEFENSE COUNSEL]: After the - -

THE COURT: - - executed portion of it?

[DEFENSE COUNSEL]: Yes.

THE COURT: Okay. Is that right?

[THE STATE]: Yes, Your Honor.

The court then examined Reyes on the record, eliciting the fact that he was then nineteen years old, had completed school through the ninth grade, and was not under the influence of any drugs, alcohol, or medication that day. After reviewing with Reyes the rights he would be waiving by pleading guilty, the court continued:

> THE COURT: Now, the - - other than the promise that they would drop the other charges and ask me to give you a sentence, the executed portion in which the actual beginning time that you would have to serve was within the sentencing guidelines, other than that promise, did anybody promise you anything to get you to plead guilty?
>
> REYES: No, Your Honor.
>
> ***
>
> THE COURT: All right. Now, are you satisfied with the services that [defense counsel] has provided to you as your lawyer?
>
> REYES: Yes, Your Honor.
>
> THE COURT: Has he done everything you've asked him to do in connection with your case?
>
> REYES: Yes, Your Honor.
>
> THE COURT: And has he answered any questions you may have about your case or about this plea?

REYES: Uh-hum. Yes, Your Honor.

After hearing the State's proffer of facts in support of the plea, the court resumed its examination of Reyes and the following then occurred:

> THE COURT: Okay. That form there is a Waiver of Rights at Plea form. I'd like [you] to read that over and when you've read it and understand it, if you'll please sign it, okay?
>
> (Long pause.)
>
> (Defense attorney and Defendant conferred.)
>
> THE COURT: All right. Mr. Reyes, I do have this form now, Waiver of Rights at Plea form. You have read over this form?
>
> REYES: Yes, I did, Your Honor.
>
> THE COURT: And you do understand it?
>
> REYES: Yes, Your Honor.

The form, which was signed by both Reyes and his attorney, listed the rights the defendant was waiving by entering a guilty plea. The "acknowledgement" portion of the form indicated that Reyes understood the rights he was waiving, and that he understood that "the maximum penalty for the offense(s) to which [he] was pleading guilty is LIFE." The court thereafter found that Reyes was entering the plea knowingly and voluntarily.

A month later, Reyes returned to court for sentencing. The court began with the following remarks:

> THE COURT: All right. We are here for sentencing. And my notes indicate that this was an ABA plea to first degree sex offense, where the parties asked me to give an executed sentence within the sentencing guidelines; is that right?
>
> [DEFENSE COUNSEL]: That's correct, Your Honor.

The State urged the court to impose a life sentence, suspending "all but the top of the guidelines, which is 25 years." Defense counsel informed the court that Reyes "knows that he's going to pay a severe punishment here today," but asked the court to consider a sentence at the "bottom" of the guidelines. The court, after noting this was "one of the most brutal and vicious sexual assaults that [it had] ever seen or read of," and finding that Reyes was "a very serious threat to the community," imposed a sentence of life imprisonment, suspending all but twenty-five years, to be followed by a five-year period of supervised probation. The remaining charges were nol prossed. The defense did not object to the sentence, and Reyes did not seek leave to appeal.

Motion to Correct an Illegal Sentence

Nearly eight years after sentence was imposed, Reyes's filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a) in which he claimed that his sentence exceeded the maximum sentence he could have received under the terms of the binding plea agreement. He maintained that, a "reasonable person" in his position would have understood that "the agreed-upon sentence could not exceed the guidelines range of 15 to 25 years, whether the sentence was active or suspended." After holding hearings on the motion, the court found that the agreement, as reflected on the record of the plea hearing, was "an executed sentence within the sentencing guidelines, with the unexecuted sentence to be anything up [to] the maximum of life imprisonment." The court also found that Reyes "reasonably understood that to be the agreement." Accordingly, the court denied the motion.

DISCUSSION

On appeal, Reyes maintains that "the sentencing agreement in the instant case was, at a minimum, ambiguous." He asserts that, "[a]t no time was it clearly explained to Mr. Reyes either (1) that a life sentence could be imposed, or (2) that a sentence longer than 25 years could be imposed with a portion suspended." He also contends that the circuit court, in denying his motion, erred in relying on the "Waiver of Rights at Plea" form that he admits was "filled out at the time of the guilty plea." He maintains that that form "should not be considered in determining what a reasonable person would understand the terms of the agreement, as verbally conveyed during the hearing, to be."

The State responds that the plea agreement was not ambiguous, and that the sentence imposed did not breach its terms. The State relies on *Ray v. State,* 454 Md. 563 (2017) to support its position. We agree with the State.

In *Ray*, the written plea agreement provided that, in exchange for the plea, there would be a "cap of four years on any executed incarceration." 454 Md. at 567. An "advice of rights form," signed by the defendant and his counsel, included the fact that the maximum penalty for the offenses was "10 years + 6 months." *Id.* At the plea hearing, the court noted that "[t]here's a cap of four years [on executed] incarceration." *Id.* at 568 (The transcript reflected a "cap of four years un-executed incarceration," but the parties agreed that was a transcription error. *Id.* at n. 1). Neither suspended time nor a term of probation were mentioned in the written documents or verbally at the plea hearing. *Id.* at 567-569. At a subsequent sentencing hearing, the State reminded the court that it had "agreed to a cap of four years of any executed incarceration." *Id.* at 569. The court sentenced the

defendant to a total term of ten years' imprisonment, with all but four years suspended. *Id.* Several years later, Ray filed a motion to correct an illegal sentence, asserting that his sentence exceeded the maximum sentence authorized by the plea agreement. *Id.* at 569. Ray maintained that a reasonable person would have understood that the plea bargain provided for a maximum sentence of four years, including any suspended time. *Id.* at 569-570. The circuit court denied his motion, and upon appeal this Court affirmed. *Ray v. State*, 230 Md. App. 157 (2016). The Court of Appeals granted Ray's petition for writ of certiorari and affirmed.

The Court of Appeals noted that, "[w]hether a trial court has violated the terms of a plea agreement is a question of law, which we review de novo." 454 Md. at 572 (quotation omitted). "Interpretation of an agreement as to sentencing, including the question of whether the agreement's language is ambiguous, is a question of law, subject to *de novo* review." *Id.* at 573 (citations omitted).

Before reviewing Ray's plea agreement, the Court of Appeals clarified the role of the reviewing court:

> 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 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 that plea proceeding. [Citation 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 577-578.

Turning to the disputed meaning of "cap of four years on any executed incarceration" in Ray's plea agreement, the Court of Appeals held that that language was "clear and unambiguous." *Id.* at 578-579. The Court of Appeals agreed with this Court's assessment that the language meant "'four years to be served in jail. They mean four years of 'hard time.'" *Id.* at 578 (quoting *Ray, supra*, 230 Md. App. at 186). The Court of Appeals further concluded that, "it is unreasonable to interpret the plain language of the agreement as prohibiting a *total* sentence beyond the cap specifically imposed on *executed* incarceration." *Id.*

The plea term in *Ray* was strikingly similar to the disputed term here: the "executed portion" of Reyes's sentence would be within the sentencing guidelines. We hold that that language was clear and unambiguous. The trial court agreed that the *executed* portion of the sentence to be imposed -- the time to be served in jail -- would fall within the sentencing guidelines. As in *Ray,* it is not reasonable to interpret this provision to mean that the *total* sentence could not exceed the sentencing guidelines.

As for Reyes's contention that the circuit court, when reviewing his motion to correct an illegal sentence, erred in relying on the "Waiver of Rights at Plea" form, we disagree. That form, in which Reyes acknowledged that the maximum sentence for first-degree sex offense was life imprisonment, was clearly a part of the plea proceeding as it was undisputedly read, reviewed, and signed in court by Reyes and his attorney in the midst

of the hearing. Moreover, the Court of Appeals in *Ray* pointed out that a similar form used in Ray's case was part of "the record" that refuted his claim that his sentence was illegal. 454 Md. at 580.

Because the executed portion of Reyes's sentence fell within the sentencing guidelines, a fact Reyes does not dispute, we hold that the circuit court did not err in denying Reyes's motion to correct an illegal sentence.

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