

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2536

September Term, 2014

DERECK T. WULAH

v.

STATE OF MARYLAND

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: March 18, 2016

*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.

Dereck T. Wulah, appellant, appeals from an order entered by the Circuit Court for Montgomery County denying his motion to correct illegal sentence. Perceiving no error, we shall affirm.

Background

Appellant was indicted on a charge of possession of a firearm with a nexus to a drug crime, along with several related offenses. On October 14, 2009, appellant appeared in circuit court and, pursuant to a plea agreement, pled guilty to possession of a firearm with a nexus to a drug crime. As initially stated, the terms of the plea agreement were that appellant would plead guilty to the firearm charge; the sentence would have a cap of nine years of executed incarceration; and the State would nol pros the remaining charges. At the October 14 hearing, appellant acknowledged that he had a violation of probation pending and understood that he could be sentenced separately in that case. Also at the hearing, after a proffer of evidence by the prosecutor, defense counsel asked the court to reset sentencing after appellant's probation violation hearing. The prosecutor conditionally agreed with the request provided that appellant agreed that, if he absconded and did not appear at sentencing, the guilty plea would stand but the cap on incarceration would not stand. Defense counsel stated that appellant had no objection. The court accepted the agreement, and appellant was continued on bond.

On November 30, 2009, appellant failed to appear at his sentencing hearing. The court issued a bench warrant. On May 10, 2010, after appellant had been arrested, the court held a sentencing hearing. Defense counsel acknowledged that appellant had failed to appear at the earlier sentencing hearing and also stated that appellant had failed to

appear at the violation of probation hearing. The court, referencing the agreement reached on October 14, 2009, stated that the cap was not in effect because appellant had voluntarily failed to appear for sentencing. The court’s statement was not contradicted.

The applicable sentencing guidelines were 9 to 14 years. Defense counsel asked for a sentence near the bottom of the guidelines. The prosecutor asked for a sentence of 20 years with all but 14 years suspended and a period of probation. The court imposed a sentence of 10 years imprisonment with no term of probation. The State nol prossed the remaining charges.

Subsequently, appellant filed two motions to reconsider sentence, which were denied. On October 9, 2014, appellant filed a motion to correct illegal sentence. On December 18, 2014, the court denied the motion. This appeal followed.

Discussion

Relying on Maryland Rule 4-243(c) (5) and *Matthews v. State*, 424 Md. 503 (2012), appellant argues that the court violated his plea agreement by sentencing him to a term of imprisonment in excess of 9 years. We disagree.

When a particular sentence is part of a plea agreement, and the court accepts the sentence, the court must impose that sentence. Md. Rule 4-243 (c). If a court imposes a sentence in violation of a binding plea agreement, it is an illegal sentence. *Matthews*, 424 Md. at 519. Here, appellant requested that his original sentencing hearing be postponed and, in exchange for acceding to that request, he agreed that if he did not appear, his guilty plea would remain but the cap would not apply. At no time did appellant ask to withdraw his guilty plea. At sentencing, he did not object to the court’s understanding of

the agreement as stated. We are satisfied that appellant understood that, if he failed to appear at the sentencing hearing, the cap of 9 years would not be in effect. *See Cuffley v. State*, 416 Md. 568, 583 (2010) (“If the record of the plea proceeding clearly discloses what the defendant reasonably understood to be the terms of the agreement, then the defendant is entitled to the benefit of the bargain, which, at the defendant’s option, is either specific enforcement of the agreement or withdrawal of the plea. *Solorzano*, 397 Md. [661] at 667-68, 919 A.2d at 656 [(2007)].”).

Matthews does not support appellant’s position. In that case, the defendant pled guilty to certain charges in exchange for a nol pros of other charges and an agreement on sentencing. The prosecutor stated that the State would ask for incarceration of 43 years, the top of the guidelines, and referred to it as a cap on actual incarceration. The court accepted the plea agreement but advised the defendant that it could sentence him to anything from the mandatory minimum of 5 years without parole, “up to the maximum of life imprisonment.” 424 Md. at 507. The court sentenced the defendant to life imprisonment with 30 years of executed time. *Id.* The Court of Appeals held that the sentencing term of the plea agreement was ambiguous because it was unclear whether the cap applied to the total years of incarceration, including any suspended time, or whether it applied to time actually served. *Id.* at 525. Consequently, the Court resolved the ambiguity in favor of the defendant. *Id.*

As stated above, we are satisfied that the defendant reasonably understood that the sentencing cap did not apply if he voluntarily failed to appear for his sentencing hearing.

He voluntarily failed to appear, and he does not argue to the contrary. Thus, the court did not violate the unambiguous plea agreement.

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