UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2788

September Term, 2013

MATTHEW THOMAS SLAVISH

v.

STATE OF MARYLAND

Krauser, C.J.,
**Zarnoch,
Reed,

JJ.

Opinion by Reed, J.

Filed: October 6, 2015

**Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

Appellant pled guilty in the Circuit Court for Cecil County to three counts of first-degree assault (Counts 3, 5 and 7). He was sentenced to 12 years on Count 3. On Count 5, he was sentenced 10 years, all suspended in favor of 5 years' probation upon release. On Count 7, he was sentenced to 10 years to run concurrent with Count 3. Appellant filed a Motion to Correct Illegal Sentence, which was denied. He filed a timely appeal, and presents a single question for our review:

> Did Appellant's sentence exceed the terms of the plea agreement?

We answer this question in the negative, and therefore affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On May 11, 2011, appellant was involved in a bar fight at "The Drunk Monkey" in Cecil County, Maryland. He was indicted on a total of thirteen counts related to the incident: four counts of first-degree assault, four counts of second-degree assault, and one count each of first-degree attempted murder, second-degree attempted murder, possession of a dangerous weapon with intent to injure, possession of a controlled dangerous substance, and possession of a controlled dangerous substance with intent to distribute. On June 11, 2011, appellant entered into an "Alford" plea agreement,[1] in which he pled guilty to three counts of first-degree assault (Counts 3, 5, and 7 from the charging document) in exchange for the State entering *nolle prosequis* on the remaining counts. A binding term of the plea agreement was that the court would sentence appellant to a minimum of 8 years

[1] *See* MD Rule 4-242(c).

and a maximum of 15 years. At the beginning of the plea hearing, the prosecutor outlined the parameters of the plea agreement as follows:

> [T]here is one essentially binding term, which is that there is a ceiling and a floor of active incarceration for the Court to consider, which is a floor of eight years and a ceiling of fifteen. … The Court will be free to determine active incarceration however the Court sees fit within that range. Beyond that, the Court will have full discretion as to any other terms, including probation or special terms or probation.

Later in the plea hearing, the presiding judge, the Honorable Keith A. Baynes, questioned appellant to determine whether he correctly understood the binding portion of plea agreement:

> THE COURT: But as far as the binding portion of this plea, as far as any active incarceration, when you return for sentencing I cannot give you a total sentence of less than eight years of active incarceration, nor can I give you a sentence greater than a total of fifteen years active incarceration. Do you understand that?
>
> [Appellant]: Yes, sir.
>
> THE COURT: I can impose additional time but that additional time must be suspended. And I can also place you on supervised probation. Do you understand that?
>
> [Appellant]: Yes, sir.
>
> . . .
>
> THE COURT: And again, you understand that if the Court accepts your guilty plea and the plea agreement in this case, you're going to get a minimum of eight years and a maximum of fifteen years active incarceration. Do you understand that?
>
> [Appellant]: Yes, sir.

At the sentencing hearing on August 31, 2012, Judge Baynes sentenced appellant to 12 years for Count 3; 10 years, all suspended in favor of 5 years' probation upon release, for Count 5; and 10 years, concurrent with Count 3, for Count 7.[2] On January 31, 2014, appellant filed a Motion to Correct Illegal Sentence, which was denied. Thereupon, appellant noted his timely appeal.

DISCUSSION

I. LEGALITY OF THE SENTENCE IN LIGHT OF THE PLEA AGREEMENT

A. Parties' Contentions

Appellant argues that his sentence is unlawful because it goes beyond the 8-to-15-year term contained in his plea agreement. Appellant contends that the court did not satisfy the requirements of *Cuffley v. State*, 416 Md. 568 (2010), *Baines v. State*, 416 Md. 604 (2010), and *Matthews v. State*, 424 Md. 503 (2012), for reserving the right to impose a sentence in excess of the agreed-upon term so long as it suspended the excess portion. Appellant argues that neither the court nor the prosecutor indicated specifically and on the record, as required by *Cuffley*, *Baines*, and *Matthews*, that the sentencing range in the plea agreement only applied to executed, non-suspended time. Appellant asserts the opposite to be true – that the record of the plea hearing indicates that a reasonable lay person in appellant's position would have understood his plea agreement to only allow for an 8-to-15-year sentence, with any suspended time included therein. Appellant draws our attention to the precedent of *Cuffley*; that any ambiguities on the record concerning the terms of a

[2] Thus, appellant would serve 12 years, which would be followed by 5 years' probation.

plea agreement must be resolved in favor of the individual pleading guilty. Resolving all ambiguities in his favor, appellant argues, would lead us to the conclusion that the suspended portion of his sentence that goes beyond 15 years violates the agreement he made with the State. He also contends that the State wrongfully argued for the trial court to impose a sentence between 5 and 32 years (the Sentencing Guidelines for the crimes he pled guilty to), even though his plea agreement contained an 8-to-15-year sentencing term.

The State argues that its mention at the sentencing hearing of a sentence between 5 and 32 years was merely a response to the trial court's inquiry about the Guidelines rather than an attempt to argue for a sentence within that range. The State also argues that, at the plea hearing, both the prosecutor, in setting forth the terms of the plea, and the court, in advising appellant of the consequences of the plea, referred to the 8-to-15-year range as applying only to *active* incarceration. In fact, the State asserts that "active incarceration" was used to describe the 8-to-15-year range at least six times on the record, in addition to the court's "plain statement" that it could "impose additional time but that additional time must be suspended." According to the State, the record indicates that a reasonable lay person in appellant's position would have understood the plea agreement to include 8-to-15 years of executed time, plus additional time, as long as any time in excess of 15 years was suspended. Therefore, the State argues that the sentence imposed by the trial court was consistent with both the plea agreement and the decisions of the Court of Appeals in *Cuffley*, *Baines*, or *Matthews*.

B. Standard of Review

Maryland Rule 4-345(a) states that "[t]he court may correct an illegal sentence at any time." It is well-settled that "whether a sentence illegality is cognizable under Rule 4–345(a) depends *solely* on whether the illegality inheres in the sentence itself[.]" *Matthews*, 424 Md. at 519. It has also been established that "a sentence that exceeds the sentence agreed upon as part of a binding plea agreement . . . is [inherently illegal and] is cognizable under Rule 4-345(a)." *Id.* at 514. Therefore, if the sentence imposed by the trial court exceeds what the parties agreed to in the plea agreement, then it is illegal and subject to reversal under Rule 4-345(a).

The following is the standard of review for determining whether a sentence is illegal because it exceeds what the parties agreed to in a plea agreement:

> [A]ny 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. The record of that 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. . . . [E]xtrinsic evidence of what the defendant's actual understanding might have been is irrelevant to the inquiry.

Cuffley, 416 Md. at 582.

C. Analysis

As both appellant and the State noted in their briefs, the Court of Appeals decided a series of cases in recent years on the issue at hand. *See Cuffley v. State*, 416 Md. 568 (2010); *Baines v. State*, 416 Md. 604 (2010); *Matthews v. State*, 424 Md. 503 (2012). We must look to those cases for guidance in order to determine whether appellant's sentence goes beyond the terms of his plea agreement. If his sentence does in fact go beyond the terms of the agreement, then, as we have already made clear, his sentence would be illegal and thus reversible under Rule 4-345(a).

The earliest of the three cases deserving our consideration is *Cuffley*. In that case, the defendant pled guilty to robbery. *Cuffley*, 416 Md. at 574. While the maximum sentence under the Sentencing Guidelines for robbery was 15 years, Cuffley's plea agreement contained a binding sentencing term of 4-to-8 years. *Id.* at 573-74. Ultimately, Cuffley was given a sentence of 15 years with all but 6 years suspended. *Id.* at 574. Therefore, while the 6 years of executed time was within the plea agreement's 4-to-8-year term, 7 out of 9 years of the suspended portion was not. The trial court denied Cuffley's Motion to Correct Illegal Sentence, reasoning that suspended time is not subject to any term of years contained in a plea agreement. *Id.* at 576. The Court of Appeals reversed, noting that "[d]efense counsel added nothing to explain further what the parties mean by that [4-to-8-year] sentencing term." *Id.* at 585. The Court of Appeals went on to say the following:

> 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.

Id. The Court of Appeals found the trial court's statement that "[a]ny conditions of probation are entirely within my discretion" was not sufficient to reserve the right to impose a split sentence, the non-suspended portion of which being within the agreed-upon term. *Id.*

The Court of Appeals took up virtually the same issue in *Baines*: "[W]hether a judge who agrees to be bound to the terms of a plea agreement that calls for a sentence 'within the guidelines' may impose a 'split sentence' that exceeds the guidelines and suspends all but the part of the sentence that falls within the guidelines." 416 Md. 604, 607 (2010). Before reaching the merits of the case, the Court of Appeals affirmed what it had previously said in *Cuffley*, that extrinsic evidence regarding what a defendant actually understood about the sentencing term of his/her plea agreement is irrelevant. *Id.* at 619. The Court of Appeals noted that all that matters is "what a reasonable lay person in Petitioner's position at the time of the plea would have understood the agreement to be . . . [based only on] facts concerning the sentencing term . . . that are manifest from the record of the plea proceeding." *Id.* Applying this standard of review, the Court of Appeals found "[t]here 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." *Id.* at 620. For this reason, the Court of Appeals vacated Baines' sentence. *Id.*

The issue we are currently presented with was brought before the Court of Appeals for a third time in *Matthews v. State*.[3] Matthews' plea agreement contained a sentencing term of 23-to-43 years. During the plea hearing, the State indicated that it would be "asking for incarceration of forty-three years. . . . The cap is a cap as to actual and immediate incarceration at the time of initial disposition." *Matthews*, 424 Md. at 522. Later during the same colloquy, the trial judge addressed his understanding of the plea agreement as follows: "[T]heoretically 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." *Id.* at 522-23. The Court of Appeals held that neither the State's comment that "that cap is a cap as to actual and immediate incarceration," nor the trial judge comment that "theoretically" he could impose a life sentence was enough to allow the court to impose a greater sentence than the term agreed to by the parties as long as it suspended the excess portion. While the State's statement "may well have been clear to the State, defense counsel and the court[,] . . . the record of the plea hearing [did] not persuade [the Court of Appeals] that Petitioner 'reasonably understood' (as that phrase is explicated in *Cuffley*) the maximum agreed-upon sentence to be." *Id.* at 524. Furthermore, the Court of Appeals believed the trial judge's statement that he could "theoretically" impose a life sentence "more likely confused further what already was unclear." *Id.* at 525. Echoing the same concerns it raised in *Cuffley* and

[3] The *Matthews* court stated the issue as follows: "Whether a plea agreement, conditional on an agreed upon 'capped' term of years, results in an illegal sentence when the trial court sentences the Defendant to life, but suspends a portion of the life sentence to make the non-suspended portion not exceed the agreed upon 'cap'?" 424 Md. 503, 511-12 (2012).

Baines, the Court of Appeals held that because "[n]o one mentioned, much less explained to [Matthews] 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[,]" the sentence imposed by the trial court violated Matthews' plea agreement. *Id.* at 524.

We now turn to the case at hand. First, we consider appellant's argument that the State argued wrongfully at the sentencing hearing for a sentence not within the sentencing term of the plea agreement, but instead within the Sentencing Guidelines. The following colloquy, taken from the record of the sentencing hearing, contains the statements of the prosecutor at issue:

> THE COURT: The sentencing guidelines in this case are five to twelve years.
>
> [Prosecutor]: I don't think that's accurate, Your Honor. Five to thirty-two.
>
> THE COURT: That's what the guidelines indicate. So with regard to Count 3 –
>
> [Prosecutor]: Your Honor, may I?
>
> THE COURT: Yes.
>
> [Prosecutor]: The guidelines are five to thirty-two.
>
> THE COURT: Well, I understand, but for the offense and then with the plea agreement, I mean, again, I'm basically looking at it as a guidelines situation because that was the way sort of the plea was entered into. I mean, I couldn't give him thirty-two years under the plea –

> [Prosecutor]: No, no. I understand that. But I hope that the Court isn't looking at it as five-to-twelve guidelines and weighing that in versus what the ceiling and the floor are, because the guidelines – I contemplated the guidelines to be the overall guideline range, and the overall guideline range is five to thirty-two, not five to twelve.
>
> THE COURT: For all three offenses, correct?
>
> [Prosecutor]: Okay. I agree with that.

The trial judge immediately proceeded to sentence appellant to 12 years for Count 3; 10 years, all suspended in favor of 5 years' probation upon release, for Count 5; and 10 years, concurrent with Count 3, for Count 7.

We find no merit to appellant's argument that the prosecutor wrongfully argued for a sentence within the Sentencing Guidelines, despite the term in the plea agreement. A fair reading of the record leads us to the conclusion that the prosecutor was merely making sure the trial court was aware of the Sentencing Guidelines for all three Counts to which appellant was pleading guilty, not just Count 3. We agree with the State that the prosecutor was "not suggesting that the plea agreement called for a sentence of 5-32 years." Rather, the prosecutor simply asked that the court consider the applicable guidelines in determining a sentence that *complied with the plea agreement*. Because the prosecutor did not wrongfully argue for a sentence within the Sentencing Guidelines, the lawfulness of appellant's sentence depends solely on whether it is consistent with the sentencing term he agreed to with the State. In doing so, we resort "solely to the record established at the Rule 4-243 plea proceeding . . . to determine . . . 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." *Cuffley*, 416 Md. at 582 (emphasis omitted).

The following summation of the plea agreement was provided on the record by the prosecutor at the plea hearing:

> [Prosecutor]: Your Honor, as you have been made aware in conversation in chambers, we have a plea in place. I'm going to outline the terms at this time. … The parameters of the plea – there is one essentially binding term, which is that there is a ceiling and a floor of active incarceration for the Court to consider, which is a floor of eight years and a ceiling of fifteen. Needless to say, the State will be asking for fifteen and the defendant will be asking for eight. The Court will be free to determine active incarceration however the Court sees fit within that range. Beyond that, the Court will have full discretion as to any other terms, including probation or special terms of probation.

Later during the plea hearing, the trial judge questioned appellant to ascertain whether he clearly understood the terms of his plea:

> THE COURT: But as far as the binding portion of this plea, as far as any active incarceration, when you return for sentencing I cannot give you a total sentence of less than eight years of active incarceration, nor can I give you a sentence greater than a total of fifteen years active incarceration. Do you understand that?
>
> [Appellant]: Yes, sir.
>
> THE COURT: I can impose additional time but that additional time must be suspended. And I can also place you on supervised probation. Do you understand that?
>
> [Appellant]: Yes, sir.
>
> . . .

> THE COURT: And again, you understand that if the Court accepts your guilty plea and the plea agreement in this case, you're going to get a minimum of eight years and a maximum of fifteen years active incarceration. Do you understand that?
>
> [Appellant]: Yes, sir.

We must determine whether, based on the above statements from the record, a reasonable lay person in appellant's position would have understood his plea agreement to allow for a sentence in excess of the agreed-upon "cap," so long as any excess time was suspended.

The sentences in *Cuffley*, *Baines*, and *Matthews* were all vacated because neither counsel nor the court stated on the record during the plea hearing that suspended time could be ordered beyond the "cap" of the plea agreement's sentencing term. *See, e.g.*, *Cuffley*, 416 Md. at 585 ("Neither counsel nor the court stated that the court could impose a sentence of more than either years' incarceration that would include no more than eight years of actual incarceration, with the remainder suspended."); *Baines*, 416 Md. at 620 ("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."); *Matthews*, 424 Md. at 511-12 ("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."). However, if a plain statement allowing for suspended time in excess of the "cap" had been made, then those sentences would have been lawful despite the sentencing term in the respective plea agreements:

> Our holding should not be interpreted as foreclosing a binding plea agreement that provides for a so-called "split sentence" like the sentence imposed in this case, that is, a sentence that exceeds the guidelines, with all of it suspended save for that portion of the sentence that falls "within the sentencing guidelines." To the contrary, such plea agreements are entirely permissible, *if,* as we noted in *Solorzano,* 397 Md. at 674 n. 2, 919 A.2d at 659 n. 2, 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.

Cuffley, 416 Md. at 586 (emphasis in original). The case presently before us represents one of the "entirely permissible" instances in which a plea agreement allowed for suspended time to be ordered in excess of the "cap" contained therein.

During the plea hearing, the trial court stated to appellant: "I [cannot] give you a sentence greater than a total of fifteen years active incarceration." Whether or not the words "active incarceration" were sufficient for a reasonable person in appellant's position to have understood that suspended time in excess of 15 years could be imposed is irrelevant, because the court went on to say: "I can impose additional time but that additional time must be suspended. And I can also place you on supervised probation. Do you understand that?" Appellant answered in the affirmative. The court's statement that "I can impose additional time but that additional time must be suspended" is "absolutely clear" and "fully explains" to the defendant that suspended time in excess of the cap is permissible under the plea agreement. Therefore, a reasonable lay person in appellant's position would have understood that his plea agreement allowed for the sentence ultimately imposed by the trial court. While we recognize that any ambiguity must be resolved in appellant's favor, there

is no ambiguity in the trial court's statement about suspended time in excess of the "cap." Pursuant to *Cuffley*, *Baines*, and *Matthews*, we hold that appellant's sentence is legal and thus not subject to reversal under Rule 4-345(a).

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