Amicus Curiarum

VOLUME 37
ISSUE 9 SEPTEMBER 2020

A Publication of the Office of the State Reporter

Table of Contents

COURT OF APPEALS

COURT OF SPECIAL APPEALS

Return to ToC

COURT OF APPEALS

Attorney Grievance Commission of Maryland v. John Xander Yi, Misc. Docket AG No. 21, September Term 2019, filed August 21, 2020. Opinion by McDonald, J.

https://www.courts.state.md.us/data/opinions/coa/2020/21a19ag.pdf

ATTORNEY DISCIPLINE – COMPETENCE, DILIGENCE AND COMMUNICATION WITH CLIENT – MISHANDLING OF CLIENT FUNDS – MISREPRESENTATION TO BAR COUNSEL – DISBARMENT

Facts:

At the time of the events that led to this case, Respondent John Xander Yi was a newly-barred immigration lawyer with less than three years' experience. He was licensed in Maryland but worked with his law partner out of a Virginia office. The misconduct in this case stems from Mr. Yi's representation of Sirlis Portillo de Espinoza, who was a recent immigrant facing serious criminal charges related to drug importation. Mr. Yi had never tried a criminal case when he agreed to represent the client. During the course of the representation, Mr. Yi committed a number of elementary errors. He did not adequately prepare a defense for his client and ultimately pressured her, against her better judgment, to plead guilty. Before sentencing, Ms. Portillo de Espinoza terminated Mr. Yi's representation. The Circuit Court permitted her to withdraw her guilty plea and, with the assistance of the Public Defender, she was ultimately acquitted after trial. Bar Counsel initiated an investigation, during which Mr. Yi provided partial, incomplete, and false responses to Bar Counsel's inquiries. Mr. Yi ultimately admitted that his representation of the client was inadequate and that his attorney trust account had been mismanaged.

In August 2019, the Attorney Grievance Commission filed a petition for disciplinary or remedial action against Mr. Yi alleging violations of the Maryland Attorneys' Rules of Professional Conduct ("MARPC"). The petition alleged violations of Rule 1.1 (competence); Rule 1.2(a) (scope of representation); Rule 1.3 (diligence); Rule 1.4 (communication); Rule 1.5(a) & (b) (fees); Rule 1.16(d) (terminating representation); Rule 5.5(a) (unauthorized practice of law); Rule 8.1 (disciplinary matters); and Rule 8.4 (a), (c), & (d) (misconduct) (Bar Counsel later withdrew the charge under Rule 5.5(a)). Bar Counsel also alleged, pursuant to Rule 8.5, the

choice of law provision of the MARPC, that Mr. Yi had violated Rule 1.15(b) & (c) of the Virginia Rules of Professional Conduct, concerning the safekeeping of client property.

The hearing judge found that Mr. Yi had violated the remaining provisions charged by Bar Counsel. In addition, the hearing judge made various credibility determinations in favor of Ms. Portillo de Espinoza and certain findings of fact regarding relevant aggravating and mitigating factors. Mr. Yi excepted to a number of the hearing judge's fact findings and contested all of the hearing judge's conclusions of law.

Held: Disbarred.

The Court of Appeals sustained all but two of the hearing judge's findings of fact and sustained all of the conclusions of law. Mr. Yi failed to provide competent and diligent representation as required by Rules 1.1 and 1.3 in several significant ways, most egregiously by failing to discuss the potential immigration consequences of a guilty plea, failing to assess the potential sentence by consulting the sentencing guidelines, failing to follow up on the investigation of his client's mental health, failing to place the terms of the State's plea offer on the record, and failing to safeguard his client's funds, among other things. Moreover, Mr. Yi violated Rules 1.4 and 1.2(a) when he failed to ensure that the retainer agreement had been properly explained to his client and failed to make the previously stated critical advisements to his client concerning the plea offer and its potential consequences.

In addition to his failure to meet the basic standards expected of attorneys, Mr. Yi mishandled money matters and engaged in dishonest conduct. Although not initially unreasonable, the fee charged for Mr. Yi's services became unreasonable in violation of Rule 1.5(a) when he failed to perform any legal services of value for his client. Mr. Yi violated Rule 1.5(b) when he neglected to ensure that the retainer agreement was adequately explained to his client. In addition, Mr. Yi did not provide Ms. Portillo de Espinoza with a refund of the unearned portion of the fee pursuant to the terms of his own retainer agreement and misappropriated $1,345 of his client's funds, thus violating Rule 1.16(d) and Virginia Rule 1.15(b) and (c). Mr. Yi violated Rule 8.1 when he knowingly misrepresented material facts in response to Bar Counsel's requests for information. His misappropriation of funds and misrepresentations to bar counsel also violated Rule 8.4(c).

Finally, Mr. Yi violated Rule 8.4(d) because he did not meet the bare minimum expected of defense counsel in a criminal case and his conduct was prejudicial to the administration of criminal justice. Mr. Yi also violated Rule 8.4(a) in light of his other rule violations.

Return to ToC

The Court upheld the hearing judge's findings of certain aggravating factors, including a dishonest or selfish motive and bad faith obstruction of the disciplinary proceeding, that were based on credibility determinations with respect to the testimony of Mr. Yi and Ms. Portillo de Espinoza. Given the seriousness of the misconduct at issue in this case – failing to provide competent and diligent representation in a case with potentially devastating consequences to the client, mishandling client funds, and providing lackadaisical and misleading responses to Bar Counsel – the Court disbarred Mr. Yi.

Return to ToC

Yaw Poku Podieh v. State of Maryland, No. 31, September Term 2019, filed August 14, 2020. Opinion by Barbera, C.J.

https://mdcourts.gov/data/opinions/coa/2020/31a19.pdf

CONSTITUTIONAL LAW – INEFFECTIVE ASSISTANCE OF COUNSEL – ACTUAL CONFLICT OF INTEREST – PRESUMPTION OF PREJUDICE

Facts:

Petitioner, Yaw Poku Podieh, was stopped by a law enforcement officer, Deputy Sheriff Michael Ensor, for driving over the posted speed limit. Upon stopping Petitioner and approaching his vehicle, Deputy Ensor smelled the odor of marijuana. Deputy Ensor asked Petitioner if he had marijuana on him, and Petitioner answered in the affirmative. Based on the odor of marijuana and Petitioner's statement, Deputy Ensor searched Petitioner and Petitioner's vehicle. The search revealed two cellphones, marijuana, and heroin. Deputy Ensor arrested Petitioner and charged him possession of a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute.

Over the ensuing months after the traffic stop, another law enforcement officer, Deputy Sheriff Brian Elliott, obtained a search warrant for the cellphones recovered during the traffic stop, a GPS warrant for Petitioner's vehicle, and eventually a search warrant for the residence where Petitioner spent his nights. Deputy Elliott described the traffic stop performed by Deputy Ensor in the application for the search warrant for the residence. Deputy Elliott conducted the search of the residence, and the search produced marijuana, heroin, and drug paraphernalia. Petitioner was charged with possession of a controlled dangerous substance, possession of a controlled dangerous substance with intent to distribute, possession of drug paraphernalia, and possession of marijuana with intent to distribute.

Petitioner hired John R. Discavage, Esquire, to represent him in both the traffic stop case and the search warrant case. Mr. Discavage negotiated a plea agreement with the State on behalf of his client, but Mr. Discavage did not file a motion to suppress in either the traffic stop case or the search warrant case.

Petitioner entered a conditional *Alford* plea in the traffic stop case to possession of a controlled dangerous substance, which was contingent upon a global resolution of both the traffic stop case and the search warrant case. It was contemplated that if Petitioner and the State reached a global resolution of the two cases, Petitioner would withdraw his *Alford* plea and the State would enter *nolle prosequi* on the charges from the traffic stop case. The State set forth the facts it would have proven had the traffic stop case gone to trial. Deputy Ensor would have been called to testify about initiating the traffic stop, detecting the odor of marijuana, searching Petitioner and the vehicle, and recovering the heroin.

Petitioner pleaded guilty in the search warrant case to possession with intent to distribute a controlled dangerous substance. As a result, the conditional *Alford* plea was withdrawn, and the State entered *nolle prosequi* on all the other charges from both the traffic stop case and the search warrant case. Petitioner is not a United States citizen and he became automatically deportable because possession with intent to distribute heroin is an aggravated felony, and aliens convicted of aggravated felonies cannot contest deportation.

Unknown to Petitioner during the pendency of his criminal trials, Mr. Discavage represented Deputy Ensor—the arresting officer in the traffic stop case—in his divorce from his then-wife, Ms. Ensor. Ms. Ensor filed a lawsuit against Mr. Discavage for negligence, breach of fiduciary duty, intentional misrepresentation, and negligent misrepresentation. The claims related to Mr. Discavage allegedly favoring Deputy Ensor in the settlement agreement. Ms. Ensor's lawsuit against Mr. Discavage began one month after Deputy Ensor arrested Petitioner in the traffic stop case and was dismissed by stipulation several months after the conclusion of Petitioner's criminal cases. Mr. Discavage did not inform Petitioner, the court handling Petitioner's cases, or the Assistant State's Attorneys prosecuting Petitioner about the civil suit or his relationship with Deputy Ensor.

Petitioner filed a petition for post-conviction relief and argued that he received ineffective assistance of counsel under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. The arguments relevant to the case at bar were: (1) Mr. Discavage and Petitioner's separate immigration counsel misadvised him about the immigration consequences of his plea agreement; and (2) Mr. Discavage failed to disclose a personal conflict of interest.

The post-conviction court granted Petitioner relief on the conflict of interest issue. The court based its decision on its finding that Mr. Discavage had labored under an actual conflict of interest resulting from, at the pertinent time, his simultaneous involvement in two separate matters, both of which involved Deputy Ensor. Under *Cuyler v. Sullivan*, 446 U.S. 335 (1980), an actual conflict of interest that adversely affects the representation is presumptively prejudicial to the defense.

The court found that at the same time Mr. Discavage was the named defendant in Ms. Ensor's then-pending lawsuit—in which Deputy Ensor likely would have been a fact witness—he was also Petitioner's defense counsel in the two criminal cases. The court explained that, but for the "global resolution" of those criminal cases, it was virtually inevitable that Mr. Discavage would have filed both a motion to suppress the evidence obtained in the traffic stop case and a similar motion in the search warrant case. The court reasoned that Mr. Discavage would need to maintain a positive rapport with Deputy Ensor for the sake of the civil suit. However, maintain a positive rapport with Deputy Ensor was at odds with how Mr. Discavage would have interacted with Deputy Ensor in Petitioner's criminal cases. In the criminal cases, had motions to suppress been filed as is typical in drug possession cases, Mr. Discavage would need to attack Deputy Ensor's credibility.

On appeal, the Court of Special Appeals reversed the decision of the post-conviction court and held that the conflict of interest was merely potential, not actual. The intermediate appellate court determined that the conflict of interest was only potential, and therefore not entitled to a presumption of prejudice, because no evidence supported the finding that Mr. Discavage needed to maintain a positive rapport with Deputy Ensor.

Held: Reversed.

The Court of Appeals reversed the Court of Special Appeals. Under *Cuyler v. Sullivan*, an actual conflict of interest that adversely affects the representation is presumptively prejudicial. In *Taylor v. State*, 428 Md. 386 (2012), the Court of Appeals adopted the three-prong test from *Mickens v. Taylor*, 240 F.3d 348 (4th Cir. 2001), to determine when a conflict of interest satisfies the *Sullivan* rule. To satisfy the *Mickens* test, a petitioner must prove: (1) that there was a plausible alternative defense strategy that defense counsel might have pursued; (2) which was objectively reasonable under the facts of the case known to defense counsel; and (3) that defense counsel's failure to pursue the strategy was linked to the conflict of interest.

As a matter of first impression, the Court held that to determine when a link exists under the third prong of *Mickens*, a petitioner must demonstrate that the alternative defense strategy was inherently in conflict with counsel's other loyalties or interests or that the alternative defense was forgone due to those other loyalties or interests.

Petitioner satisfied his burden under *Mickens* by demonstrating that: (1) Mr. Discavage could have filed motions to suppress evidence in the criminal cases; (2) filing such motions are the objectively reasonable course of action in plain-smell, drug possession cases; and (3) Mr. Discavage's reliance on Deputy Ensor in the civil suit encouraged Mr. Discavage not to file motions to suppress in order to avoid confronting Deputy Ensor in the criminal cases. As such, Mr. Discavage counsel labored under an actual conflict of interest that adversely affected the representation, and Petitioner is entitled to post-conviction relief.

Return to ToC

Pizza di Joey, LLC and Madame BBQ, LLC v. Mayor and City Council of Baltimore, No. 41, September Term 2019, filed August 17, 2020. Opinion by Biran, J.

Raker, J., dissents.

https://mdcourts.gov/data/opinions/coa/2020/41a19.pdf

JUDICIAL REVIEW – DECLARATORY JUDGMENT ACT – JUSTICIABILITY – RIPENESS – STANDING

MARYLAND DECLARATION OF RIGHTS – ARTICLE 24 – EQUAL PROTECTION – SUBSTANTIVE DUE PROCESS – BALTIMORE CITY CODE, ARTICLE 15, § 17-33 – RATIONAL BASIS REVIEW

COURTS – WAIVER – APPELLATE REVIEW

MARYLAND DECLARATION OF RIGHTS – ARTICLE 24 – VOID-FOR- VAGUENESS DOCTRINE – FACIAL CHALLENGE

Facts:

In 2014, Baltimore City created a series of regulations concerning the operations of licensed mobile vendors. One such regulation is Article 15, section 17-33 of the Baltimore City Code. Referred to as the "300-foot rule," it provides:

> A mobile vendor may not park a vendor truck within 300 feet of any retail business establishment that is primarily engaged in selling the same type of food product … as that offered by the mobile vendor.

The Petitioners in this case, Pizza di Joey, LLC and Madame BBQ, LLC (the "Food Trucks") are both licensed as mobile vendors in Baltimore City. The Food Trucks claimed that the 300-foot rule prevents them from operating their food trucks in some of Baltimore's most desirable neighborhoods, such as Federal Hill and Hampden, due to the many competing brick-and-mortar restaurants in those areas. While City officials acknowledged that there has never been a citation issued or license revoked as a result of the 300-foot rule, the City's enforcement of the rule through responding to complaints from brick-and-mortar restaurants caused the Food Trucks concern.

The Food Trucks filed suit against the Mayor and City Council of Baltimore, alleging that the 300-foot rule violates their rights to substantive due process and equal protection under Article 24 of the Maryland Declaration of Rights. At trial, the City introduced the testimony of an economics expert, who testified that the 300-foot rule addressed the "free-rider" problem that

results from a food truck's ability to park at a stationary competitor's doorstep, and siphon away customers seeking the same kind of food as that offered by the brick-and-mortar restaurant, without making the same investments as the brick-and-mortar establishment. According to the City's expert, the 300-foot rule was an effective way to help Baltimore protect brick-and-mortar restaurants from unfair competition and thereby help maintain the vitality and vibrancy of Baltimore's commercial districts.

Applying rational basis review, the Circuit Court for Baltimore City held that the 300-foot rule does not deprive the Food Trucks of substantive due process and equal protection under Article 24. However, despite the Food Trucks' affirmative waiver of a claim that the 300-foot rule is void for vagueness, the circuit court invalidated the 300-foot rule as unconstitutionally vague and enjoined the City from enforcing it. In particular, the court concluded that the language "primarily engaged in" and "same type of food products," is impermissibly vague.

The City appealed the circuit court's ruling to the Court of Special Appeals, which affirmed the circuit court's ruling that the 300-foot rule does not violate Article 24 but reversed the circuit court's judgment in favor of the Food Trucks based on vagueness. The Court of Appeals granted the Food Trucks' petition for certiorari to determine the constitutionality of the 300-foot rule.

Held: Affirmed.

The Court of Appeals held that the Food Trucks' substantive due process and equal protection claims were justiciable in a declaratory judgment action brought under Md. Code, Cts. & Jud. Proc. § 3-409(a)(1) (1973, 2013 Repl. Vol.). First, the Food Trucks' substantive due process and equal protections are ripe. Enforcement of the 300-foot rule restricts where mobile vendors may operate and affects their potential profitability, resulting in concrete, specific claims of constitutional violations. The Court also held that the Food Trucks have standing to challenge the 300-foot rule. They established at trial that they were directly affected by the 300-foot rule.

On the merits of the Food Trucks' Article 24 claims, the Court held that the proper level of judicial scrutiny for the 300-foot rule is rational basis review. The Court held that the 300-foot rule is rationally related to Baltimore City's legitimate interest in ensuring the economic vibrancy of its commercial districts. The 300-foot rule furthers this interest by addressing the "free rider" problem that exists when food trucks are able to park too close to restaurants that primarily sell the same type of food products. Even reviewed under the less deferential "heightened rational basis" test, the 300-foot rule is constitutional because it bears a real and substantial relation to Baltimore's legitimate interest in ensuring the vibrancy of its commercial districts.

The Court also held that, given the Food Trucks' affirmative waiver of a vagueness challenge, the circuit court erred in holding the 300-foot rule void for vagueness on its own initiative. The Court explained that an appellate court has discretion to give effect to a party's affirmative

waiver of a claim for relief in the trial court, despite the trial court having decided the question on its own initiative.

In this case, the Court of Appeals exercised its discretion to review the circuit court's vagueness ruling. The Court held that a facial vagueness challenge to the 300-foot rule is permissible. On the merits of that claim, the Court held that the 300-foot rule is not void for vagueness. The Food Trucks failed to show that there is no set of circumstances under which the 300-rule is valid. In addition, the language of the 300-foot rule is not so broad as to be susceptible to irrational and selective enforcement.

Return to ToC

John Vigna v. State of Maryland, No. 55, September Term 2019, filed August 18, 2020. Opinion by Biran, J.

Watts and Hotten, JJ., concur.

https://mdcourts.gov/data/opinions/coa/2020/55a19.pdf

CRIMINAL LAW – CHARACTER EVIDENCE – CHARACTER OF THE ACCUSED FOR APPROPRIATENESS WITH CHILDREN

CRIMINAL LAW – CHARACTER EVIDENCE – HARMLESS ERROR

APPELLATE PRACTICE – ABANDONMENT AND PRESERVATION OF ARGUMENTS

CRIMINAL LAW – SIXTH AMENDMENT RIGHT TO FAIR TRIAL – DUE PROCESS

Facts:

In February 2016, a teacher and counselor at Cloverly Elementary School in Silver Spring, Maryland, became concerned when a typically attentive student looked uncomfortable during a body safety class. At the end of that day, the student told the teacher and counselor that John Vigna, a popular teacher at the school, had touched her and other girls in ways that made them feel uncomfortable. This allegation led to a criminal investigation, which resulted in an indictment of Vigna for allegedly sexually abusing five former female students over the course of approximately 15 years.

At trial, Vigna relied heavily on character evidence to defend himself. The Circuit Court for Montgomery County allowed Vigna's character witnesses to testify that Vigna was law-abiding and honest, but excluded evidence meant to show Vigna's character for appropriate interaction with children under his care. The trial court concluded that appropriate interaction with children under one's care is not a character trait under Maryland Rule 5-404(a). The circuit court allowed the State to introduce evidence of two letters of reprimand that Vigna received for inappropriate (but non-criminal) contact with students.

After hearing from nearly two dozen witnesses – including Vigna himself – the jury convicted Vigna on nine of the 14 counts in which he was charged. On appeal, the Court of Special Appeals affirmed Vigna's convictions. As to the trial court's exclusion of Vigna's proffered character evidence, the intermediate appellate court determined the proffered trait is not relevant in a case involving sexual crimes against children. The court also rejected Vigna's constitutional challenge to the simultaneous admission of the reprimands and exclusion of the character evidence, which he alleged created an imbalance that deprived him of a fair trial.

Return to ToC

Held: Affirmed.

The Court of Appeals held that, in a prosecution of a defendant for a sex crime against a minor, the defendant's character for appropriateness with children in his custody or care may be a pertinent trait of character for purposes of admissibility of character evidence under Maryland Rule 5-404(a)(2)(A). When the State objects to a defendant's proffer of opinion or reputation evidence under Rule 5-404(a)(2)(A) to establish his or her character for a particular trait, the trial court must determine whether: (1) the particular quality identified by the defendant is a "trait of character" within the meaning of Rule 5-404(a)(2)(A); and (2) evidence of such a trait of character is "pertinent," i.e., relevant to the trier of fact's consideration of the charged offenses. If the trial court answers both of these questions in the affirmative, then the court (if requested by the State) should (3) analyze the proffered evidence under Maryland Rule 5-403 to determine whether its probative value is substantially outweighed by the danger of unfair prejudice or another circumstance listed in that Rule.

The Court held that any error in excluding evidence of Vigna's character for appropriateness with children in his custody or care was harmless beyond a reasonable doubt. Testimony from parents who stated that, based on their experiences in seeing Vigna interact with children in his custody or care, they would entrust the lives of their children and other children to him, was functionally the equivalent of an opinion that Vigna was the type of person who was appropriate with children in his custody or care. In addition, opinion testimony of multiple defense witnesses that Vigna was law-abiding, although broader than the excluded opinion evidence Vigna sought to elicit, ultimately served the same purpose.

The Court held that, where Vigna included no substantive argument in his briefs on the constitutional question for which the Court granted review, Vigna abandoned the argument. In addition, Vigna failed to preserve a new constitutional argument, based on due process, for appellate review, where he raised it for the first time in his briefs to the Court. The Court further held that both constitutional arguments lacked merit. Because any evidentiary error was harmless beyond a reasonable doubt, Vigna received a fair trial under the Sixth Amendment. In addition, the trial court's adverse evidentiary ruling did not prevent Vigna from presenting a meaningful defense. Thus, the exclusion of the proffered character evidence did not deprive Vigna of due process.

Return to ToC

Randy Morquell Brown, Gianpaolo Bottini & Kitrell B. Wilson v. State of Maryland, Misc. No. 30, September Term 2018, filed August 24, 2020. Opinion by McDonald, J.

https://mdcourts.gov/data/opinions/coa/2020/30a18m.pdf

CRIMINAL LAW – MANDATORY MINIMUM SENTENCES – CRIMINAL PROCEDURE – PLEA AGREEMENTS – BINDING PLEA AGREEMENTS

CRIMINAL LAW – MANDATORY MINIMUM SENTENCES – CRIMINAL PROCEDURE – PLEA AGREEMENTS – WAIVER OF RIGHT TO SEEK MODIFICATION OF SENTENCE

CRIMINAL LAW – MANDATORY MINIMUM SENTENCES – CRIMINAL PROCEDURE – MOTION TO MODIFY SENTENCE

CRIMINAL LAW – MANDATORY MINIMUM SENTENCES – CRIMINAL PROCEDURE – MOTION TO MODIFY SENTENCE - APPEALS

Facts:

In 2016, the General Assembly enacted the Justice Reinvestment Act ("JRA") that, among other things, prospectively eliminated the mandatory minimum sentences enumerated in Maryland Code, Criminal Law Article ("CR"), §§5-607 through 5-609 for certain repeat drug offenders. The JRA also provided potential relief for defendants who had been sentenced to a mandatory minimum sentence prior to the elimination of such sentences to seek a modification of that sentence by providing a one-year window to file a motion to ask the court to modify that sentence and provided the court with some factors to consider in evaluating the motion. It is also placed the burden of persuasion on the State to argue for retention of the mandatory minimum sentence. These provisions were codified in CR §5-609.1.

The JRA did not specifically address whether CR §5-609.1 applied to defendants serving mandatory minimum sentences pursuant to a binding plea agreement and did not explicitly indicate whether a defendant was entitled to a hearing before a court denies a request to modify or to an appeal of an adverse decision on the motion to modify.

Following CR §5-609.1 becoming effective on October 1, 2017, numerous inmates filed motions for modification of their sentences. Randy Morquell Brown had his motion denied by the circuit court because he had been sentenced to a mandatory minimum sentence pursuant to a binding plea agreement. Gianpaolo Bottini had his motion denied by the circuit court because he had been sentenced to a mandatory minimum sentence pursuant to a binding plea agreement that included a waiver of his right to seek a sentence modification. Kitrell Wilson, who was sentenced to a mandatory minimum sentence following a jury trial, had his motion summarily denied by the circuit court without a hearing. Each of these defendants filed a timely appeal.

The State contested the legal positions put forward by each of the appellants on the merits and further argued that a denial of a motion for modification is not an appealable final judgment.

Seeking guidance from the Court to Appeals to ensure the uniform application of the JRA, the Court of Special Appeals, pursuant to Maryland Rule 8-304, certified four questions of law drawn from these three pending appeals concerning the application of CR §5-609.1 to plea agreements and the procedural questions relating to a hearing and appeal, which the Court agreed to grant a writ of *certiorari*.

Held: Certified questions answered; cases remanded to the Court of Special Appeals

The Court of Appeals held that, pursuant to CR §5-609.1, a circuit court is vested with the discretion to modify a previously imposed mandatory minimum sentence, upon consideration of the factors mentioned in CR §5-609.1(b), even if that sentence was imposed pursuant to a binding plea agreement under Maryland Rule 4-243(c) and the State does not consent to the proposed modification. The Court explained that the text and legislative history of CR §5-609.1 indicate that the statute was intended to supersede other existing laws that would limit the discretion of courts to modify certain mandatory minimum sentences, including a binding plea agreement. The Court rejected arguments that allowing modification of a binding plea agreement without the State's consent would infringe on the prosecutorial discretion afforded State's Attorneys by the Maryland Constitution or would constitute a breach of the plea agreement thereby releasing the State from its obligations in the original agreement.

For the same reasons, the Court also held that a circuit court has the discretion to modify a previously imposed mandatory sentence, upon consideration of the factors mentioned in CR §5-609.1(b), even if that sentence was imposed pursuant to a binding plea agreement under Maryland Rule 4-243(c) in which the defendant agreed to waive the right to seek a sentence modification as part of the plea agreement.

The Court next held that a circuit court should, in most instances, hold a hearing to resolve any material factual disputes or assist in consideration of the factors that a court is required to consider in ruling on a motion pursuant to CR §5-609.1. Whereas the language of the statute itself does not mandate a hearing, the Court explained that holding a hearing will ordinarily assist the court in properly exercising its discretion in ruling on the motion for modification. Pursuant to Maryland Rule 4-345, a circuit court must conduct a hearing when granting a motion.

Finally, the Court held that a denial of a motion under CR §5-609.1 is an appealable final judgment pursuant to Maryland Code, Courts & Judicial Proceedings §12-301. The Court reasoned that a denial of a motion under CR §5-609.1 is different than a usual denial of a Rule 4-345 motion for modification (which is generally non-appealable) because the statute shifts the burden of persuasion to the State that a modification of a mandatory minimum sentence is inappropriate resulting in a decision that is more akin to a re-sentencing. A reviewing court should apply the deferential abuse-of-discretion standard, as is the standard that is applied in

review of sentencing decisions, which may include legal error, such as a court failing to recognize its discretion.

Having answered the certified questions but without expressing a view on the merits of the predicate cases underlying the appeal, the Court remanded the cases to the Court of Special Appeals for further proceedings consistent with this opinion.

Shawn Albert Franklin v. State of Maryland, No. 57, September Term 2019, filed August 13, 2020. Opinion by Biran, J.

Watts, Hotten, and Booth, JJ., concur.

https://mdcourts.gov/data/opinions/coa/2020/57a19.pdf

WRIT OF ERROR CORAM NOBIS – INEFFECTIVE ASSISTANCE OF COUNSEL – PERFORMANCE OF COUNSEL – MOTION FOR MODIFICATION OF SENTENCE UNDER MD. RULE 4-345(e) – REQUEST FOR HEARING DURING FIVE-YEAR PERIOD FOR REVIEW OF RULE 4-345(e) MOTION – "NO ACTION" NOTATION BY SENTENCING COURT

WRIT OF ERROR CORAM NOBIS – INEFFECTIVE ASSISTANCE OF COUNSEL – PERFORMANCE OF COUNSEL – MOTION FOR MODIFICATION OF SENTENCE UNDER MD. RULE 4-345(e) – REQUEST FOR HEARING DURING FIVE-YEAR PERIOD FOR REVIEW OF MOTION

WRIT OF ERROR CORAM NOBIS – INEFFECTIVE ASSISTANCE OF COUNSEL – PREJUDICE – MOTION FOR MODIFICATION OF SENTENCE – FAILURE TO RENEW REQUEST FOR HEARING DURING FIVE-YEAR PERIOD FOR REVIEW OF MOTION

Facts:

On March 5, 2010, in the Circuit Court for Charles County, Petitioner Shawn Franklin entered an *Alford* plea to charges of reckless endangerment and transporting a handgun in a vehicle. The plea agreement included a binding cap of no more than 60 days of active jail time. On March 22, 2010, Franklin, with retained attorney Kenneth W. Prien, appeared before the circuit court for sentencing. Mr. Prien requested that the court impose a sentence of probation before judgment. The court declined Mr. Prien's request, and instead imposed concurrent sentences of three years of incarceration with all but 14 days suspended, three years of unsupervised probation, a $500 fine, and 24 hours of community service.

On April 1, 2010, Mr. Prien filed a motion under Maryland Rule 4-345(e), requesting that the sentencing court reconsider Franklin's sentence after Franklin completed his period of probation. The motion and proposed order requested that the court hold a hearing on the motion, but requested that the court keep the motion "under advisement." Under Rule 4-345(e)(1), the sentencing court had five years from March 22, 2010 (the date of imposition of sentence), to modify Franklin's sentence. On April 20, 2010, the sentencing judge handwrote "no action" on both the motion for sentence modification and the proposed order. Franklin successfully completed his period of probation, paid all court costs, and completed his court-ordered community service. Neither Franklin nor Mr. Prien renewed the request for a hearing on the

pending Rule 4-345(e) motion following the completion of Franklin's probation. The sentencing court took no further action on that motion.

On April 26, 2017, on behalf of Franklin, the Office of the Public Defender filed a petition for a writ of error *coram nobis* in the Circuit Court for Charles County. In the petition, Franklin alleged that Mr. Prien provided ineffective assistance of counsel by "failing to request a hearing in a timely manner on the motion for reconsideration of sentence." A different judge of the Circuit Court for Charles County, sitting as the *coram nobis* court, held an evidentiary hearing on Franklin's petition. Franklin testified at the hearing that Mr. Prien did not tell him that there was a five-year time limit for modification of his sentence. He also testified that, sometime in 2016, his employer "hired a new HR company" that conducted background checks on all employees. In the course of this process, his convictions came to light, eventually leading to the termination of his employment in 2017.

The *coram nobis* court denied Franklin's petition. The court held that Franklin had not established that Mr. Prien provided ineffective assistance of counsel. The court found that Mr. Prien requested a hearing on the motion for reconsideration of Franklin's sentence, and that the sentencing court considered that request and took no action. Regarding Franklin's claim that he had not known about the five-year time limit for the court to modify his sentence, the *coram nobis* court stated: "Whether Mr. Prien told you about the five years or not, I have no reason to doubt you. I don't know. Um…he may not have."

Franklin appealed the denial of his *coram nobis* petition to the Court of Special Appeals. In an unreported opinion, the intermediate appellate court affirmed the *coram nobis* court's denial of Franklin's petition. 2019 WL 4131948 (Aug. 30, 2019). The Court of Special Appeals read the coram nobis court's ruling as making a factual finding that the sentencing court's notation of "no action" on the Rule 4-345(e) motion and proposed order constituted a denial of the hearing request and, therefore, a denial of the motion itself. The Court of Special Appeals found no clear error in this finding. As a result, the Court of Special Appeals concluded that Mr. Prien was under no obligation to renew the request for a hearing during the remainder of the five-year period, and therefore, did not provide Franklin with ineffective assistance of counsel.

Held: Affirmed

The Court of Appeals held that it was clear error to find that the sentencing court's notation of "no action" on Franklin's motion for modification of sentence and proposed order, approximately three weeks after the filing of the motion, constituted a denial of Franklin's request for a hearing on the motion and of the motion itself. Mr. Prien knew or should have known that the sentencing court took the motion under advisement, and that the sentencing court could still rule on the motion for modification of sentence within five years of the imposition of sentence.

The Court of Appeals held that an attorney must ensure that his or her client knows there is a five-year period for consideration of a motion for modification of a sentence under Rule 4-345(e). The Court further held that, when assessing whether defense counsel performed deficiently for purposes of an ineffective assistance claim, a court may not find *per se* unreasonable performance where counsel, who previously filed a motion for modification of sentence that was then taken under advisement by the sentencing court, failed to request (or to renew a request for) a hearing on the motion on the attorney's own initiative within the five-year period for the court to consider the motion. Rather, a post-conviction or *coram nobis* court must examine the totality of the circumstances in any such case to determine whether counsel performed deficiently. Ultimately, it is the defendant's decision, not the attorney's, whether and when to request a hearing after a motion for sentence modification has been taken under advisement.

The Court held that, in Franklin's case, Mr. Prien did not provide deficient representation. The *coram nobis* court did not find that Mr. Prien failed to advise Franklin of the five-year period for consideration of the Rule 4-345(e) motion. In addition, the *coram nobis* court found that Franklin was not "affected for five years" by his convictions, and that Franklin "never contacted the attorney until after" those five years had elapsed. These findings indicate that the court believed that Franklin's failure to ask Mr. Prien to renew the request for a hearing was due to Franklin not being affected by the convictions during the five-year period. The Court held that this finding was not clearly erroneous.

Additionally, a majority of the Court stated that, in a case where a court finds deficient performance in the failure of an attorney to request a hearing on a Rule 4-345(e) motion that has been held in abeyance, a post-conviction or *coram nobis* court generally should find the requisite prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), and should provide the defendant with a reasonable opportunity to notify the court that the defendant wishes the court set the motion in for a hearing, and should also allow the court a reasonable opportunity to hold a hearing, should the court decide to grant the request for a hearing.

Return to ToC

In re: R.S., No. 58, September Term 2019, filed August 17, 2020. Opinion by Hotten, J.

https://www.courts.state.md.us/data/opinions/coa/2020/58a19.pdf

STATUTORY INTERPRETATION – INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN – CINA PROCEEDINGS

Facts:

Petitioner, Worcester County Department of Social Services ("the Department"), became aware of allegations of neglect concerning a minor, R.S., in October 2015, when it was reported that R.S. and her mother, S.S., were staying in a hotel with a male relative who was accused of, and later admitted to, molesting another child. In June 2016, the Department learned that S.S. and R.S. were both living in a minivan under sub-standard conditions. The Department subsequently arranged long-term shelter care for S.S. and R.S., but S.S. left the shelter with R.S. and continued living in the minivan. In November 2016, the Department removed R.S. from the care of S.S. and placed her in emergency foster care. Thereafter, the Department filed respective Petitions for Continued Shelter Care and Child in Need of Assistance in the Circuit Court for Worcester County, sitting as a juvenile court ("the juvenile court").

During a subsequent hearing on the petitions, the juvenile court was advised that the biological father of R.S., T.S., resided in Delaware. The Department contacted T.S. and requested his attendance at the adjudicatory hearing. T.S. appeared *pro se* and agreed to submit to a court-ordered paternity test to conclusively establish paternity.

Return to ToC

The paternity test revealed that T.S. was the biological father of R.S. The juvenile court continued the dispositional phase of the proceedings, so that T.S. could demonstrate parental fitness. In the interim, the juvenile court ordered unsupervised visits between T.S. and R.S. and, if parental fitness was demonstrated, arrange an Interstate Compact on the Placement of Children ("ICPC") home study of the paternal grandparents' home in Delaware. The juvenile court also ordered an ICPC home study for T.S.

When the juvenile court resumed the disposition hearing, counsel for R.S. argued that the ICPC home study was inappropriate because the ICPC does not apply to non-custodial, biological parents, and T.S. could not be denied custody, absent a finding of parental unfitness. The juvenile court disagreed and proceeded with the ICPC home study process. While the results of the home study were pending, T.S., the paternal grandparents, and R.S. continued to develop a familial relationship.

A Delaware social worker conducted a home study for both T.S. and the paternal grandparents. She determined that placement with T.S. was inappropriate because of his memory loss, but that the paternal grandparents were a viable placement option. Upon receipt of the findings from the

Delaware ICPC home study, the juvenile court determined that it was too late to "go back [to the adjudicatory hearing] and say dad is fit and we should dismiss the CINA." The juvenile court declined to make a finding regarding the ability of T.S. to care for R.S. Instead, the juvenile court awarded custody to the paternal grandparents.

Counsel for R.S. filed exceptions to the custody determination by the juvenile court, but the exceptions were denied. T.S. and counsel for R.S. appealed the order denying the exceptions to the Court of Special Appeals, but the Court of Special Appeals dismissed the appeal as an "impermissible interlocutory appeal." *In re R.S.* ("*R.S. I*"), No. 33, Sept. Term 2018, slip op. at 1–4 (Md. App. Jan. 14, 2019).

In January 2019, the Department recommended that the juvenile court terminate the CINA proceedings and award joint legal and physical custody to T.S. and the paternal grandparents. The juvenile court agreed. Counsel for R.S. appealed that decision to the Court of Special Appeals.

The Court of Special Appeals vacated the CINA order and the custody determination. *In re R.S.* ("*R.S. II*"), 242 Md. App. 338, 215 A.3d 392 (2019). Applying a "plain-meaning" analysis to § 5-604 of the Family Law Article, the Court of Special Appeals held that the ICPC does not apply to the out-of-state placement of a child with a biological parent. *Id*. at 360–61, 215 A.3d at 405. The Department appealed to the Court of Appeals.

Held: Affirmed.

The Court of Appeals affirmed the judgment of the Court of Special Appeals and held that the Interstate Compact on Placement of Children did not apply to out-of-state placements of children with their non-custodial, biological parent. The Court concluded that the plain language of the ICPC makes it clear that the ICPC only applies to placements in foster and pre-adoptive care, neither of which contemplates parental placements.

In re: O.P., No. 26, September Term 2019, filed August 14, 2020. Opinion by McDonald, J.

https://www.courts.state.md.us/data/opinions/coa/2020/26a19.pdf

CIVIL PROCEDURE – APPEALS – MOOTNESS – ISSUES CAPABLE OF REPETITION YET EVADING REVIEW

CIVIL PROCEDURE – APPEALS – COLLATERAL ORDER DOCTRINE

FAMILY LAW – CHILD IN NEED OF ASSISTANCE – SHELTER CARE – STANDARD OF PROOF

Facts:

The procedures governing juvenile court proceedings when a child is alleged to be a child in need of assistance ("CINA") are set forth in Maryland Code, Courts & Judicial Proceedings Article ("CJ"), §3-801 et seq. After receiving a complaint of child abuse or neglect, a local department of social services files a petition alleging that the child is a CINA and setting forth supporting facts. The proceeding to determine whether the child is a CINA consists of two stages – an adjudicatory hearing and a disposition hearing. At the adjudicatory hearing, the rules of evidence apply and the allegations in the petition must be proved by a preponderance of the evidence. CJ §3-817. If the court finds that the allegations in the petition are true, the court then holds a separate disposition hearing to determine whether the child is, in fact, a CINA and, if so, the nature of any necessary court intervention. CJ §3-819.

In certain cases, a child alleged to be a CINA may be placed in shelter care – temporary placement outside of the home – prior to disposition of the CINA petition. CJ §3-815. After a child is placed in emergency shelter care, the department must immediately file a petition to authorize continued shelter care and the juvenile court is to immediately hold a shelter care hearing to determine whether temporary placement of the child outside the home for up to 30 days is warranted. Pursuant to the statutory criteria set forth in CJ §3-815(d), the court may authorize continued shelter if it finds that (1) return of the child to the child's home is contrary to the safety and welfare of the child; and (2) either (i) removal from the home is necessary due to an alleged emergency situation and in order to provide for the safety of the child, or (ii) reasonable efforts were made but were unsuccessful to eliminate the need to remove the child from the home.

In this case, an infant ("O.P."), who had been born prematurely and spent seven weeks in the neonatal intensive care unit, was hospitalized with serious unexplained brain injuries several days after an incident at home where he stopped breathing. Petitioner Anne Arundel County Department of Social Services (the "Department") placed O.P. in emergency shelter care and immediately filed a CINA petition with a request for continued temporary shelter care pending

resolution of the CINA petition. The Circuit Court for Anne Arundel County, sitting as a juvenile court, held a hearing and denied the Department's request for continued temporary shelter care, finding that the Department had failed to establish the statutory criteria by a preponderance of the evidence. O.P. was returned to the custody of his parents.

On appeal, the Department and counsel appointed for O.P. challenged the juvenile court's use of a preponderance standard for determining whether to authorize continued shelter care. The Court of Special Appeals held that the juvenile court used the correct standard of proof and affirmed the juvenile court's decision, concluding that its fact findings were not clearly erroneous and that it did not abuse its discretion in denying continued shelter care.

Held: Affirmed in part and reversed in part.

As a threshold matter, the Court of Appeals declined to dismiss the appeal on the ground of mootness. Around the time that the Department and O.P.'s mother filed their petitions for certiorari with this Court, the parties reached a settlement in the CINA case under which O.P. was declared a CINA but would remain with his parents subject to the Department's supervision. Although the issue of shelter care in this particular case is moot, the Court of Appeals exercised its discretion to decide the legal issues presented by the parties – the appealability of a shelter care decision and the appropriate standard of proof to be applied in a shelter care proceeding – because they are issues "capable of repetition, yet evading review."

As another threshold matter, the Court of Appeals held that the juvenile court's decision to deny continued shelter care was appealable under the collateral order doctrine because that order (1) conclusively determined (2) an important disputed question (3) that is separate from the merits of the CINA case and (4) that would be effectively unreviewable if the appeal awaited final judgment in the CINA case. The Court of Appeals agreed with the Court of Special Appeals that the first, second, and fourth elements of the collateral order doctrine were easily satisfied, and that the third element presented the closest question. For the third element, the Court adopted the intermediate appellate court's analysis that a shelter care determination is separate from the CINA determination because it resolves a different issue – whether there is an impending risk of the child's health and safety in the home pending completion of the CINA proceeding – and the shelter care proceeding is separate from the proceedings that lead to the CINA decision.

With respect to the standard of proof that a juvenile court is to apply in determining whether to authorize continued temporary shelter care for a period of up to 30 days, the Court of Appeals held that a juvenile court must have reasonable grounds to find that the criteria in CJ §3-815(d) are satisfied. Given the statute's silence on the particular standard of proof to be applied at a shelter care hearing, the Court examined CJ §3-815(d) within its broader statutory context. An order to continue shelter care is preliminary, as the hearing is informal and happens in response to an emergency situation at the very outset of the CINA case, when evidence is typically incomplete. In addition, an order to continue shelter care is temporary, as it may last for no more than 30 days. The Court noted that Maryland law allows for decisions in similar emergency

contexts to be based on standards such as probable cause, reasonable grounds, or reasonable likelihood, and that most states have adopted such a standard for similar preliminary temporary orders in CINA cases. In comparison, the adjudicatory hearing is the full evidentiary hearing in a CINA case, at which the rules of evidence apply and by which time evidence has been more fully developed. It is not until this point that the juvenile court must assess whether the local department has met its burden of proving the allegations in the CINA petition by a preponderance of the evidence. Given the strong interest in protecting the child's best interests at the shelter care stage of a CINA case, as well as the fact that the deprivation of parental rights at this stage is temporary, pending the adjudication of the CINA petition, the Court concluded that reasonable grounds is the appropriate standard for a juvenile court to apply. Any continuation of shelter care beyond 30 days must be based upon findings made applying a preponderance standard at the adjudicatory stage of the CINA case.

Return to ToC

Gregory Johnson v. Maryland Department of Health, No. 71, September Term 2019, filed August 24, 2020. Opinion by Biran, J.

https://www.mdcourts.gov/data/opinions/coa/2020/71a19.pdf

STATUTORY INTERPRETATION – SEPARATION OF POWERS – HEALTH-GENERAL § 10-708(g)(3) – INVOLUNTARY MEDICATION OF PERSON FOUND INCOMPETENT TO STAND TRIAL

CONSTITUTIONAL LAW – PROCEDURAL DUE PROCESS – INVOLUNTARY MEDICATION OF PERSON FOUND INCOMPETENT TO STAND TRIAL

Facts:

Since approximately 2010, Gregory Johnson has believed that individuals are tracking, harassing, and stealing from him. On May 15, 2019, Mr. Johnson allegedly stabbed a neighbor in the stomach and torso. The neighbor was very seriously injured, requiring emergency surgery at the University of Maryland Shock Trauma Center. For approximately a year leading up to this incident, Mr. Johnson repeatedly accused the neighbor of breaking into his apartment to steal his clothes and television and to have sex with women.

Mr. Johnson was arrested and subsequently charged in the Circuit Court for Baltimore City with attempted murder and related offenses. On June 12, 2019, Mr. Johnson was transferred to Clifton T. Perkins Hospital Center ("Perkins"), a forensic psychiatric hospital in Howard County run by the Maryland Department of Health (the "Department"), for a pretrial competency evaluation. According to a treatment note concerning Mr. Johnson from July 3, 2019, Mr. Johnson "has some basic knowledge of [courtroom] proceedings, … but his paranoia gets in the way of him being competent to stand trial." A Perkins forensic psychiatrist provided a competency evaluation concerning Mr. Johnson to the criminal trial court. On July 17, 2019, the court found Mr. Johnson incompetent to stand trial ("IST"). The court committed Mr. Johnson to Perkins for treatment under section 3-106(c)(1)(i) of the Criminal Procedure Article ("CP") of the Maryland Code, thus necessarily finding that Mr. Johnson was a "danger to self or the person or property of another" because of a mental disorder.

Back at Perkins, Mr. Johnson incorporated the hospital and staff into his delusional system, accusing them of having surreptitiously given him psychotropic medications against his will in place of his blood pressure medication. As detailed in his August 1, 2019 treatment note, Mr. Johnson's treating psychiatrist, Dr. Adam Brown, discussed with Mr. Johnson the improbability of his persecutory beliefs, but Mr. Johnson remained steadfast in those beliefs and refused to consider that he might be exhibiting symptoms of mental illness, even when he had no other explanation to offer. Dr. Brown diagnosed Mr. Johnson with Unspecified Schizophrenia Spectrum and Other Psychotic Disorder. After Mr. Johnson was prescribed a nightly five

milligram dose of Haloperidol, an antipsychotic medication, he informed Perkins staff that he had no intention of taking the prescribed medication.

On August 14, 2019, the Department provided a written Notice of Clinical Review Panel to Mr. Johnson, informing him of the Department's intent to convene a clinical review panel under section 10-708 of the Health-General Article ("HG") of the Maryland Code. The notice stated that the panel would convene at Perkins at 1:00 p.m. on the following day, August 15, 2019, to determine "whether psychiatric medication(s) shall be given to you despite your refusal." The notice also advised Mr. Johnson of his various rights in connection with the panel.

The panel convened on August 15, 2019. Dr. Brown presented the argument as to why Mr. Johnson required the involuntary administration of medication, specifically Haloperidol and Benztropine (the latter being used to treat side effects of antipsychotic drugs such as Haloperidol). Dr. Brown provided the panel with Mr. Johnson's clinical history and a description of his current symptoms. Dr. Brown indicated that Mr. Johnson's psychiatric problems, including paranoia and persecutory delusional beliefs, are not likely to resolve without treatment with antipsychotic medication. Dr. Brown also opined that Mr. Johnson is not likely to be restored to competency to stand trial without antipsychotic medication. Based on Dr. Brown's presentation, the clinical review panel approved the involuntary administration of Haloperidol and Benztropine to Mr. Johnson for a period of up to 90 days.

Mr. Johnson invoked his right to a hearing before an Administrative Law Judge ("ALJ") from the Office of Administrative Hearings to review the clinical review panel's determination and requested that the State provide him with legal representation at no cost to him. On August 29, 2019, an attorney from Disability Rights Maryland represented Mr. Johnson at a *de novo* hearing before an ALJ. The Department presented its case primarily though the testimony of Dr. Brown, whom the ALJ accepted as an expert in general psychiatry and forensic psychiatry. At the conclusion of the hearing, the ALJ found that the Department had shown all the requirements for an order of involuntary medication under HG § 10-708. Among other things, the ALJ found that, without administration of the medications, Mr. Johnson was at a substantial risk of continued hospitalization due to remaining seriously mentally ill with no significant relief of, and for a significantly longer period time with, the mental health symptoms that: (1) resulted in Mr. Johnson being committed under Title 3 of the Criminal Procedure Article; and (2) would cause Mr. Johnson to be a danger to himself or others if released from the hospital. The ALJ did not find that Mr. Johnson was a danger to himself or others within Perkins without the prescribed medications.

The ALJ then considered whether the involuntary administration of medication to Mr. Johnson would violate Mr. Johnson's right to substantive due process, applying the four-part test set forth in *Sell v. United States*, 539 U.S. 166, 180 (2003), which the Court had adopted in *Allmond v. Department of Health & Mental Hygiene*, 448 Md. 592 (2017). The ALJ found by clear and convincing evidence that the State had shown: (1) it has an important interest in prosecuting Mr. Johnson for the serious crimes with which he is charged, including attempted murder; (2) involuntary medication of Mr. Johnson will further this State interest by enabling Mr. Johnson to become competent to stand trial; (3) involuntary medication is necessary to further this interest;

that is, there are no less intrusive alternatives to involuntary medication that would allow the State to bring Mr. Johnson to trial; and (4) administration of drugs is medically appropriate in light of Mr. Johnson's medical condition. Finally, citing *Allmond*, the ALJ found that restoring Mr. Johnson to competency provided an "overriding justification" for his involuntary medication. The ALJ issued a written order on August 29, 2019, approving the Department's administration of the prescribed antipsychotic medications to Mr. Johnson for up to 90 days. On judicial review, the Circuit Court for Howard County upheld the ALJ's order.

Held: Affirmed.

The Court of Appeals held that, under HG § 10-708, the Department is authorized to involuntarily medicate an individual for the purpose of restoring competency to stand trial, provided the Department complies with requirements of due process. The Court rejected Mr. Johnson's argument that the language of HG § 10-708(g) evinces the General Assembly's intent to give the Department authority to involuntarily medicate only those IST defendants who remain dangerous at the time of the proposed medication. The Court explained that Mr. Johnson's argument ignores the strong correlation between serious mental illness and a finding of IST. The Court stated that, in allowing the involuntary administration of medication to treat "mental illness symptoms" that "resulted in the individual being committed to a hospital" under CP Title 3, the General Assembly in HG §§ 10-708(g)(3)(i)(2) and (ii)(2) authorized the Department to treat not just the mental illness symptoms that led to the criminal trial court's finding of dangerousness, but also the symptoms of mental illness that led to the court's IST finding. Mr. Johnson's contrary reading of the statute would render §§ 10-708(g)(3)(i)(2) and (ii)(2) superfluous, and would lead to absurd and illogical results.

The Court also held that the General Assembly's placement of authority in the Department and an administrative law judge to decide whether to involuntarily medicate a person to restore competency is permissible under Maryland's separation of powers. Neither the Department nor an ALJ makes a legal determination regarding a defendant's competency, which is made only by the criminal trial court. The proceeding to determine whether to involuntarily medicate a person is distinct from the prior determination of incompetence to stand trial, and is not properly considered a critical stage of the criminal proceeding.

The Court of Appeals further held that application of the administrative process set forth in HG § 10-708 did not deprive Mr. Johnson of due process. While Mr. Johnson has a significant liberty interest in avoiding unwanted psychiatric medication, the safeguards provided in § 10-708 adequately mitigated the risk of erroneous deprivation of that interest. The Court explained that an ALJ is fully capable of analyzing the *Sell* factors. Here, the ALJ considered the *Sell* factors under a clear-and-convincing-evidence standard, which the Court adopted as the standard in Maryland. The Court explained that use of the clear-and-convincing-evidence standard in the *Sell* analysis lessens the risk of an erroneous deprivation of an individual's right to be free of unwanted medication. The Court also rejected Mr. Johnson's argument that he was improperly denied the assistance of his criminal trial counsel during the administrative process. If Mr.

Johnson or his counsel in this case wanted Mr. Johnson's criminal trial counsel to advise or otherwise assist in the administrative proceedings, there was no bar to criminal trial counsel doing so. In addition, the record provides no indication that Mr. Johnson was prejudiced as a result of the absence of his criminal trial counsel from the administrative proceedings. Because Mr. Johnson was afforded procedural and substantive due process, the Court affirmed the ALJ's order approving involuntary medication to restore Mr. Johnson's competence to stand trial.

Return to ToC

75-80 Properties, L.L.C., et al. v. RALE, Inc., et al., No. 59, September Term 2019, filed August 24, 2020. Opinion by Booth, J.

https://www.courts.state.md.us/data/opinions/coa/2020/59a19.pdf

STATUTORY INTERPRETATION – FREDERICK COUNTY ETHICS ORDINANCE APPLICABLE TO ETHICS VIOLATIONS DURING DEVELOPMENT APPROVAL PROCESS

DOCTRINE OF ZONING ESTOPPEL

Facts:

In November 2012, Petitioners Payne Investments, LLC and 75-80 Properties, LLC (collectively "the Developers") filed an application to rezone approximately 450 acres of land in Frederick County from its current agricultural designation to allow for a planned unit development (PUD) and the construction of approximately 1,500 residential units. In connection with the PUD, the developers requested that the county enter into a rights and responsibilities agreement ("DRRA") and an adequate public facilities ordinance letter of understanding ("APFO LOU") ("development approvals"). After several public hearings, the Board of County Commissioners voted 4-1 to approve the PUD and the development approvals. Notably, a letter from Frederick Area Committee for Transportation ("FACT") (a group of representatives of the business community and the local government who have training or expertise in transportation issues) was read into the record at the final meeting at which the vote occurred. What was not known until after the vote was that Commissioner C. Paul Smith had attended a FACT meeting prior to the vote, during which he stated his support for the rezoning and provided many of the substantive arguments that were included in the FACT letter.

After these facts came to light, Residents Against Landsdale Expansion ("RALE"), a local citizens opposition group, filed a petition for judicial review of the rezoning approval. In connection with its petition for judicial review, RALE requested that the circuit court remand the Developers' rezoning application to the newly constituted County Council, citing the Frederick County Ethics Statute, GP §§ 5-857 – 5-862. RALE argued that Commissioner Smith had engaged in undisclosed ex parte communications concerning the Developers' application, in violation of GP § 5-859(b), and that the circuit court was required to "remand the case to the governing body for reconsideration" under the requirements set forth in GP § 5-862(a)(2). The court ordered a remand to the County Council but did not dismiss the case.

On remand, after conducting public hearings into former Commissioner Smith's undisclosed ex parte communications and the facts and circumstances surrounding creation of the FACT letter, the County Council determined that it should review the Developers' rezoning application de novo. However, the Developers refused to participate in a de novo proceeding, contending that they had vested rights in the development approvals. Without the Developers present for

consideration of the application, the County was unable to proceed. The County Council requested that the court take the necessary action so that the County Council could rehear the Developers' application.

The circuit court issued an opinion and order vacating the development approvals. The circuit court found that Commissioner Smith had engaged in an undisclosed ex parte communication in violation of GP § 5-859(b). Accordingly, the circuit court determined that a remand to the County Council was appropriate. Because the Developer declined to participate in the County Council's remand proceeding, the circuit court vacated the prior development approvals, so that a de novo proceeding could commence. The Developers appealed.

The Court of Special Appeals affirmed the circuit court. In finding Commissioner Smith engaged in ex parte communications, the intermediate appellate court determined that by its plain terms, the statute requires the disclosure of ex parte communications and that the circuit court did not err in vacating the development approvals as part of its remand order.

Held: Affirmed.

The Court of Appeals held that under the plain language of the Frederick County Ethics Statute, GP § 5-862, the circuit court was not required to undertake a procedural due process analysis and to determine whether the violation of the statute violated an aggrieved party's right to notice and an opportunity to be heard. The Court explained that under the plain language of the statute, the circuit court is required to determine, within the context of a judicial review proceeding, whether a violation of the Ethics Statute occurred. If the circuit court makes a factual determination that a violation occurred, its work is done, and the court "shall" remand the matter to the Frederick County governing body for "reconsideration." On remand, the statute does not provide any parameters or limitations on the type of reconsideration proceeding the County Council must undertake. Accordingly, the Frederick County Council has the discretion to determine the scope of the reconsideration proceeding. The Council, within its authority, determined that it would conduct a de novo hearing on the Developers' application. The circuit court did not err in vacating the development approvals in connection with its remand order after the Developers refused to participate in the de novo reconsideration proceeding.

The Court declined to recognize or apply zoning estoppel under the facts of this case. Assuming (without deciding) that the Court recognizes the doctrine, the Developers had not demonstrated the elements of good faith and substantial reliance on the development approvals. Finally, The Court rejected the Developers' argument that the Ethics Statute is ambiguous.

Return to ToC

Darlene Barclay v. Sadie M. Castruccio, No. 30, September Term 2019, filed June 30, 2020. Opinion by Adkins, J.

Getty and Booth, JJ., concur.

https://mdcourts.gov/data/opinions/coa/2020/30a19.pdf

TORT – INTENTIONAL INTERFERENCE WITH AN INHERITANCE OR GIFT – CAUSE OF ACTION – TIMING OF INTERFERENCE

Facts:

Peter Castruccio never had children of his own, and he saw Darlene Barclay as his daughter. Darlene worked for the Castruccio's real estate business until Peter's death in 2013. Darlene was unable to see Peter in his last sixteen months because Sadie prevented Darlene from entering the family home, and allegedly refused to let Peter visit her at the office. When Peter passed away, Sadie made it clear that Darlene was not welcome at his funeral. Peter's last will and testament (the "Will") left, among other things, $800,000 to Darlene.

The Will provided that the remainder of the estate would pass to Sadie if she (a) survived Peter; (b) wrote and executed a will prior to Peter's death; and (c) filed that will with the Register of Wills in Anne Arundel County. If Sadie failed to meet all of the terms, Darlene became the residuary beneficiary.

Sadie did not fulfill the Will's final requirement before Peter's death. Darlene, therefore, inherited Peter's residuary estate. Sadie subsequently filed seven lawsuits to overturn Peter's estate plan, as well as an attempt to bring criminal charges against Darlene.

In 2017, Darlene filed a complaint alleging intentional interference with an expectancy, malicious use of process, and abuse of process in the Circuit Court for Anne Arundel County. Following a hearing, the circuit court granted Sadie's Motion to Dismiss. On appeal, Darlene only challenged the lower court's dismissal of the intentional interference with an expectancy claim. The Court of Special Appeals affirmed, holding that "the complaint cannot support a claim for interference with expected inheritance, even if we were to recognize one."

This Court granted Darlene's Petition for Writ of Certiorari for the following questions: (1) Did the Circuit Court err when it ruled that the cause of action for intentional interference with an inheritance is not a cause for action under Maryland law? (2) Did Petitioner adequately plead facts to succeed on a claim of intentional interference with an inheritance?

Held: Affirmed.

The Court of Appeals adopted the tort of intentional interference with an inheritance or gift, and held that the allegations in Darlene's complaint were insufficient to survive a motion to dismiss.

The Court of Appeals began by looking at Maryland's well-established use of the tort of interference with contractual or economic relations over the years. Additionally, the Court noted Darlene's use of Restatement (Third) of Torts § 19, which provides a tort for intentional interference with an inheritance. In analyzing whether to extend the tort of interference with contractual or economic relations, the Court looked at North Carolina, one of the first states to adopt inheritance interference as a cause of action. In *Bohannon v. Wachovia Bank & Tr. Co.*, 188 S.E. 890 (N.C. 1936), the North Carolina Supreme Court found a natural extension of intentional interference with economic relations for inheritance cases. The Court of Appeals noted that about half of the states recognize the tort of intentional interference with an inheritance or gift.

By looking at *Bohannon*'s persuasive logic, the Court saw no principled reason to deny liability for inheritance interference while also recognizing liability for other instances of wrongful interference with economic expectancy. This new tort allows litigants to recover from the bad actor instead of the estate, protecting the estate from paying fees for bad actors.

After establishing intentional interference with an inheritance or gift as a tort, the Court looked to Darlene's complaint. The alleged interference happened after Peter's death, and there were no relevant cases predicated strictly on wrongful acts occurring after the relationship had ended. In Darlene's case, the relationship ended upon Peter's death. By referencing the Restatement (Third) of Torts, the Court concluded that the interference alleged must be with an ongoing or prospective relationship. Darlene's cause of action lacked an ongoing or prospective relationship, so the Court affirmed dismissal of her claim.

Return to ToC

American Radiology Services, LLC, et al. v. Martin Reiss, No. 50, September Term 2019, file August 24, 2020. Opinion by Booth, J.

https://www.courts.state.md.us/data/opinions/coa/2020/50a19.pdf

MEDICAL MALPRACTICE – DEFENSE OF NON-PARTY MEDICAL NEGLIGENCE – REQUIREMENT OF EXPERT TESTIMONY

VERDICT SHEET – ERRONEOUS SUBMISSION OF ISSUE TO JURY – PREJUDICE

Facts:

This case involved a medical malpractice action brought by the plaintiff, Martin Reiss, against his radiologists. The plaintiff alleged that the radiologists failed to correctly interpret CT scans and failed to alert his oncologist of an alleged growth of a cancerous lymph node before it grew to a size where it could no longer be safely removed. The defendant radiologists denied liability. As part of their defense, the radiologists asserted as an alternative causation theory, that the negligence of Mr. Reiss's non-party physicians —the plaintiff's surgeon and the oncologists— caused Mr. Reiss's injuries.

Despite the defendant radiologists' assertion that the non-party physicians were negligent, at trial, they failed to produce any expert testimony to establish non-party physician negligence. The circuit court permitted the defendants to argue non-party negligence to the jury and permitted the inclusion of a question on the special verdict sheet, in which the jurors were instructed to consider whether the non-party physicians' "negligent act or acts" were a "substantial factor" in causing Mr. Reiss's injuries. The jurors found that the defendant radiologists were not negligent, but nonetheless proceeded to complete an aberrant verdict sheet affirmatively answering that the non-party physicians' negligence was a substantial factor in causing Mr. Reiss's injuries, and awarded Mr. Reiss $4.8 million in damages. After the jurors completed the aberrant verdict sheet, the court advised the jury that they should not have considered non-party negligence and damages if they found that the defendants were not liable. The jury was sent back to deliberate further with the same verdict sheet. This time, they found that the defendants were not liable, but did not award any damages to the plaintiff.

The Court of Special Appeals reversed and remanded the case for a new trial. The Court of Special Appeals held that expert testimony is required when a defendant asserts that a non-party physician was negligent as part of his defense. The intermediate appellate court also held that the trial judge erred in submitting the question of non-party medical negligence to the jury, and further held that the error was prejudicial.

Held: Affirmed.

The Court of Appeals held that, to generate a defense of non-party medical negligence, expert testimony is required to establish a breach of the standard of care by a non-party and to establish causation. With limited exceptions, expert testimony is required to establish medical negligence and causation because such complex issues are beyond the general knowledge and comprehension of layperson jurors. The requirement that medical negligence be established by expert testimony is tied to a party's burden of producing admissible evidence sufficient to generate an issue for the jury. The need for expert testimony is not alleviated because a defendant asserts non-party medical negligence as an alternative causation theory in connection with a general denial of liability. The Court did not hold or require that a defendant must call his or her own expert to generate the issue to prove that a non-party physician was the negligent person. Assuming the discovery rules are satisfied, a defendant may elicit standard of care testimony through cross-examination of a plaintiff's expert.

The Court held that the defendants' attempt to rely upon the general pronouncements of preferred treatment by the plaintiff's experts fell short of meeting the legal standard of establishing to a reasonable degree of medical probability that the non-party physicians' conduct fell below the standard of care and caused the plaintiff's injury.

The Court further held that with no expert testimony to establish medical negligence or causation, the circuit court erred in submitting the question of non-party medical negligence to the jury, and that the error was prejudicial. The jurors' confusion was obvious from the face of the aberrant verdict sheet—the juror awarded the plaintiff $4.8 million in damages, even though they found that the defendants were not negligent. The jury made a factual determination that non-party physicians were negligent despite there being no admissible evidence to establish physician negligence. The jury could not have reasonably been expected to put that conclusion out of their minds when the circuit court directed them to return to their deliberations and complete a second verdict sheet.

Return to ToC

COURT OF SPECIAL APPEALS

Edward Effion Hill v. State of Maryland, No. 1503, September Term 2019, filed August 26, 2020. Opinion by Beachley, J.

https://mdcourts.gov/data/opinions/cosa/2020/1503s19.pdf

APPELLATE JURISDICTION – PETITION FOR COMMITMENT FOR SUBSTANCE ABUSE TREATMENT – MULTIPLE FILINGS PERMITTED – FINAL JUDGMENT

EX POST FACTO CLAUSE – SIGNIFICANT RISK OF INCREASED PUNISHMENT BY PROLONGING TERM OF INCARCERATION

Facts:

In 2011, appellant Edward Hill received a twenty-five year sentence for first-degree assault, a concurrent twenty year sentence for use of a handgun in the commission of a crime of violence, and a concurrent fifteen year sentence for possession of a firearm by a person convicted of a crime of violence.

In December 2017, Hill petitioned the Circuit Court for Prince George's County pursuant to Health General ("HG") § 8-507 for commitment to the Department of Health for drug treatment. The court denied the petition, but suggested that Hill petition again in approximately one year.

On October 1, 2018, the General Assembly amended HG § 8-507 to prevent a court from granting a petition for commitment for a defendant convicted of a crime of violence until the defendant is eligible for parole.

In March 2019, Hill again petitioned for HG § 8-507 commitment. The court granted the petition, apparently unaware of the General Assembly's recent amendment. The Department of Health responded by informing the court that, due to the amendments to HG § 8-507, Hill could not be committed until he reached parole eligibility after May 10, 2024. Hill then filed a motion in the circuit court asking it to backdate its decision and grant his petition. Hill further argued that application of the amended HG § 8-507 violated the *Ex Post Facto* Clause of the United States Constitution. The court denied Hill's petition and held that there was no *ex post facto* violation.

Hill timely appealed, and the State moved to dismiss the appeal, arguing that this Court lacks jurisdiction pursuant to *Fuller v. State*, 397 Md. 372 (2007).

Held: Motion to dismiss denied. Judgment reversed.

In *Fuller*, the Court of Appeals held that the denial of an HG § 8-507 petition is not appealable because it is not a final judgment. Regarding final judgments, the *Fuller* Court held that because an inmate may file unlimited HG § 8-507 petitions, a single denial does not constitute an appealable final judgment.

Hill's circumstances are distinguishable from Fuller's due to the 2018 amendments to HG § 8-507. Whereas Fuller was permitted to file multiple HG § 8-507 petitions and was eligible for commitment at all times, the 2018 amendments to HG § 8-507 have effectively terminated Hill's ability to seek a commitment until he reaches parole eligibility in 2024. The court's denial of Hill's petition settled the rights of the parties and effectively foreclosed any relief to Hill. Accordingly, unlike in *Fuller*, Hill's denial constitutes a final judgment, and is therefore appealable to this Court.

Not only does this Court have jurisdiction to consider Hill's appeal, but the 2018 amendments to HG § 8-507 constitute an ex post facto violation when applied to Hill.

An ex post facto violation may occur where a change in the law creates a significant risk of increasing the punishment attached to a crime. Here, the 2018 amendments increased Hill's punishment; absent the 2018 amendments, Hill would have been released from prison and committed to the Department of Health in 2019, subject to appropriate probationary conditions. The 2018 amendments, however, now require Hill to serve his sentence until at least 2024. Because the amendments increase Hill's punishment, they violate the Ex Post Facto Clause of the United States Constitution.

Return to ToC

Raghbir Singh v. State of Maryland, No. 3365, September Term 2018, filed August 26, 2020. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2020/3365s18.pdf

CRIMINAL PROCEDURE – CONSTITUTIONAL RIGHT TO SPEEDY TRIAL

Facts:

On June 11, 2017, Jennifer Johnson died from an overdose of heroin and carfentanil, an analogue of the synthetic opioid fentanyl. Shortly before her death, Johnson had purchased heroin from Amy Bormel.

One day after Johnson's death, Bormel sold heroin to a confidential informant. Police arrested Raghbir Singh, suspecting that he was involved in the sale to the informant. Singh was charged with conspiracy to distribute a controlled dangerous substance and related offenses. The Circuit Court for Montgomery County suppressed the evidence obtained as a result of his arrest, concluding that police arrested him without probable cause. The State entered a nolle prosequi as to the charges against Singh.

On March 29, 2018, a Montgomery County grand jury indicted Singh for the murder (or manslaughter) of Johnson, distribution of heroin, and conspiracy to distribute heroin. At that time, Singh was incarcerated while serving a sentence on an unrelated conviction.

On December 20, 2018, the grand jury issued an eight-count superseding indictment, charging Singh with: second-degree murder and involuntary manslaughter; distribution of heroin, carfentanil, and a mixture of heroin and carfentanil; and conspiracy to distribute heroin, carfentanil, and a mixture of heroin and carfentanil. Two weeks later, the State entered a nolle prosequi as to the original indictment.

The circuit court scheduled a trial on the charges in the superseding indictment to begin on May 13, 2019. Singh moved to dismiss the charges, contending that the State had violated his constitutional right to a speedy trial. After a hearing, the circuit court denied his motion, reasoning that the delay in bringing Singh to trial did not begin until the date of the superseding indictment.

Singh entered a conditional plea of guilty on the charge of involuntary manslaughter, reserving his right to seek appellate review of the ruling on the speedy-trial motion. The court sentenced him to 10 years of incarceration, with all but six of those years suspended, followed by five years of supervised probation. Singh appealed.

Held: Case remanded without affirmance, reversal, or modification.

The Court of Special Appeals remanded the case to the circuit court for the purpose of reevaluating Singh's motion to dismiss based on an alleged violation of his right to a speedy trial.

To determine whether a particular defendant has been denied a speedy trial, courts examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): the length of delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant. The length of delay usually includes the entire period from the date of arrest or filing of formal charges until the date of trial.

To determine the length of delay in cases where the State brings additional charges in a superseding indictment, the Court of Special Appeals adopted the test set forth in *United States v. Handa*, 892 F.3d 95, 106-07 (1st Cir. 2018). As to any charge included in both the original indictment and the superseding indictment, the starting point is the date of the original indictment. As to any charge added in the superseding indictment, the starting point is the date of the superseding indictment unless (1) the additional charge is based on the same conduct previously charged and (2) the State could have, with diligence, brought the additional charge at the time of the original indictment.

The Court of Special Appeals remanded the case to the circuit court to determine whether the State could have, with diligence, brought the additional charges on the date of the original indictment. The Court directed the circuit court analyze the factors set forth in *Barker v. Wingo* as to the charges from the original indictment and as to the additional charges from the superseding indictment if the court finds that the State could have, with diligence, brought those charges at the time of the original indictment.

Return to ToC

Kimberly Bartenfelder v. Thomas Bartenfelder, No. 934, September Term 2018 & No. 2052, September Term 2019, filed July 2, 2020. Opinion by Gould, J.

https://mdcourts.gov/data/opinions/cosa/2020/0934s18.pdf

CORPORATIONS – CLOSE CORPORATIONS – STATUTORY RIGHT TO ELECT TO PURCHASE SHAREHOLDER STOCK IN A DISSOLUTION

Facts:

Kimberly Bartenfelder filed a complaint in the Circuit Court for Harford County against Thomas Bartenfelder and three companies that they jointly owned, accusing Mr. Bartenfelder of assorted wrongdoings in connection with the companies. Included in Count I of the complaint was a request for a receiver to be appointed to have power over the accounts and the operations of the companies.

Two of the companies were close corporations. Mr. Bartenfelder claimed that Ms. Bartenfelder's request for the appointment of a receiver triggered his right under § 4-603(a) of the Corporations and Associations Article ("CA") of the Maryland Code Annotated (1975, 2014 Repl. Vol.) to acquire her shares in the two close corporations. He further claimed that he validly elected to exercise that right. Ms. Bartenfelder contested that her request for the appointment of a receiver triggered the statutory buy-out right.

After a hearing, the court ruled that Ms. Bartenfelder's request for a receiver triggered Mr. Bartenfelder's statutory right to purchase Ms. Bartenfelder's stock, and it began the process for valuing her stock and consummating the transaction (the "First Order"). Ms. Bartenfelder filed a notice of appeal (the "First Appeal").

While the First Appeal was pending, the case proceeded in the circuit court with the appraisal process to determine the fair value of Ms. Bartenfelder's stock in the two close corporations. The appraisers determined the fair value of Ms. Bartenfelder's interest in one of the close corporations to be $560,000.00, and the fair value of Ms. Bartenfelder's interest in the other to be $0.00. Mr. Bartenfelder filed an unopposed motion to confirm the appraisers' reports and to establish the purchase price and a payment schedule. The circuit court granted Mr. Bartenfelder's motion and ordered him to pay to Ms. Bartenfelder two installments of $280,000, plus post-judgment interest, for her stock in the two close corporations (the "Second Order"). Ms. Bartenfelder noted an appeal from the Second Order (the "Second Appeal").

The Court of Special Appeals ("CSA") ordered the parties to show cause as to, *inter alia*, whether the two appeals should be consolidated. Both parties timely responded to the Show Cause Order, and the CSA consolidated the two appeals.

In his answer to the Show Cause Order, Mr. Bartenfelder contended that the Second Appeal was moot and should have been dismissed. Mr. Bartenfelder further contended that Ms. Bartenfelder failed to preserve her right to appeal.

Held: Reversed and remanded.

Motion to dismiss denied and the statutory buy-out right was not triggered by Ms. Bartenfelder's request for the appointment of a receiver. Reversed and remanded for proceedings consistent with this opinion.

The CSA concluded that the Second Appeal was not moot, and that Ms. Bartenfelder had preserved her rights. The CSA therefore denied Mr. Bartenfelder's motion to dismiss and held that there was no basis to dismiss the Second Appeal.

The CSA also concluded that even though there was no final judgment because neither the First Order nor the Second Order resolved all claims in the case, it had jurisdiction over the appeal pursuant to § 12-303(3)(v) of the Courts & Judicial Proceedings Article of the Maryland Code Annotated. This subsection allows for an interlocutory appeal of an order "[f]or the sale, conveyance, or delivery of real or personal property or payment of money. . . ." Stock is considered personal property, *Shenker v. Laureate Educ., Inc*., 411 Md. 317, 346 (2009) (citation omitted), and the Second Order constituted an order to compel the sale of Ms. Bartenfelder's stock to Mr. Bartenfelder.

As to the substantive issue on appeal, the CSA noted that CA § 4-603 was enacted to give a stockholder the ability to prevent the dissolution, or the appointment of a receiver, by electing to purchase the stock of the dissolution-seeking stockholder. *See* William G. Hall, Jr., *The New Maryland Close Corporation Law*, 27 Md. L. Rev. 341, 349 (1967). Analyzing the text of CA § 4-603 in conjunction with other relevant statutory provisions, the CSA concluded that this purchase right applies *only* in the context of a dissolution proceeding. The CSA therefore held that the purchase right under CA § 4-603(a) was not triggered by Ms. Bartenfelder's request for the appointment of a receiver, and Ms. Bartenfelder was not required to sell her stock to Mr. Bartenfelder.

Return to ToC

D'Angelo Wright v. State of Maryland, No. 733, September Term 2019, filed July 31, 2020. Opinion by Raker, J.

https://mdcourts.gov/data/opinions/cosa/2020/0733s19.pdf

CRIMINAL LAW – JURY INSTRUCTION – FLIGHT OR SURRENDER – FLIGHT OR REFUSAL TO FLEE

Facts:

Appellant, D'Angelo Wright, was indicted by the Grand Jury for Baltimore City for attempted first-degree murder and several other charges related to assault and use of a firearm. On April 11, 2017, Eric Tate, III, was playing a game of dice. The surveillance video from a nearby Dollar Shop showed an altercation, over a dispute about the game, between Mr. Tate and a man in a red hat, whom Tate claimed was appellant. The man lost his hat during the altercation and ran away. The video showed two men approach Mr. Tate, one of whom shot him. Mr. Tate testified initially that he did not know the identity of the assailant because he was shot from behind, but later he testified that it was appellant. The video showed the assailant flee after the shooting. The primary issue at trial was the identification of the person who shot Mr. Tate.

On appeal, appellant argued that the trial court erred in instructing the jury on flight, maintaining that it is error to so instruct where identification is the only issue in the case. Appellant also argued that the instruction given by the court implied to the jury that appellant was in fact the criminal actor and the one who shot Mr. Tate. The State argued that appellant did not concede at trial that the only issue was identification, but that, in any case, an instruction on flight, if satisfying the other evidentiary requirements, is appropriate. The State also argued that the text of the instruction gives no reason to believe that the jurors would have thought that the trial court was telling them that appellant was the person fleeing.

Held: Affirmed.

The Court of Special Appeals affirmed the judgments of conviction, holding that when the sole issue at trial is the identity of the criminal actor, a trial court may give a pattern jury instruction on flight provided that it does not imply that the identity issue is settled.

Return to ToC

Warren Schmidt v. State of Maryland, No. 2795, September Term 2018, filed April 7, 2020. Opinion by Gould, J.

https://www.mdcourts.gov/data/opinions/cosa/2020/2795s18.pdf

SENTENCING AND PUNISHMENT – PROBATION AND RELATED DISPOSITIONS – GROUNDS AND CONSIDERATIONS IN GENERAL

SENTENCING AND PUNISHMENT – RECONSIDERATION AND MODIFICATION OF SENTENCE – DISPOSITION

Facts:

In 2012, Appellant Warren Schmidt assaulted a nurse while in the throes of a schizophrenic episode. Before trial, Mr. Schmidt and the State agreed that Mr. Schmidt would plead guilty to first-degree assault, Mr. Schmidt would assert (and the State would not contest) a plea of not criminally responsible ("NCR"), and the State would agree to supervised conditional release. After the court entered an order effectuating this agreement, Mr. Schmidt filed a motion for modification under Maryland Rule 4-345, asking that the motion be held in abeyance pending a request for a hearing so that in the future he could seek to modify his disposition. The court accepted the motion for filing and agreed to hold the motion in abeyance.

In 2018, after Mr. Schmidt successfully completed his conditional release, he requested a hearing on his motion for modification and asked that the court transform his NCR finding into a probation before judgment ("PBJ") under Md. Code Ann., Crim. Proc. ("CP") § 6-220 (2001, 2018 Repl. Vol.). The circuit court declined, finding that CP § 6-220—which states that a court may, under certain circumstances, stay the entering of judgment and place a defendant on probation after a guilty verdict—did not apply to an NCR finding.

Held: Affirmed.

On appeal, Mr. Schmidt argued that the circuit court erred in holding that an NCR finding was not a guilty verdict or a "judgment" for purposes of CP § 6-220. Specifically, Mr. Schmidt contended that, contrary to the court's holding, a finding of guilt must precede an NCR finding, and that an NCR finding is thus a "judgment" under Maryland precedent and consequently falls within the scope of CP § 6-220.

The Court of Special Appeals disagreed. First, the Court held that CP § 6-220 applies to a judgment on a guilty finding or guilty plea that would have otherwise become final upon sentencing. Therefore, CP § 6-220 does not apply to a judgment that has already been made final

through a finding of not criminally responsible. As such, Mr. Schmidt was not eligible for a PBJ.

Moreover, the Court held that Md. Rule 4-345(e)(1), which grants a court the power to revise a sentence, does not apply to a finding of NCR. A finding of NCR is not a "sentence" as the term is contemplated by the Rule. Therefore, the Court held that Mr. Schmidt could not use that rule as a vehicle for transforming his NCR finding into a PBJ.

Return to ToC

Tonya Hayes v. State of Maryland, No. 500, September Term 2019; *Marquese Winston v. State of Maryland*, No. 556, September Term 2019, filed August 25, 2020. Opinion by Nazarian, J.

https://mdcourts.gov/data/opinions/cosa/2020/0500s19.pdf

CRIMINAL PROCEDURE – VOIR DIRE

CRIMINAL PROCEDURE – VOIR DIRE – PRESERVATION

Facts:

A popular bartender, Alex Wroblewski, was shot and killed at a Royal Farms store in Locust Point, where he had stopped on his way home after a shift. After a joint trial in the Circuit Court for Baltimore City, a jury found Tonya Hayes guilty of transporting a handgun in a vehicle and conspiracy to transport a handgun in a vehicle and Marquese Winston guilty of second-degree murder, use of a handgun in the commission of a crime of violence, transporting a handgun in a vehicle, conspiracy to transport a handgun in a vehicle, and carrying a handgun on his person.

At around 1:00 a.m. on November 14, 2017, after a shift, Mr. Wroblewski came in to a Royal Farms at which he was a regular. Several Royal Farms employees testified that Mr. Wroblewski was intoxicated. He purchased some food, and as he was leaving the store, he encountered a man and a woman, who followed him out after he left. A short while later, the employees heard a single gunshot, and they observed Mr. Wroblewski lying on the ground. One of them ran back in to the store and called 911. The employees identified Mr. Winston and Ms. Hayes as the man and woman who had followed Mr. Wroblewski out.

Ms. Hayes's adult son, Tivontre Gatling-Mouzon, who had pleaded guilty to conspiracy to commit armed robbery for his involvement in the incident, testified on behalf of the State. He was in the car with his younger sister while Ms. Hayes and Mr. Winston went into the store. He testified that Mr. Winston came back to the car, reached down by Mr. Mouzon's leg, and asked Mr. Mouzon to come with him around the corner. Mr. Mouzon followed Mr. Winston and saw what he described as a confrontation between Mr. Winston and Mr. Wroblewski. He saw the gun, began to head back to the car, and heard a shot. Mr. Winston entered the car, and Ms. Hayes drove them all back to Richmond, Virginia.

A surveillance video captured the incident as well.

Held: Convictions reversed and case remanded for further proceedings.

First, the Court held that, under *Kazadi v. State*, 467 Md. 1 (2020), a trial court must, on request, ask during *voir dire* whether any prospective jurors are unwilling or unable to comply with the jury instructions on the long-standing fundamental principles of the presumption of innocence, the State's burden of proof, and the defendant's right not to testify. The Court held that both defendants preserved the objection (although the question of whether Ms. Hayes successfully joined Mr. Winston's counsel's objection was close), and that therefore the circuit court abused its discretion when it refused to ask requested *voir dire* questions relating to those topics. The Court reversed the convictions and remanded for further proceedings.

Second, the Court held that the circuit court did not err in declining to give Ms. Hayes's proposed jury instruction on the duress / necessity defense. She argued that there was "some" evidence to support those instructions because it showed that Ms. Hayes was shaking and crying immediately after the shooting and that she had no reasonable opportunity to escape as Mr. Winston jumped into the car carrying a loaded handgun. But there was no evidence to support a finding that Mr. Winston had threatened her or that Ms. Hayes was in imminent danger of serious bodily harm or death if she did not drive the car and transport the handgun, and the circuit court therefore did not abuse its discretion in declining to give the requested duress / necessity defense jury instruction.

Third, the Court held that the circuit court did not err in giving a flight instruction as to Ms. Hayes. She had argued that the evidence did not support that her driving away from the scene suggested a consciousness of guilt because her actions could have been motivated by fear or by a desire to protect her children. The Court held that, while the evidence could have supported Ms. Hayes's version of events, it could also have supported Ms. Hayes's consciousness of guilt for the shooting and its aftermath.

Fourth, the Court held that the circuit court did not err in declining Mr. Winston's request to instruct the jury on imperfect self-defense because there was no evidence supporting that Mr. Winston ever had a genuine belief that he was in immediate and imminent danger.

Fifth, the Court held that Mr. Winston's right to a speedy trial was not violated as a result of the sixteen months that elapsed between his arrest and trial. The Court concluded that the length of the delay was not egregious under the circumstances, the reasons for the delays were not intended to undermine Mr. Winston's case, and Mr. Winston failed to identify any specific prejudice other than pre-trial incarceration.

Sixth, the Court held that the evidence was sufficient to support Ms. Hayes's convictions for transporting a handgun and conspiracy to transport a handgun. Ms. Hayes argued that she could not be guilty of "knowingly" transporting a handgun. But the Court concluded that on this record, even if she hadn't known about the gun initially, she indisputably knew that Mr. Winston had a gun after the shooting. Also, despite Ms. Hayes's shock and fear in the aftermath of the shooting, the evidence was sufficient to support the "meeting of the minds" necessary for the conspiracy conviction because Ms. Hayes drove away after Mr. Winston told her to drive.

Return to ToC

State of Maryland v. Charles Edward Wallace, No. 1414, September Term 2019, filed August 26, 2020, by Berger, J.

https://mdcourts.gov/data/opinions/cosa/2020/1414s19.pdf

POSTCONVICTION – INEFFECTIVE ASSISTANCE OF COUNSEL – FAILURE TO OBJECT TO ERRONEOUS JURY INSTRUCTION – REMEDY – CONCESSION TO ADMISSION OF BAD ACTS EVIDENCE – FAILURE TO OBJECT TO STATEMENTS REGARDING PETITIONER'S PRIOR VIOLENT CRIME CONVICTION – CUMULATIVE EFFECT OF COUNSEL'S ERRORS

Facts:

Following a jury trial in the Circuit Court for Anne Arundel County, Charles Edward Wallace was convicted of attempted second-degree murder, first- and second-degree assault, use of a handgun in the commission of a crime of violence, possession of a regulated firearm after previously having been convicted of a crime of violence, and reckless endangerment. The underlying offense occurred on September 25, 2010. The victim went to purchase drugs but told Wallace that he did not want to buy drugs from Wallace because Wallace was selling fake drugs. Wallace became aggressive and argumentative and then shot the victim in the arm and the chest.

Wallace's convictions were affirmed on direct appeal, after which Wallace filed a postconviction petition alleging ineffective assistance of counsel. In his petition, Wallace alleged that his trial counsel had been ineffective in three ways: (1) by failing to object to an erroneous jury instruction for attempted second-degree murder; (2) by conceding the admissibility of "other crimes" evidence which, purportedly, was inadmissible; and (3) by failing to object to the trial court's erroneous and prejudicial statements to the jury, when explaining the firearm possession offense, that Wallace previously had been convicted of a crime of violence.

Following a hearing, the postconviction court issued a memorandum opinion and order granting Wallace's petition and awarding him a new trial. The postconviction court determined that trial counsel's failure to object to the concededly erroneous attempted second-degree murder jury instruction constituted deficient performance which caused prejudice to Wallace. In a footnote elsewhere in its opinion, it further declared, without explanation, that the proper remedy for that ineffective assistance was a new trial on all charges. With respect to trial counsel's concession that purportedly inadmissible "other bad acts" evidence was inadmissible, the postconviction court, in its memorandum opinion, found that, although the evidence was inadmissible, trial counsel's concession could be deemed trial strategy, and it declined to find deficient performance. With respect to trial counsel's failure to object to the trial court's statements informing the jury that Wallace previously had been convicted of a "crime of violence," the postconviction court found deficient performance but no prejudice "solely based on this particular deficient performance." The postconviction court further found that the "combination

of the three allegations" raised in Wallace's petition amounted to ineffective assistance of counsel.

The State filed a motion for reconsideration, which was denied. In addition to denying the State's motion for reconsideration, the postconviction court further declared, among other things, that the postconviction court's prior opinion "shall be clarified to reflect the Court's finding that trial counsel's failure to object to the prior bad acts evidence was an error and amounts to deficient performance;" and that the postconviction court's prior opinion "shall be clarified to reflect the Court's finding that the cumulative effect of trial counsel's errors clearly resulted in denial of effective assistance of counsel[.]"

The State subsequently filed an application for leave to appeal. Although the State conceded that trial counsel had been ineffective in failing to object to the erroneous attempted second-degree murder jury instruction, it contended that Wallace was entitled only to vacatur of that conviction and that the postconviction court erred in granting a new trial as to all outstanding charges. The State's application for leave to appeal was granted by the Court of Special Appeals.

Held: Order of the Circuit Court for Anne Arundel County Vacated. Case Remanded with Instructions to Vacate Wallace's Conviction of Attempted Second-Degree Murder but Otherwise Deny his Petition for Postconviction Relief.

The Court of Special Appeals first considered the claim of ineffective assistance of counsel premised upon trial counsel's failure to object to the trial court's erroneous instruction on attempted murder in the second-degree. The parties agreed that the trial court erred when it instructed the jury that "in order to convict the Defendant of attempted second-degree murder, the State must prove . . . the Defendant attempted to cause the death of [the victim] and that the Defendant engaged in the deadly conduct either with the intent to **kill or with the intent to inflict such serious bodily harm that death would be the likely result**." (Emphasis added.) The Court of Special Appeals explained that to prove attempted second-degree murder, the State must show that the defendant acted with the specific intent to murder, not merely the intent to cause such serious bodily harm that death would be the likely result.

The Court observed that the only disagreement regarding this claim was the appropriate remedy. The Court considered that, in addition to attempted second-degree murder, Wallace was convicted of first- and second-degree assault, use of a handgun in the commission of a crime of violence, possession of a regulated firearm after previously having been convicted of a disqualifying crime, and reckless endangerment. The Court reasoned that the erroneous jury instruction, to which trial counsel had failed to object, permitted a conviction upon a lesser proof of the specific intent to commit attempted second-degree murder but had no effect whatsoever on the convictions of possession of a regulated firearm after previously having been convicted of a disqualifying crime and reckless endangerment.

The Court of Special Appeals then considered whether Wallace's convictions for first- and second-degree assault and use of a handgun in the commission of a crime of violence could have been tainted by the erroneous instruction for attempted second-degree murder. The Court reasoned that the theory of second-degree assault presented to the jury was battery, which required the State to prove that the defendant caused offensive physical contact or physical harm to the victim, that the contact resulted from the defendant's intentional or reckless act and was not accidental, and that the victim did not consent to the contact. The Court concluded that it was clear that the jury's finding that Wallace had, at least, the intent to inflict such grievous bodily harm that death would be the likely result was more than enough to prove that it found the intent to commit battery, whether of the intentional or unintentional variety. For the first-degree assault offense, the Court explained that the jury could have found either or both modes of first-degree assault, but the jury's finding that Wallace had, at least, the intent to inflict such serious bodily harm that death would be the likely result was more than enough to establish either mode of first-degree assault. The Court similarly concluded that the use of a handgun in the commission of a crime of violence offense was not tainted by the erroneous instruction because of the three predicate crimes -- attempted second-degree murder, first-degree assault, and second-degree assault -- only the offense of attempted second-degree murder was tainted by the erroneous jury instruction. Because only the offense of attempted second-degree murder was tainted by the erroneous jury instruction, the Court of Special Appeals concluded that the appropriate remedy was vacatur of the second-degree attempted murder conviction only.

The Court of Special Appeals then considered Wallace's assertion that trial counsel's failure to challenge the admissibility of the victim's testimony about Wallace having slashed the victim's tires approximately six years prior to the shooting was deficient. The Court concluded that trial counsel did not perform deficiently in conceding the admissibility of this testimony because the testimony was potentially relevant to Wallace's motive as well as to the identity of the shooter.

The next allegation of error considered by the Court was Wallace's claim that that trial counsel had been ineffective in failing to object when the trial court informed the jury that Wallace had previously had been convicted of a crime of violence in the context of its instructions regarding the firearm offenses. The Court determined that the failure to object constituted deficient performance, but further held that Wallace was unable to demonstrate how he was prejudiced by this deficiency.

Finally, the Court of Special Appeals addressed the trial court's conclusion that Wallace was entitled to postconviction relief due to the cumulative effect of trial counsel's errors. The Court concluded that there were only two clear-cut instances of deficient performance: trial counsel's failure to object to the defective jury instruction for attempted second-degree murder and trial counsel's failure to object to the misstatements of the stipulation, which erroneously informed the jury that Wallace previously had been convicted of a crime of violence. The prejudicial effect of the first deficiency was limited to the attempted second-degree murder offense, and the second deficiency resulted in no prejudice. Accordingly, the Court of Special Appeals held that Wallace was entitled to vacatur of the attempted second-degree murder conviction only.

Return to ToC

E.N. v. T.R., No. 1231, September Term 2019, filed August 25, 2020. Opinion by Beachley, J.

https://mdcourts.gov/data/opinions/cosa/2020/1231s19.pdf

DE FACTO PARENTHOOD – TWO LEGAL PARENTS – CONSENT BY ONE LEGAL PARENT

Facts:

Appellant E.N. ("Mother") and D.D. ("Father") are the biological parents of two minor children who were born in 2005 and 2007. The four lived together until 2009, when Father was incarcerated. Thereafter, the children lived with Mother and the maternal grandmother.

In late 2013, Father was released from prison, and began a relationship with appellee T.R. Father and T.R. moved in together, and the children began visiting them "almost every weekend." In 2015, Father and T.R. purchased a home together, and later that year the children moved in, partially because they wanted to spend more time with Father, but also because Mother needed a break "to get herself right."

The children continued to live with Father and T.R. until late 2017, when Father was again imprisoned. Despite Father's incarceration, the children continued to live with T.R.

In November 2017, while T.R. and the children were visiting with the children's paternal grandparents, Mother appeared and demanded their return. Police diffused the situation, and the children returned to T.R.'s home the following day. Mother neither contacted nor saw the children again until September 2018.

In February 2018, T.R. filed a complaint for custody, essentially alleging that she was the children's "*de facto*" parent because the children had lived with her for the preceding three years, and had almost no contact with Mother during that time. Mother filed a counter-complaint requesting sole legal and physical custody. From prison, Father filed a document purporting to give T.R. "full custody" of the children.

Following a hearing, the circuit court concluded that T.R. was the *de facto* parent of the children even though it expressly found that Mother did not consent to or foster the relationship with T.R. The court granted T.R. physical custody with joint legal custody to T.R. and Mother. Mother then noted this timely appeal in which she claims that the circuit court erred because both legal parents must consent to and foster a parent-like relationship to create a *de facto* parent relationship with a third party.

Held: Affirmed.

Although technically an issue of first impression in Maryland, the Court of Appeals has implicitly held that one parent may consent to the creation of a *de facto* parent relationship. In *Conover v. Conover*, 450 Md. 51 (2016), a same-sex couple case, the Court of Appeals for the first time recognized *de facto* parenthood in Maryland. Although there was only one biological parent in *Conover*, the Court of Appeals's holding in its most literal sense recognized that one legal parent's conduct could create a *de facto* parent relationship with a third party.

In her concurrence in *Conover*, Judge Watts interpreted the majority opinion to hold that "only one parent is needed to consent to and foster a parent-like relationship with the would-be *de facto* parent." *Id*. at 87-88. She expressed concern, however, that in cases with two biological parents, one biological parent could unilaterally consent to and foster a *de facto* parent relationship without any knowledge by the other legal parent. In this case, we adopt Judge Watts's interpretation of the majority opinion in *Conover*.

Additionally, recognition of T.R.'s *de facto* parenthood will not infringe on Mother's fundamental rights because once T.R. achieved *de facto* parent status, she had co-equal fundamental constitutional rights with Mother.

Finally, the circuit court did not abuse its discretion in awarding T.R. primary physical custody where the court found that T.R. is a "wonderful mother," that Mother's request for custody seemed insincere, that the children felt that Mother abandoned them and instead viewed T.R. as their "real" mother, and that T.R. is an integral part of the children's lives.

Return to ToC

Baltimore Police Department v. James Brooks, et al., Nos. 979, 980, 982, 983, 985, 988, 989, 991, 992, 993, & 994, September Term 2019, filed July 30, 2020. Opinion by Harrell, J.

https://www.mdcourts.gov/data/opinions/cosa/2020/0979s19.pdf

PUBLIC SAFETY – LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS – FILING ADMINISTRATIVE CHARGES

Facts:

During the years 2017-18, the Baltimore Police Department received complaints regarding fifteen individual officers. In each case, the related complaint involved a violation of internal BPD practice, procedure, or policy. As a result, each of the fifteen officers against whom complaints were lodged were entered into the administrative disciplinary process.

The BPD's process for filing administrative charges against an officer once it received a complaint was to begin the investigation by the Office of Professional Responsibility. Once the OPR determines whether the allegations of misconduct are sustained, the charges are passed on to the Disciplinary Review Committee. The DRC meets and determines what discipline it feels is appropriate for the involved officer.

The Police Commissioner's designee is present at the DRC meeting and would either approve orally the recommended discipline or amend it. The officers were not invited to participate at the meeting. A member of the DRC and the designee would then sign and date a form document that was provided later to the charged officers.

This process must adhere to Md. Code, Pub. Safety § 3-106, a section of the Law Enforcement Officers' Bill of Rights, which requires that "a law enforcement agency may not bring administrative charges against a law enforcement officer unless the agency files the charges within one year after the act that gives rise to the charges comes to the attention of the appropriate agency official."

In each of the fifteen cases, the DRC meeting was held prior to the expiration of the one-year limitation period, but the form document was not signed and dated until after the expiration date.

The officers brought suit in the Circuit Court for Baltimore County to foreclose the adjudication of the charges brought against them because the limitation period had run. The BPD argued that its internal policy considered the charges filed as of the DRC meeting when the commissioner's designee approves verbally the charges. The officers argued that signing-off on the form document was the act of filing required by the LEOBR.

The Circuit Court ruled that the act of filing requires some level of formality that is not achieved through verbal affirmation at a closed-doors meeting. The Circuit Court dismissed the charges as the one-year limitation period had run in all fifteen cases.

The BPD filed this timely appeal.

Held: Affirmed.

The Court of Special Appeals determined that, while a signature on a particular document is not required by LEOBR, the relevant section does require some level of formality in regard to filing that is not achieved through verbal approval at a closed-doors meeting. The Court held that the relevant section of the LEOBR was passed to protect officers against having charges held over their head indefinitely, an outcome which the BPD's claimed policy does not address.

The Court concluded further that the BPD had, despite its claims otherwise, adopted the policy that the commissioner's designee's signing-off on the form document was in practice the act of filing, rather than the earlier verbal approval. Determining that the BPD's relevant policy was ambiguous as to its plain meaning regarding the filing of charges and that affidavits filed by the BPD claiming the charges were considered filed upon verbal approval were not convincing, the Court held that the BPD's practice was to require the signed form document to proceed with charges against an officer. Thus, signing-off on the form document was the final act of charging. As the signatures all were affixed after the one-year limitation period expired, the charges were properly dismissed.

The Court held also that the BPD's interpretation of the statutory language was not due deference often afforded an administrative body's interpretation and application of statues governing its activities. The BPD's relevant written policy (as far as it goes) was published in 2017 and the interpretation for which the BPD asks for deference on did not appear to undergo a sound reasoning process, appearing for the first time in the record in the affidavits for this case. Thus, the BPD's interpretation was due minimal deference.

Return to ToC

ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated August 13, 2020, the resignation of

EDWARD JAMES ADKINS

from the further practice of law in this State has been accepted.

*

This is to certify that the name of

CHARLES DARROW YATES

has been replaced upon the register of attorneys in this State as of August 13, 2020

*

By an Order of the Court of Appeals dated August 14, 2020, the following attorney has been indefinitely suspended by consent:

JAMES JOSEPH FOURNIER

*

By an Opinion and Order of the Court of Appeals dated August 21, 2020, the following attorney has been disbarred:

JOHN XANDER YI

*

By an Order of the Court of Appeals dated August 24, 2020, the following attorney has been suspended for 180 days:

CHARLES ALEX MURRAY

*

Return to ToC

*

By an Opinion and Order of the Court of Appeals dated August 26, 2020, the following attorney has been disbarred:

DAVID ELLIOTT FRANK

*

Return to ToC

UNREPORTED OPINIONS

The full text of Court of Special Appeals unreported opinions can be found online:

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
2627 LLC v. The Valley's Planning Council	1838 **	August 12, 2020
A		
Aaron, Jared v. State	0555	August 6, 2020
Agbara, Emmanuel v. Okoji	0613	August 5, 2020
Allen, Reginald v. State	1088	August 17, 2020
Angel Enterprises v. Talbot Cnty.	2842 *	August 20, 2020
Ausby, Aaron J. v. State	1091	August 12, 2020
B		
Barton, Willie Lee v. Md. Parole Commission	1696	August 6, 2020
Bathula, Alexander v. Crabbs	3208 *	August 6, 2020
Berryman, Latania v. Kettles	3049 *	August 10, 2020
Betskoff, Kevin C. v. Standard Guaranty Insurance	0358	August 4, 2020
Billing, Anne Kelly v. Moulsdale	3287 *	August 6, 2020
Bolden, Jermaine T. v. Lash	0262	August 6, 2020
Bradley, Tavon v. State	0879	August 7, 2020
Brutus 630 v. Harford Cnty.	0283	August 12, 2020
Burton, Christopher v. Intelligence & Investigative Div.	0038	August 25, 2020
C		
Capers, Edward v. State	0947	August 25, 2020
Carrington, Duran v. State	3183 *	August 4, 2020
Cartrette, Evelyn Faye v. RA Brooklyn Park	0172	August 3, 2020
Cartwright, Lundes Anthony v. State	1584	August 5, 2020
Chery, Martin Moise v. State	0351	August 24, 2020
Cincinnati Insurance Co. v. Shuster	0834	August 11, 2020
Coulibaly, Tiemoko v. Ward	0819	August 5, 2020

† September Term 2020
September Term 2019
* September Term 2018
** September Term 2017

Crawford, Herbert v. State	0944	August 5, 2020
Crowder, Derrick Jerome v. State	2403 *	August 10, 2020
E		
Eddins, Travis v. State	0869	August 10, 2020
English, Eric Lamar v. Brock & Scott, PLLC	0623	August 4, 2020
F		
Floyd, Shennika v. State	0880	August 25, 2020
G		
Garcia-Ortiz, Carlos v. State	0054	August 18, 2020
Geiger, Karl Daniel v. Backstage, LLC	0754	August 17, 2020
Ghazzaoui, Ramez v. Chelle	2829 *	August 17, 2020
Gibson, Terrell v. State	3428 *	August 20, 2020
Giles-Simmons, Sharon v. Hyundai Motor Amer.	0734	August 17, 2020
Glover, Kevin Tyrone v. State	0629	August 10, 2020
Grady Management v. Birru	3162 *	August 28, 2020
Green, Richard Andre v. State	3155 *	August 27, 2020
H		
Hamilton, Dennis v. Rottenberg	3472 *	August 28, 2020
Harris, Jermaine v. Wicomico Cnty. State's Attorney	0673	August 5, 2020
Henry, Janel Antwain v. State	1005	August 12, 2020
Holdclaw, Andre v. Sec. of Pub. Safety & Corr. Servs.	0261 †	August 7, 2020
I		
In re: S.B.	1253	August 20, 2020
In the Matter of Patel	2178 **	August 17, 2020
J		
Jackson, Dyron, Jr. v. State	1481	August 19, 2020
Jacobs, Russell Kurt, Jr. v. State	0510	August 20, 2020
JMD Services v. LMG 17	0810	August 5, 2020
Johnson, Anthony v. Sec. of Pub. Safety & Corr. Servs.	0260 †	August 7, 2020
Jordan, Wayne A. v. State	1107	August 3, 2020
K		
Kamal, Anwar v. Specialized Loan Servicing	0705	August 7, 2020
Khalatbari, Vida v. Bonetti	0914	August 4, 2020
Kiknadze, Nevlud v. Elis	1166 *	August 24, 2020

† September Term 2020
September Term 2019
* September Term 2018
** September Term 2017

Kim, In Sung v. State	1535	August 31, 2020
King, Robert v. Neall	3487 *	August 27, 2020
L		
Latimer, Anthony Leon v. State	1129 *	August 4, 2020
Leon-Ramos, Bayron v. State	3007 *	August 19, 2020
Lewis, Shaila E. Settles v. Lewis	3482 *	August 20, 2020
M		
Makundi, Flavia E. v. O'Sullivan	0479	August 6, 2020
McDonald, Malik-Ali Shamol v. State	0806 *	August 21, 2020
McKnight, Gregory Deron v. State	3394 *	August 4, 2020
Merriweather Post Bus. Trust v. It's My Amphitheater	2594 *	August 6, 2020
Mullen, Robert J., Jr. v. Capital Holdings 200	0898 *	August 20, 2020
Murphy, Cedric Ryan v. State	3291 *	August 4, 2020
Murphy, Cedric Ryan v. State	3290 *	August 4, 2020
N		
Nicholson, Terrell Markee v. State	1118	August 5, 2020
O		
Olarinde, Adepoju v. Korede	2405	August 20, 2020
P		
Paterakis, Roula v. Paterakis	3066 *	August 20, 2020
Pettit, Samuel Thomas, Jr. v. State	1047	August 20, 2020
R		
Randolph, Tyrell Davon v. State	0937	August 11, 2020
Rodriguez, Luis Bonilla v. State	3430 *	August 12, 2020
S		
Sample, Hayes v. State	1715 **	August 31, 2020
Schaffer, Gregory F. v. Schaffer	2970 *	August 18, 2020
Scott, Geoffrey v. State	0362	August 11, 2020
Spartan Business & Tech. Servs. v. IOU Central	0749	August 3, 2020
Spartan Business & Tech. Servs. v. IOU Central	1737	August 3, 2020
T		
Thomas, Brandon v. Savage	0548	August 6, 2020
Thurston, Richard Allen v. State	0182	August 3, 2020

† September Term 2020
September Term 2019
* September Term 2018
** September Term 2017

Return to ToC

Tillman, Jamerson v. Prince George's Cnty. Police Dept.	0818	August 5, 2020
Traettino, Angela v. Traettino	2271 *	August 11, 2020
Traverso, Jaime v. State	0370 †	August 7, 2020

V

Volunteer Fire & Rescue Ass'n v. Prince George's Cnty.	0614	August 4, 2020

W

Warfield, Brandon v. State	0998	August 31, 2020
Wartman, Kenneth Albert, III v. State	0051	August 17, 2020
Wilson Homes v. Putnam	0730	August 19, 2020
Wilson, Brittany Rena v. State	0107	August 27, 2020
Wozar, Mark Robert Michael v. Wozar	2286	August 7, 2020

Z

Zesinger, Andrew Peter v. Law Offices of Donaldson	2808 *	August 13, 2020

† September Term 2020
September Term 2019
* September Term 2018
** September Term 2017