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COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Thereen Dian Daley, Misc. Docket AG No. 69, September Term 2019, filed October 22, 2021. Opinion by Getty, C.J.

<https://mdcourts.gov/data/opinions/coa/2021/69a19ag.pdf>

ATTORNEY DISCIPLINE – SANCTION – INDEFINITE SUSPENSION

Facts:

On February 21, 2020, the Attorney Grievance Commission of Maryland (the “Commission”), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action (“Petition”) in this Court alleging that Ms. Daley violated the Maryland Attorneys’ Rules of Professional Conduct (“MARPC”). The Petition alleged that Ms. Daley violated the following Rules: 19-304.1 (Truthfulness in Statements to Others); 19-304.2 (Communications with Persons Represented by an Attorney); 19-304.4 (Respect for Rights of Third Persons); 19-308.1 (Bar Admission and Disciplinary Matters); and 19-308.4 (Misconduct).

The Court of Appeals transmitted the matter to the Circuit Court for Howard County on February 25, 2020 for the hearing judge to make findings of fact and conclusions of law. Ms. Daley was served with the Petition, Writ of Summons issued by the circuit court on May 18, 2020. Ms. Daley submitted a Motion to Postpone her matter, which the hearing judge denied on August 12, 2020. On August 19, 2020, Bar Counsel served Ms. Daley with its First Request for Admission of Facts and Genuineness of Documents. Ms. Daley did not file an answer to Bar Counsel’s request. On September 18, 2020, the hearing judge entered an Order of Default against Ms. Daley. On March 3, 2021, the hearing judge heard arguments from Ms. Daley’s attorney regarding her motion to dismiss and to vacate the default judgment. The hearing judge denied the motion and continued with the hearing as scheduled. Ms. Daley did not attend the hearing or present mitigating evidence.

The hearing judge adopted Bar Counsel’s Proposed Findings of Fact and Conclusions of Law and found the following facts: Ms. Daley, while representing her husband, Mr. Valentine, made numerous false statements to opposing counsel and to Mr. Valentine’s mortgage holder. Ms.

Daley also communicated directly with a person whom she knew to be represented and refused to communicate through that person's attorney. Ms. Daley failed to timely respond to Bar Counsel's lawful requests for information, and in her tardy responses, she made intentional misrepresentations to Bar Counsel.

The hearing judge concluded that Ms. Daley had violated MARPC 4.1, 4.2, 8.1, and 8.4.

Held: Indefinite Suspension

The Court of Appeals concluded that Ms. Daley violated the following MARPC: 4.1 (Truthfulness in Statements to Others); 4.2 (Communications with Persons Represented by an Attorney); 8.1 (Bar Admissions and Disciplinary Matters); and 8.4 (Misconduct). The Court overruled Ms. Daley's exceptions to the hearing judge's findings of fact and conclusions of law concerning improper service of process and her ability to refute Bar Counsel's allegations.

The Court indefinitely suspended Ms. Daley based on the violations she committed. Throughout Ms. Daley's representation of her husband, she engaged in an overarching and widespread pattern of misconduct by making intentional misrepresentations to opposing counsel and Bar Counsel, directly contacting the opposing party despite knowing they were represented by legal counsel, failing to timely respond throughout the fact-finding process, and conducting herself in a way that was prejudicial to the administration of justice. The Court also found the existence of numerous aggravating factors: (1) multiple offenses; (2) bad faith obstruction of the disciplinary proceedings; (3) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and (4) refusal to acknowledge the wrongful nature of her conduct. Further, there existed no mitigating factors to warrant a lesser sanction, as the Court relied on Bar Counsel's uncontested evidence alone in determining Ms. Daley's sanction. As a result, Ms. Daley was suspended indefinitely from the practice of law in Maryland.

COURT OF SPECIAL APPEALS

Marcella Holloman v. Marilyn Mosby, No. 1976, September Term 2019, filed October 28, 2021. Opinion by Nazarian, J.

<https://www.mdcourts.gov/data/opinions/cosa/2021/1976s19.pdf>

COURTS AND JUDICIAL PROCEEDINGS – GRAND JURY INVESTIGATION – PRIVATE RIGHT OF ACTION

GRAND JURY INVESTIGATION – COMMON LAW – RIGHT TO APPROACH GRAND JURY

Facts:

Marcella Holloman’s son, Maurice Donald Johnson, was shot and killed by police at their home in August 2012. Ever since, Ms. Holloman has sought to have the shooting investigated and charges brought against the involved officers. After the State’s Attorney declined to bring charges, Ms. Holloman filed a petition for a writ of mandamus in the Circuit Court for Baltimore City that sought a grand jury investigation into the shooting. After several court filings, documents contained in the court file were forwarded to the Baltimore City grand jury, which declined to indict. A later motion for relief and to present additional materials to the grand jury was denied as moot.

Ms. Holloman appealed, arguing that two different sources of law that, she says, entitle her to present her case to a grand jury. The *first* is Section 8-417(b) of the Courts and Judicial Proceedings Article of the Maryland Code (“CJ”), which states that “[i]n addition to any other duty imposed by law, each grand jury shall carry out an investigation if a judge of the [Baltimore City] circuit court directs.” The *second* is a common law right to seek permission to appear before a grand jury.

Held: Reversed and remanded.

The Court of Special Appeals reversed and remanded with directions that the circuit court allow Ms. Holloman to compile materials she wishes to submit and to forward those materials to the grand jury. The Court held, *first*, that CJ § 8-417(b) does not create a private right of action for a citizen of Baltimore City to compel a judge to approach a grand jury. *Second*, the Court held that Ms. Holloman has the right at common law to ask the grand jury to initiate an investigation and to prepare the materials and information for submission to the grand jury in support of that request. The Court reasoned that the grand jury's power to investigate matters not presented by the State's Attorney's office is a check on the State's Attorney's broad discretion when determining which criminal actions to prosecute. Consistent with *Brack v. Wells*, 184 Md. 86 (1944); *Sibley v. Doe*, 227 Md. App. 645 (2016), a private citizen has the right to ask the grand jury whether it will conduct an investigation into criminal allegations. This right is not limitless, though. The citizen must first exhaust all other possible remedies, and is not entitled to present evidence to the grand jury personally, but they can compile the documents they wish presented to and considered by the grand jury, subject to reasonable volume and scope limitations.

Everett Smith v. State of Maryland, No. 1273, September Term 2020, filed October 27, 2021. Opinion by Berger, J.

<https://mdcourts.gov/data/opinions/cosa/2021/1273s20.pdf>

INHERENT PREJUDICE – RIGHT TO FAIR TRIAL – “THIN BLUE LINE” FLAG FACE MASK – CLOSING ARGUMENT – ORATORICAL CONCEIT OR FLOURISH AND METAPHORICAL ALLUSIONS

Facts:

Everett Smith was charged with second-degree child abuse and second-degree assault following an altercation between Smith and his teenage daughter. Prior to trial, defense counsel objected to the “thin blue line” flag face mask that courtroom bailiffs were wearing and asked the trial court to prohibit bailiffs from wearing “thin blue line” flag masks in the courtroom. The trial court denied defense counsel’s request, and the trial proceeded.

The teenage victim testified at trial about the altercation during which Smith had assaulted her. During closing argument, the prosecutor argued that the victim “had to reveal mental health diagnoses” and “withstand an intense cross-examination.” The prosecutor continued: “Imagine, 15 years old. And she’s been dragged through the mud today. And none of that matters.” Defense counsel noted an objection, which was overruled by the trial court. The prosecutor continued: “None of that matters. What matters are the things that are relevant, things that relate to the crimes charged. Her life, her history, her mental health, that is not on trial here. It is for you to evaluate certainly the testimony and things related to that. But do not disregard what she has to say simply because she’s had a rough life.”

The jury found Smith guilty of second-degree child abuse and second-degree assault. Smith noted a timely appeal.

Held: Affirmed.

The Court of Special Appeals first addressed Smith’s assertion that by allowing a bailiff to wear a “thin blue line” flag face mask in the courtroom, the trial court deprived Smith of his right to due process and to a fair trial. Smith asserted that the wearing of the face mask was inherently prejudicial and did not contend that he experienced actual prejudice as a result of the bailiff’s mask.

The Court of Special Appeals considered practices that have been held to be inherently prejudicial, including the compelling of an accused to stand trial before a jury while dressed in identifiable prison clothing and the use of physical restraints visible to the jury absent a specific

finding that the restraints were justified by a specific state interest. The Court observed that inherent prejudice is difficult to establish. The Court considered that the presence of identifiable law enforcement officers has not been held to be inherently prejudicial. The Court of Special Appeals emphasized that the chief feature that distinguishes the use of identifiable security officers from courtroom practices held to be inherently prejudicial is the wider range of inferences that a juror might reasonably draw from the officers' presence.

Turning to the specific allegation of inherent prejudice at hand, the Court of Special Appeals observed that the "thin blue line" flag symbol does not have one generally accepted meaning but is interpreted as meaning a variety of different things. Some view the "thin blue line" flag symbol as a racist symbol antithetical to the Black Lives Matter Movement, while others perceive the symbol to be a general symbol of support of law enforcement or pride in policing. The Court held that a wide range of inferences could have been drawn from the bailiff's "thin blue line" flag face mask. The Court emphasized that the context in which the symbol was displayed must be considered. Specifically, the "thin blue line" flag symbol appeared on the face mask of a uniformed and armed law enforcement officer. The Court considered that reasonable jurors may have inferred that a law enforcement officer displaying this symbol might be doing so in order to display his pride in being a law enforcement officer. Because jurors may have drawn a wide range of inferences from the bailiff's face mask, the Court of Special Appeals rejected Smith's inherent prejudice argument and held that the wearing of a "thin blue line" flag face mask by a uniformed courtroom bailiff did not constitute inherent prejudice that deprived Smith of his right to a fair trial.

Smith further asserted on appeal that the circuit court abused its discretion by overruling Smith's objection during the prosecutor's closing argument. The Court of Special Appeals determined that the prosecutor's comment that the victim had been "dragged through the mud" was not an attack on the defense but an attempt to encourage the jurors to consider the victim's perspective when assessing the credibility of her testimony. The Court held that the comment was within the scope of permissible closing argument. The Court further held that the prosecutor's reference to issues that "did not matter" was also acceptable because the prosecutor was attempting to encourage the jury to focus on the victim's specific testimony rather than mental health matters that the prosecutor asserted were irrelevant to the credibility determination. The Court further emphasized that the trial court had instructed the jury that "closing arguments are not evidence." Accordingly, the Court of Special Appeals concluded that the trial court did not commit reversible error by overruling defense counsel's objection to the prosecutor's closing arguments.

Juan Pablo B. v. State of Maryland, No. 2614, September Term 2019, filed September 29, 2021. Opinion by Leahy, J.

<https://mdcourts.gov/data/opinions/cosa/2021/2614s19.pdf>

CRIMINAL LAW – SENTENCING – ILLEGAL SENTENCE – DETERMINING ILLEGALITY

Facts:

Juan Pablo B. (“Appellant”) and Irma D. lived in a one-bedroom apartment with their daughter, V. Both parents worked, and Appellant frequently was home alone with V. V. testified at trial that Appellant began to sexually abuse her before she reached the age of ten. The first incident that she could recall happened when she was on the couch, watching television, and Appellant ran his hands along her thighs and up to her “private parts.” According to V., Appellant would abuse her in this manner “multiple times when” they “were home alone.” On another occasion, Appellant approached V. from behind and fondled her breasts. At other times, Appellant would “touch” her. V. then testified that Appellant raped her one evening. Eventually, when she was approximately 15 years old, V. informed other family members of the abuse. V.’s mother then notified the police.

A four-count indictment was returned in the Circuit Court for Prince George’s County charging Appellant with sexual abuse of a minor family member, rape in the second degree, sexual offense in the third degree, and assault in the second degree. The matter proceeded to a two-day jury trial, during which only V. and her mother testified. The case was then submitted to the jury.

After the jury had been deliberating approximately 90 minutes, it sent a note to the court, stating: “We agree on 3 counts, but can’t agree on one. How do we proceed?” The court informed the parties that it received the note. The prosecutor suggested that the court should simply advise the jury to continue its deliberations, and defense counsel concurred. The court disagreed, observing that the jury was “looking for guidance with respect to their current position of being deadlocked on one count.” Over the parties’ objections, the court gave a modified *Allen* instruction, which closely tracked Maryland Criminal Pattern Jury Instruction 2:01.

The jury found Appellant guilty on three counts—sexual abuse of a minor, third-degree sexual offense, and second-degree assault. The court imposed concurrent sentences totaling 25 years’ imprisonment, with all but 20 years suspended. During the sentencing hearing, the court articulated various “conditions of probation,” including lifetime sex offender registration, but failed to announce that Appellant was to serve a period of probation, and for how long, following his release from prison. Appellant noted an appeal.

Held: Remanded for resentencing; judgments otherwise affirmed.

The Court of Special Appeals reached two holdings. First, the Court held that the circuit court did not abuse its discretion in giving the modified *Allen* instruction. The jury had expressly requested the court's help and indicated that it was deadlocked on one count. The Court concluded that the trial judge acted reasonably by delivering the instruction when the jury was deadlocked on one of the counts. The fact that the jury had only been deliberating approximately 90 minutes before alerting the court to its deadlock on one count was not alarming, given that there were only two witnesses who testified at trial.

Second, the Court determined that the omission, however unintentional, of the duration of probation from the defendant's sentence (despite its inclusion in the subsequent probation order), resulted in an illegal sentence of probation. The Court explained that a sentencing court's authority to correct a mistake in its announcement of a sentence is circumscribed by Maryland Rule 4-345(c). The Rule allows a court to correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Maryland Rule 4-346(a) governs the imposition of probation. The plain language of Maryland Rule 4-346(a) is mandatory. The Rule expressly requires a sentencing court to advise the defendant of the conditions and duration of probation in open court when imposing a period of probation. Accordingly, under Maryland Rules 4-345(c) and 4-346(a), the court could not correct its mistake (whether knowingly or inadvertently) without doing so on the record in open court while Appellant was still present.

In analyzing whether these rules violations resulted in an illegal sentence, the Court concluded that generally, but not always, sentences that are imposed in violation of a mandatory Maryland Rule are inherently illegal. Because the duration of probation is an integral part of the sentence itself, the defendant was entitled to rely upon the sentencing court's oral announcement of the sentence. The sentencing court failed to announce that Appellant was to serve a period of probation, and for how long, following his release from prison. Accordingly, among other things, the Court remanded with directions to strike the five-year sentence of probation from Appellant's sentence; identify the conditions of lifetime sexual offender supervision imposed at the sentencing hearing; and correct the commitment record, probation order, and docket entries.

ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated August 16, 2021, the following attorney has been indefinitely suspended by consent, effective October 1, 2021:

RUTH MARGUERITE MARIE SCHAUB

*

This is to certify that

GEORGE ZACHARIAS PETROS

has been replaced upon the register of attorneys in this State as of October 5, 2021.

*

By an Order of the Court of Appeals dated September 7, 2021, the following attorney has been indefinitely suspended by consent, effective October 7, 2021:

ERIC RENARD TYRONE

*

By an Opinion and Order of the Court of Appeals dated October 22, 2021, the following attorney has been disbarred:

JOSEPH IGNATIUS CASSILLY

*

By an Opinion and Order of the Court of Appeals dated October 22, 2021, the following attorney has been indefinitely suspended:

THEREEN DIAN DALEY

*

*

By an Order of the Court of Appeals dated October 22, 2021, the following attorney has been
disbarred:

JON EDWARD SHIELDS

*

By an Order of the Court of Appeals dated October 25, 2021, the following attorney has been
suspended for sixty days:

TERRANCE JAMES SHANAHAN

*

By an Order of the Court of Appeals dated October 28, 2021, the following attorney has been
indefinitely suspended by consent:

SYLVIA LORRAINE ADAMS

*

JUDICIAL APPOINTMENTS

*

On August 12, 2021, the Governor announced the appointment of **DELEGATE MICHAEL EDWARD MALONE** to the Circuit Court for Anne Arundel County. Judge Malone was sworn in on October 1, 2021 and fills the vacancy created by the elevation of the Hon. Laura S. Ripken to the Court of Special Appeals.

*

On September 1, 2021, the Governor announced the appointment of **CAROL ANN CODERRE** to the Circuit Court for Prince George's County. Judge Coderre was sworn in on October 8, 2021 and fills the vacancy created by the retirement of the Hon. Beverly J. Woodard.

*

On September 30, 2021, the Governor announced the appointment of **GARRET PETER GLENNON** to the Circuit Court for Baltimore County. Judge Glennon was sworn in on Tuesday, October 26, 2021 and fills the vacancy created by the retirement of the Hon. C. Carey Deeley, Jr.

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UNREPORTED OPINIONS

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

<https://mdcourts.gov/appellate/unreportedopinions>

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