Circuit Court for Howard County
Case No: C-13-CR-19-000614

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 104

September Term, 2023

FRANCK NGANDE

v.

STATE OF MARYLAND

Shaw,
Kehoe, S.,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: September 12, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Howard County found appellant, Franck Ngande, guilty on the charges of first-degree murder of Taiwan Dorsey, attempted first-degree murder of Elijah Rucker, and related charges. At sentencing, the circuit court imposed an aggregate sentence of life without parole, a consecutive life sentence with the possibility of parole, and a consecutive forty-year sentence. Noting a timely appeal, he seeks review of the following question:

> Did the trial court abuse its discretion and violate [a]ppellant's right of allocution including the right to present information in mitigation of punishment when the court refused to postpone sentencing for preparation of counsel or the appearance and testimony of [his] parents on his behalf?

Answering appellant's question in the negative, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 20, 2019, appellant contacted Rucker and inquired about buying marijuana from him. According to Rucker, their interaction escalated when he informed appellant that he did not have marijuana to sell to appellant. The State introduced a recorded Snapchat video call between Rucker and appellant, during which appellant and Rucker agreed to meet and fight. Dorsey was present with Rucker during the video call. Appellant told Rucker to view his Snapchat story prior to the meeting, which showed video clips of appellant "jumping around with a gun[.]"

Rucker and Dorsey met appellant outside appellant's apartment building on Little Patuxent Parkway in Columbia. As the two of them approached appellant, appellant called to someone he called "Steve" to help him. Rucker "rushed" appellant and "started punching

him." When Steve tried to join in the fight, Dorsey began fighting Steve. When the fighting ended, appellant went to his apartment. While he was gone, Rucker took cash from appellant's car. Afterwards, Rucker and Dorsey began walking up a hill to leave, but when shots were fired in their direction, they started running. Rucker heard four shots fired when he and Dorsey were running away. Dorsey, who was shot in the back,[1] was transported to Shock Trauma at the University of Maryland Medical Center, where, as a result of his wounds, he died. The day after the shooting, appellant sent Rucker Snapchat messages indicating his involvement in the shooting.

At the conclusion of a six-day trial, appellant was convicted of first-degree murder, attempted first-degree murder, possession of a rifle after being convicted of a disqualifying crime, two counts of use of a firearm in the commission of a crime of violence, and reckless endangerment.

DISCUSSION

Appellant contends that the circuit court abused its discretion and violated his right to allocution when it denied his request to postpone his sentencing because his counsel was unprepared and his parents were not there to testify on his behalf. In addition, he asserts that comments by the court when denying his motion for a continuance demonstrated the court's unfairness and partiality.

The State responds that the denial of appellant's request for a continuance was not

[1] Appellant's brief states that Rucker was shot in the leg. There is no reference in the record to Rucker being shot, but the State did present evidence that a bullet had struck the house of Shankara Muthuswamy to support the reckless endangerment charge.

an abuse of its discretion because defense counsel[2] had had ample time to prepare for the sentencing after appellant's presentence investigation (PSI) had been completed. According to the State, defense counsel's mistaken belief as to the purpose of the hearing and their lack of preparation did not warrant a continuance. In addition, it argues the court's factual mistake related to appellant's parents' absence from the hearing was not so egregious that it undermined the court's impartiality.

We review a denial of a request to postpone sentencing for abuse of discretion. *Mainor v. State*, 475 Md. 487, 499 (2021). Absent such an abuse, we will not disturb the decision. *Id*. An abuse of discretion is a decision that is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id*. (quotation marks and citations omitted). In other words, an abuse of discretion occurs when "'no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.'" *Cagle v. State*, 462 Md. 67, 75 (2018) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

Following entry of the verdict on October 24, 2022, defense counsel asked the circuit court to postpone sentencing until a PSI could be completed, and the court agreed. The prosecutor suggested sentencing be tentatively scheduled for December 22, 2022, with the understanding that, if the PSI was not completed or the parties were not ready for disposition at that time, the sentencing would be postponed. The court, doubting that the

[2] Appellant was represented by two attorneys from the same office. When we refer to defense counsel, we are referring to either or both attorneys.

PSI would be ready by December 22, 2022, suggested the parties appear for a status conference to agree on a date for sentencing on December 22, 2022.[3]

On December 14, 2022, the Division of Probation and Parole ("DPP") requested that appellant's sentencing be postponed for thirty to forty-five days to permit it to complete the PSI. The State, on December 19, 2022, filed a "Consent Motion to Postpone Disposition and Status Hearings," for the completion of the PSI. That motion stated: "Should the [c]ourt grant this [m]otion, the parties have agreed to set the disposition hearing for March 3, 2023, a date that was approved by Calendar Management." In addition, the court was asked to reschedule the "status hearing" in appellant's other pending case for that same date.[4] The circuit court granted the motion and postponed both "the disposition hearing" in this case and the "status hearing" in the pending case to March 3, 2023.

DPP filed the PSI on February 23, 2023. On March 2, 2023, defense counsel filed a motion to postpone sentencing to April 21, 2023. The motion stated that defense counsel, having "mistakenly believed" the March 3, 2023 hearing was a scheduling conference to pick dates for sentencing, was not "prepared to effectively argue" for an appropriate sentence and was "still gathering material to present at sentencing[.]" After the State deferred to the court on the motion, the court denied the motion.

[3] Appellant was awaiting trial in a separate criminal case. Defense counsel, who also represented appellant in that case, asked the court to schedule a status conference in that case for December 22, 2022.

[4] The certificate of service indicated that a copy of the consent motion had been "sent electronically" to one of the two attorneys representing appellant.

At the hearing on March 3, 2023, defense counsel renewed the request for a postponement. They again indicated being unprepared for sentencing because of the scheduling mistake for which they recognized there was "no excuse[,]" and they had been unable to access the PSI. In addition, appellant had been advised that the purpose of the hearing was a status conference and sentencing issues had not been discussed with him. According to defense counsel, collecting materials for sentencing was difficult because appellant's parents, who they believed would "want to be here" for sentencing, lived out of the country.

The State recognized that defense counsel had made an "honest mistake," but it argued other factors weighed against a postponement. In particular, it asserted that Dorsey's parents, sister, cousins, aunts, uncles, and friends, who were all present, were "ready for closure." In the State's view, defense counsel, who had represented appellant for years, would be able to "adequately represent his interest and [allocute] for him."

As reflected in the following colloquy, the court denied a postponement, but it granted a recess for defense counsel to review the PSI and confer with appellant:

> THE COURT: Well I have to deny the request for a postponement. We'll proceed to sentencing today. You have the PSI already, you have the State's [m]otion in support of sentencing and I have other matters I can attend to while you're going over those things with [appellant] downstairs. But we will go to sentencing today. As you know . . . I am rapidly approaching retirement.
>
> [DEFENSE COUNSEL[5]]: Absolutely, Your Honor, thank you.
>
> THE COURT: And I have limited days available and March 21st is not one of them.

[5] Both defense counsels participated in the exchange with the court.

[DEFENSE COUNSEL]: That's fine Your Honor, thank you.

* * *

[DEFENSE COUNSEL]: I don't feel I will be, as much as I appreciate the time we're given and will do my very best, I had intended to write our own memorandum in lieu of sentence in which I do in every case, Federal and State, if it's a major case, to give to the [c]ourt plus other information concerning background and everything. So I will do my best of course on his behalf but wanted to put on the record as I did in the motion that uh, it's not a good situation for his benefit. I appreciate Your Honor –

THE COURT: And if you want to write something out down [in] the library down there, that would be fine.

[DEFENSE COUNSEL]: It's in our motion.

THE COURT: Yes, sir.

[DEFENSE COUNSEL]: Your Honor, we're not going to file any formally at this time, we'll just present oral arguments.

[DEFENSE COUNSEL]: Yeah, I just wanted to make sure because I could obviously see problems but I would normally, would have my own memorandum, have the family if they would plan to come, say something and letters from wherever.

THE COURT: Yeah.

[DEFENSE COUNSEL]: None of which I'll be able to do. But I'll, we'll do our best.

THE COURT: The family also heard that sentencing would be today after he was convicted. If they wanted to be here, I'm sure they could have been here. Thank you very much, see you in a little bit.

[DEFENSE COUNSEL]: Thank you, Your Honor.

When the court reconvened, defense counsel indicated that they had reviewed the PSI, the State's sentencing memorandum, and the State's notice to seek a sentence of life imprisonment without parole. The State presented its recommendation of an aggregate

sentence of life without the possibility of parole, plus a life sentence, plus forty years, to run consecutively.

After Dorsey's family members addressed the court, defense counsel argued mitigation and for a sentence less than life without parole. Defense counsel pointed out that appellant was twenty-five years old, was born in Cameroon, and that his family had immigrated to England and Ireland before coming to Philadelphia in 2004. Appellant had lived in Texas from 2005 and 2010 and in Maryland from 2010 to 2013 before he returned to Cameroon. He later moved to Brussels. After obtaining his GED, he returned to Maryland in 2017 to attend Howard County Community College. There, he was taking economics and finance classes while also working two jobs.

Noting appellant had had "a stable family life," defense counsel stated the many moves had obviously "contributed to issues in his life." As did the murder of his brother in 2014. Afterwards, appellant began "self-medicating" quite heavily with marijuana, and, at the time of this offense, he was selling marijuana "to support his own marijuana habit." In addition, he had been diagnosed with schizophrenia, major depressive disorder, and hyper insomnia. All of this, defense counsel argued, were "lingering effects" from his brother's death and the "severe impact" it had on his life. According to defense counsel, what had happened here was a fight that got "out of hand" and not a lying-in-wait murder or murder for hire situation.

In allocution, appellant addressed the court and apologized to the Dorsey family.

The court sentenced appellant to life without parole for first-degree murder, a consecutive sentence of life for attempted first-degree murder, a consecutive fifteen-year

sentence for possession of a rifle after having been convicted of a crime of violence, concurrent twenty-year sentences for each count of use of a firearm in the commission of a crime of violence, and five years consecutive for reckless endangerment.

Appellant contends the court's denial of the motion to postpone sentencing deprived him of the opportunity "to make a statement that was a product of preparation and diligence by trial counsel." And that the "court compounded its error" by denying him the "right to present information in mitigation of punishment through his parents."

He relies on *Mainor*, *supra*, to support his argument that the court's refusal to postpone sentencing was an abuse of its discretion. In *Mainor*, the jury returned its verdict on the second day of a case that was schedule for a one-day trial. 475 Md. at 507 n.4. After polling the jury, the trial court indicated its intent to proceed to sentencing. *Id*. at 496. The trial court denied Mainor's request to postpone sentencing to permit a long-form PSI to be completed and to allow Mainor's mother, who was unable to attend the trial on the second day due to work obligations, to testify on his behalf. *Id*. at 496-97.

In denying the postponement, the trial court in *Mainor* commented that a postponement was not justified because there was "no need" for a long-form PSI and that Mainor's mother's absence indicated that being there was '"obviously not that important to her."' *Id*. In response, defense counsel stated that Mainor's mother was not present because she was working, and, due to Mainor's young age, counsel would prefer to have her present. *Id*. at 497. The trial judge answered '"[s]he could be here, [defense counsel], you know that."' *Id*.

On appeal, our Supreme Court held that the court's denial of Mainor's request for a postponement was an abuse of discretion. *Id*. at 502. Emphasizing that the trial court had "ignored important guiding principles when determining Mr. Mainor's sentence[,]" the Court explained that a PSI based on his age and criminal record "irrefutably would have benefited the sentencing process." *Id*. at 507, 509. And even if it was not an abuse of discretion to refuse to order a PSI, the Court stated that "no reasonable person could determine that *both* the PSI and Mr. Mainor's mother's testimony were unnecessary while still adhering to the guiding principle requiring a defendant's sentence to be personally tailored and individualized[.]" *Id*. at 513.

The Court concluded that transitioning from verdict to sentencing with no advance notice and denying Mainor's request for a postponement "eliminated [his] opportunity to present mitigating information" in the form of the PSI or his mother's testimony. *Id*. at 502. Moreover, the trial court's comments regarding Mainor's mother's absence were indisputably "dismissive and disrespectful[,]" and in combination with the trial court's other comments, "could cause a reasonable person to question" the trial court's impartiality. *Id*. at 518.

Appellant's case is distinguishable from *Mainor*. The verdict in appellant's case did not proceed directly to sentencing, and sentencing awaited the completion of the PSI. Here, a status conference was held two months after the trial and actual sentencing was scheduled later by consent for March 3, 2023, more than two months after the status conference and about four months after the verdict. Unlike in *Mainor*, time was provided for the completion of the PSI, and there was ample time from the consent scheduling of sentencing

for preparation and to gather mitigation information and witness testimony. In short, the case now before us and *Mainor* are quite different.

In addition, we are not persuaded that the court denied appellant an opportunity to present mitigation information in violation of Md. Rule 4-342(e). Even absent testimony from appellant's parents, the sentencing court had a great deal of personal information before it to assist it in tailoring an individualized sentence for appellant. *See Jennings v. State*, 339 Md. 675, 683 (1995) ("[A] defendant's sentence should be individualized to fit the offender and not merely the crime[,]" based upon "both the facts and circumstances of the crime itself and the background of the individual convicted of committing the crime." (quotation marks and citations omitted)). In addition to the PSI, defense counsel, who have represented appellant for some time, presented information to the court about his family life, his educational and employment history, and the effect his brother's murder had had on his mental health and his substance use. *See Kelly v. State*, 195 Md. App. 403, 439 (2010) (holding that it was not an abuse of discretion or a denial of the right to mitigation in denial of a postponement of sentencing where defense counsel presented the court with information regarding defendant's background, work and educational history, and family involvement).

Moreover, the record expressly reflects the court's consideration of appellant's family involvement and their support, even though they were not present:

> [Appellant] comes from apparently, seemingly from a very nice family. A family where he enjoyed powerful relationships with his parents, his parents are in the medical profession in the Netherlands, I think it is. And they've been very, very helpful to him in terms of providing support and encouragement. Not just in terms of this case.

> So it is particularly tragic that [appellant] comes from circumstances where it would seem that he had significant opportunities to do something meaningful with his life.

The sentencing court clearly had information about appellant's family, his background, his brother's murder, his substance abuse, and his personal struggles, including mental health issues. The record reflects the sentencing court's express consideration of the evidence presented through the PSI and by defense counsel's mitigation argument. For these reasons, we are not persuaded that the sentencing court's denial of the postponement request denied appellant a fair opportunity to present mitigation factors to the court.

Appellant also argues that, in denying the postponement, the sentencing court "impermissibly prioritized" the victims' family member's need to return on another day and the trial court's need "to find time on its calendar before retirement[.]" Again, we are not persuaded. The court calendar, the schedules of witnesses, victims, and others, the reason for appellant's counsel's failure to prepare, and appellant's right to allocution were all factors to be considered and balanced in a postponement decision.

In *Abeokuto v. State*, 391 Md. 289, 329 (2006), the date of a three-day death-penalty sentencing was set with input from the prosecutor and defense counsel. Nine days prior to sentencing, defense counsel filed a motion for a continuance, citing difficulty in "focus[ing] the necessary attention on the case with its troubling facts" and the lack of preparation of mitigation witnesses due to a miscommunication between the witness and defense counsel. *Id*. The circuit court, noting the case's '"long and troubled history'" and that the dates for the hearing had been set with the approval of the trial court, the assignment

office, and witnesses, denied the motion for postponement. *Id.* at 329-30. Because the conceded reasons for the continuance "'boil[ed] down to absence of preparation[,]"' our Supreme Court affirmed. *Id.* at 330. It held that denying the postponement was not an abuse of the court's discretion because "sound reasons existed for the decision." *Id*. *See also Stone v. State*, 178 Md. App. 428, 451-52 (2008) (holding no abuse of discretion in the circuit court's denial of defendant's request for a postponement made on the day of sentencing for the purpose of entering the appearance of private counsel and allowing that counsel to prepare and arrange for additional witness testimony where there had been ample time between trial and sentencing for defendant to hire new counsel and gather witnesses), *abrogated on other grounds as recognized in Kelly v. State*, 208 Md. App. 218, 248 (2012).

Here, issues or problems that a postponement, in light of the court calendar, could cause to victims and witnesses, and the court's upcoming retirement were not improper considerations in determining whether to grant the postponement. Therefore, it was not an abuse of discretion for the court to consider them when ruling on the request for postponement.

Stating that the judge's comments regarding the parents' absence were "eerily similar to those at issue in *Mainor*," appellant further contends that the comments could cause a reasonable person to question the judge's impartiality and the fairness of the sentence. The focus of this contention is the comment that "[appellant's] family also heard that sentencing would be today after he was convicted. If they wanted to be here, I'm sure

they could have been here." That comment was not factually correct because it assumed that the parents had "heard that sentencing would be today after he was convicted."

Without question, appellant had a fundamental right "to not only fairness and impartiality from a sentencing judge, but also to the appearance of an impartial and disinterested sentencing judge[.]" *Mainor*, 475 Md. at 517 (citing *Jackson v. State*, 364 Md. 192, 206-07 (2001)). "'If a judge's comments during sentencing could cause a reasonable person to question the impartiality of the judge, then the defendant has been deprived of due process and the judge has abused his or her discretion.'" *Id.* (emphasis omitted) (quoting *Jackson*, 364 Md. at 207). In determining whether a trial court was influenced by impermissible considerations during sentencing, the offending comments must be viewed "'in the context of the entire sentencing proceeding[.]'" *Sharp v. State*, 446 Md. 669, 689 (2016) (quoting *Abdul-Maleek v. State*, 426 Md. 59, 73 (2012)).

The *Mainor* Court characterized the trial court's comment regarding the absence of Mainor's mother to be "dismissive and disrespectful," but it did not base the due process violation on those comments standing alone. 475 Md. at 518. Rather, it was those comments "in combination" with other comments and actions that "could cause a reasonable person to question [its] impartiality" and for which the Court determined Mainor was entitled to a re-sentencing hearing. *Id*.

Here, the court's comment that appellant's parents could have been at sentencing had they wanted to be there was based either on a mistaken belief that the sentencing date was set immediately after the verdict or sometime later for a date of which they were aware. Either would be incorrect. The actual sentencing date was determined months later with

consent of defense counsel, the prosecutor, and the court. As previously indicated, the time between when the date was set and the actual sentencing date was sufficient time to notify appellant's parents of the date, and to arrange for them, and any other witnesses, to appear at sentencing. In short, we are not persuaded that that single mistaken comment by the court, viewed in the context of the entire sentencing proceeding, would cause a reasonable person to infer that the court was motivated by improper considerations during sentencing. Therefore, we hold that the court did not abuse its discretion or deny appellant the right to present mitigation evidence when it denied appellant's request to postpone sentencing.

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