

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 0561 & 1503

September Term, 2014

IN RE: JOSEPH J.

Zarnoch,
Leahy,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: September 17, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Joseph J., was adjudicated a delinquent by the Circuit Court for Prince George's County. At the disposition hearing, the court (Lamasney, J.) waived court costs. At the review hearing one month later, the court (Dawson, J.) imposed court costs. There was no objection at that time. Here, Joseph J. challenges the costs order. Because the issue was not preserved, we shall affirm.

Joseph J., on February 20, 2014, pled involved to the unauthorized use of a motor vehicle, an offense, if committed by an adult, in violation of Maryland Code (2002, 2012 Repl. Vol.), § 7-105 of the Criminal Law Article. The Department of Juvenile Services (DJS) Social History Investigation and Recommendation, prepared for his March 24, 2014 disposition hearing, reported that Joseph J., a ninth grader, had been suspended for eight days that school year, most recently on March 12, 2014, for insubordination. Appellant admitted to the interviewer using his allowance, on three occasions, to purchase marijuana. His mother told DJS that she suspected the usage began in middle school.

At the disposition hearing, the court committed Joseph J. to DJS for community based residential treatment in the Safe Passages Day Treatment Program, "with graduated sanctions, to include electronic monitoring and/or detention upon review." The court also ordered that court costs were waived. It set a review hearing for April 22, 2014.

At that hearing, DJS advised the court that, since the disposition hearing, Joseph J. had been suspended from school for three days, ending April 22, for insubordination. Joseph J. told the court, "I got suspended three days before spring break for no reason." DJS advised that appellant had two unexcused absences from Safe Passages after he started in

the program on April 2. Joseph J. said one absence occurred when he missed a bus by ten minutes because he had been shopping with his father for new pants. He had torn his pants playing basketball. The other absence, he said, was due to his "really bad allergies."

The court reviewed Joseph J.'s report card. He had failed each class in each of the three school quarters that had elapsed in that school year. Appellant told the court, "I'm not like a good comprehender." He had told this to himself. The court unloaded:

"You've convinced yourself that you're dumb. That's what you just stood there and told me. You've convinced yourself. If you don't think you can do it, how the hell are you going to ever do it. [']I'm dumb. I can't do that.[']"

"Young man, don't you let yourself or anybody else ever call you dumb. There's nothing dumb about you. You've made some dumb mistakes. And, by the way, I have the file here. Yes, you've got some outrageous grades, but you can't go around and let yourself or anybody else call you dumb and let you think you're dumb. And then you convince yourself[, ']I can't do it.[']"

The court ordered Joseph J. "[c]ontinued in present status," set a review hearing for May 20, 2014, and directed that appellant pay \$155 in court costs. There was no objection or post hearing motion questioning this aspect of the order. Appellant timely filed an order for appeal. It is No. 0561 of September Term, 2014 in this Court.¹

¹The caption of this appeal includes No. 1503, September Term, 2014. Appellant, however, has not presented any argument in his brief in support of that appeal so that we affirm in No. 1503.

On the petition of the State, the court, on June 23, 2014, had ordered appellant to show cause why he should not be found in violation of his pretrial release. See Maryland Rule 11-116(c). At the show cause hearing on July 23, 2014, Joseph J. was continued on electronic monitoring. The court ordered appellant and his parents to pay court costs of
(continued...)

Question Presented

"Where the juvenile court waived court costs as part of the disposition, did a different judge err in *sua sponte* imposing court costs on the juvenile at a subsequent review hearing?"

Discussion

Appellant acknowledges that there is no case law addressing the issue that he raised. He refers us to Maryland Code (1974, 2013 Repl. Vol.), § 3-8A-19(g) of the Courts and Judicial Proceedings Article (CJ) dealing with disposition hearings in juvenile delinquency cases. It provides:

"The court may impose reasonable court costs against a respondent, or the respondent's parent ... against whom a finding of delinquency has been entered under the provisions of this section."

Because § 3-8A-19 addresses dispositions, in their multiple permutations, in delinquency cases, it seems clear that the General Assembly contemplated by subsection (g) that costs would be addressed and the discretion whether to impose or to waive costs would be exercised at the disposition hearing. Judge Lamasney ordered that costs be waived. Judge Dawson imposed presumably those same costs at the review hearing.²

¹(...continued)

\$155. Appellant noted an appeal on August 19, 2014, but, as observed above, it has not been pursued. The record before us does not reflect whether those costs were paid.

²We have no difficulty in discerning that Judge Dawson was attempting to implement that objective of CJ Title 3, Subtitle 8A, described as "[c]ompetency and character development to assist children in becoming responsible and productive members of society." CJ § 3-8A-02(a)(1)(iii).

Joseph J. also refers us to the Revised Schedule of Circuit Court Charges, Costs, and Fees Established Under Courts Article § 7-202, effective July 1, 2010 (the Schedule). *See* Editor's note to CJ § 7-202. Section 7-202 authorizes the State Court Administrator, with the approval of the Board of Public Works, to determine the amount of all court costs and charges for the circuit courts. The Schedule implements that authorization. Part III.B.1(F) of the Schedule provides that "a filing fee, surcharge for the Maryland Legal Services Corporation, or other court cost" shall not be collected in advance in "an original juvenile proceeding brought in the circuit court under Courts Article, Title 3, Subtitle 8 or 8A." Part III.B.2 of the Schedule, however, provides that "[i]f this Schedule ... waives prepayment ... the court shall award charges, costs, and fees in accordance with this Schedule, at the conclusion of the case."³

Having argued that the cost waiver decision is positioned at the disposition hearing stage, Joseph J. next argues that there are "prudential reasons to decline to overturn the disposition hearing judge's decision to waive costs." He refers to a detailed pre-disposition report,⁴ to the possibility that the public impression will be that outcomes are dependent on

³Because none of the arguments presented here were presented to the trial court, and because as explained below, appellant does not satisfy the criteria for plain error review, we do not undertake to resolve the apparent conflict between the "may" of CJ § 3-8A-19(g) and the "shall" of Part III.B.2 of the Schedule.

⁴The review hearing judge had the same report.

the particular judge, and to possible arbitrariness, absent, as here, a statement of reasons for the change.

Addressing the lack of preservation, Joseph J. submits that his issue is a novel and important one.

Appellant is invoking the plain error doctrine. "The power to decide issues not raised below is 'solely within the court's discretion and is in no way mandatory.'" *White v. State*, 223 Md. App. 353, 402, 116 A.3d 520, 549 (2015) (quoting *Conyers v. State*, 354 Md. 132, 148, 729 A.2d 910, 918, *cert. denied*, 528 U.S. 910, 120 S. Ct. 258, 145 L. Ed. 2d 216 (1999)).

In *McCree v. State*, 214 Md. App. 238, 76 A.3d 400 (2013), this Court reviewed the criteria ordinarily to be satisfied to trigger an exercise of that discretion, saying:

"The Supreme Court summarized the plain error review process in *Puckett v. United States*, 556 U.S. 129, 135, 129 S. Ct. 1423[, 1429], 173 L. Ed. 2d 266 (2009):

"[P]lain-error review involves four steps, or prongs. First, there must be an error or defect – some sort of [d]eviation from a legal rule – that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings. Fourth and finally, if the above three prongs are satisfied, the court of appeals has the discretion to remedy the error – discretion which ought to be exercised only if the error seriously affect[s] the fairness, integrity or public

reputation of judicial proceedings. Meeting all four prongs is difficult, as it should be.'

"The *Puckett* formulation has been expressly adopted by the Court of Appeals. See *State v. Rich*, 415 Md. 567, 578-79, 3 A.3d 1210[, 1216-17] (2010); see also *Kelly v. State*, 195 Md. App. 403, 432, 6 A.3d 396[, 413] (2010), *cert. denied*, 417 Md. 502, 10 A.3d 1181, *cert. denied sub nom. Kelly v. Maryland*, ___ U.S. ___, 131 S. Ct. 2119, 179 L. Ed. 2d 912 (2011)."

Id. at 272, 76 A.3d at 420.

Here, it is not at all clear that there is any error, much less plain error. The State points to CJ § 3-8A-20.1, which in relevant part provides:

"(a) '*Treatment service plan*' defined; contents. – (1) In this section, 'treatment service plan' means a plan recommended at a disposition hearing under § 3-8A-19 of this subtitle or at a disposition review hearing under this section by the Department of Juvenile Services to the court proposing specific assistance, guidance, treatment, or rehabilitation of a child.

"(2) In making a treatment service plan, a juvenile counselor shall meet with the child who is the subject of the treatment service plan and the child's parent, guardian, or legal custodian to discuss the treatment service plan.

"(3) If a child's parent, guardian, or legal custodian is unable or refuses to meet with the juvenile counselor, the treatment service plan shall indicate that the parent, guardian, or legal custodian is unable or refuses to meet, and the reason for the inability or refusal to meet, if known.

"(4) At a minimum, the treatment service plan shall include:
"(i) The recommended level of supervision for the child;
"(ii) Specific goals for the child and family to meet, along with timelines for meeting those goals;
"(iii) A statement of any condition that the child's parent, guardian, or legal custodian must change in order to alleviate any risks to the child;

"(iv) A statement of the services to be provided to the child and child's family; and

"(v) Any other information that may be necessary to make a disposition consistent with the child's best interests and the protection of the public interest.

....

"(d) *Disposition review hearing* – ...

"(2) At a disposition review hearing, the court may:

"(i) *Revise*, in accordance with the provisions of § 3-8A-19 of this subtitle, *the disposition* previously made; and

"(ii) *Revise the treatment service plan* previously adopted."

(Emphasis added).

The waiver of costs was part of the original disposition. It was revised at the review hearing. Further, at the disposition hearing, DJS recommended that Joseph J. "be committed to the Department for placement in the Safe Passages Program ... based upon Joseph's need for structure, guidance and substance abuse treatment." This disposition appears to be a "treatment service plan" within the meaning of CJ § 3-8A-20.1. Appellant makes no argument to the contrary.

Nor do we consider that the revision of the court cost feature of the original disposition affected appellant's substantial rights. It did not affect his admission of involved, and both judges agreed that Joseph J. should be put on electronic monitoring. He was not going to be imprisoned for debt.

For these reasons, we decline to exercise our discretion to conduct plain error review.

**JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED.**

**COSTS TO BE PAID BY THE
APPELLANT.**