

Circuit Court for Baltimore County  
Case No. 03K17000496

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1717

September Term, 2017

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HAROLD HENRY

v.

STATE OF MARYLAND

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Berger,  
Friedman,  
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: January 7, 2019

\*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.

On August 17, 2017, appellant, Harold Henry, pled guilty to one count of conspiracy to commit first-degree assault in the Circuit Court for Baltimore County. Following the court's denial of his Request for New Trial/to Withdraw Guilty Plea without a hearing, he noted this appeal.

Appellant presents the following questions for our review:

1. Did the trial court err by denying appellant's Request for New Trial/to Withdraw Guilty Plea without a hearing?
2. Did the trial court err in denying appellant's Request for New Trial/to Withdraw Guilty Plea?

For reasons to follow, we hold the court erred by denying appellant's Request for New Trial/to Withdraw Guilty Plea without holding a hearing as required by Maryland Rule 4-242(h). We therefore remand this case for further proceedings.

### **BACKGROUND**

On January 10, 2017, at approximately 12:40 a.m., the Baltimore County Police Department responded to a home invasion after receiving a call that people were shooting at and attempting to break into the residence of Constance Clark, appellant's girlfriend. Earlier in the evening of January 9, 2017, appellant visited his girlfriend at the home and the couple got into an argument. As the argument ensued, two other male guests at the home had to remove appellant from the home. Upon his removal, appellant allegedly yelled he was going to return to "shoot up" the home.

Shortly after midnight, on January 10, an unknown male burst through the back door of the home with a gun. Shontee Barclay, Ms. Clark's sister, gathered all of the children in the house to take them upstairs. Upon looking out of the window, she saw

appellant and two other masked men in the front yard. Ms. Barclay then called 911 and, while on the phone, she heard gunshots being fired into the front of the home. When police officers arrived, they were unable to locate appellant or the other men. After conducting a search of the home, officers found three bullet holes in the front portion of the house. They recovered several bullet casings from the McDonald's parking lot directly across the street.

Appellant was charged with fifty-two counts, including attempted first-degree murder; attempted second-degree murder; multiple counts of first-degree assault, second-degree assault, reckless endangerment, use of a firearm in the commission of a crime of violence; and several other firearm offenses. On August 17, 2017, in the Circuit Court for Baltimore County, appellant entered a plea of guilty to conspiracy to commit first-degree assault. The remaining charges were entered *nolle prosequi*.

A sentencing hearing was held on August 28, 2017. Pursuant to the plea agreement, the State recommended a sentence of fifteen years in prison, with all but three years suspended, followed by a period of supervised probation. Following allocution, the court sentenced appellant to twenty-five years in prison, with all but thirteen years suspended, followed by a period of supervised probation and an order that appellant have no contact with the victims. On September 7, 2017, appellant filed a Request for New Trial/to Withdraw Guilty Plea. The State responded in opposition and the trial court denied the motion without a hearing. This timely appeal followed.

## **DISCUSSION**

### **I. Motion to Dismiss.**

The State argues this case should be dismissed as appellant “is not entitled to file a direct appeal challenging his guilty plea.” Instead, appellant must “first file an application for leave to appeal, pursuant to Md. Rule 8-204.” The State cites § 12-302 of the Courts and Judicial Proceedings Article, which provides that “an appeal from a final judgment entered following a plea of guilty in a circuit court,” is not permitted, except as expressly provided. Md. Code Ann., Cts. & Jud. Proc. § 12-302(e) (2013 Repl. Vol., 2017 Supp.). In a criminal case, a final judgment “consists of the verdict and . . . the sanction imposed, which is normally a fine or sentence of imprisonment or both.” *Telak v. State*, 315 Md. 568, 575 (1989). “Review of such a judgment shall be sought by application for leave to appeal.” Cts. & Jud. Proc. § 12-302(e)(2). The State contends that allowing appellant to “circumvent the plain language and intent of Cts. & Jud. Proc. § 12-302(e)(2),” by filing a Notice of Appeal, which is tantamount to a direct appeal, instead of an application for leave to appeal, is improper.

In *Grandison v. State*, 425 Md. 34 (2012), the Court of Appeals addressed a motion to dismiss an appeal of a postconviction proceeding because defendant did not file an application for leave to appeal, but instead filed a notice of appeal. In addressing this issue, the Court stated:

Without question, the Court of Special Appeals has sometimes treated a [n]otice of [a]ppeal as an [a]pplication for [l]eave to [a]ppeal. *See, e.g., Miller v. State*, 185 Md. App. 293, 295, 970 A.2d 332, 333 (2009) (“[t]he appellant filed a timely notice of appeal, which this Court treated as an application for leave to appeal[.]”); *Bagley v. Warden*, 1 Md. App. 154, 158, 228 A.2d 491, 492 (1967) (treating the document “designated by applicant as a ‘[n]otice of [a]ppeal’” as an “application for leave to appeal”). This practice likely prevails in any number of unreported opinions. At least one reported case, however, has required strict compliance with the dictates of Rule 8–204. *See*,

*e.g.*, *Britton v. State*, 201 Md. App. 589, 595, 30 A.3d 236, 239 (2011) (“Because appellate review of a guilty plea may only be obtained by an application for leave to appeal and because appellant’s notice of appeal lacked sufficient content to be deemed the substantive equivalent of an application for leave to appeal, this Court dismissed his appeal.”). We view the decision as to whether an appellate court will require strict compliance with the terms of Rules 8–204 or 8–306 to be discretionary.

In the present case we exercise our discretion to treat appellant’s filing as an application for leave to appeal. We view the filing as having sufficient content and thus deny the State’s motion to dismiss.

The State also contends appellant’s Request for New Trial/to Withdraw Plea was untimely because the motion was not filed within ten days of the verdict pursuant to Md. Rule 4-331(a).<sup>1</sup> The State argues the verdict was entered at the time appellant pled guilty on August 17, 2017. However, this Court has held that “whenever there is a conviction, there is no final judgment until sentencing, and that prior thereto, a judge may reconsider his order granting a new trial.” *Christian v. State*, 65 Md. App. 303, 307 (1985). Thus, the verdict was entered on August 28, 2017, the date of appellant’s sentencing.

Further, Rule 4-242(h) provides that “[a]fter the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty.” Here, both parties concede appellant was sentenced on August 28, 2017, and he filed a Request for New Trial/to Withdraw Plea ten days later on September 7, 2017. As such, the motion was timely filed and was sufficient

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<sup>1</sup> Maryland Rule 4-331(a) provides that “on motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.”

to warrant the trial court's consideration of his request to withdraw his plea. *See Harding v. State*, 235 Md. App. 287, 297 (2017) (a motion filed within ten days after imposition of sentencing, captioned Motion to Withdraw Guilty Plea and Motion for New Trial, and included a prayer of relief to withdraw guilty plea, “was sufficient to trigger the trial court's consideration of his request to withdraw his plea.”). Consequently, we deny the State's motion to dismiss.

**II. The trial court erred by ruling on appellant’s motion to withdraw his guilty plea without a hearing.**

Appellant contends “the circuit court committed reversible error in failing to conduct a hearing on [a]ppellant’s request to withdraw his guilty plea, and consequently, his conviction must be vacated” or, in the alternative, the case should be remanded to “the circuit court to conduct a hearing on the request to withdraw the guilty plea.” Conversely, appellee asserts the court acted within its discretion in denying the motion without a hearing. The State maintains that appellant’s motion did not allege facts sufficient to require a hearing under Md. Rule 4-242(h). Specifically, the motion did not “allege that his plea was not voluntary, or that he did not understand the nature of the charge to which he was entering a plea, or that he did not understand the consequences of the plea.” We disagree with the State’s contention.

Maryland Rule 4-242(h) governs motions to withdraw guilty pleas and does not require the specificity averred by the State to be alleged in the motion. The sole requirement is that the motion be filed timely. It states in pertinent part:

At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere

when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c), (d), or (e)<sup>2</sup> of this Rule were not

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<sup>2</sup> **(c) Plea of Guilty.** The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

**(d) Conditional Plea of Guilty.**

(1) *Scope of Section.* This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.

(2) *Entry of Plea; Requirements.* With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

(3) *Withdrawal of Plea.* A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

**(e) Plea of Nolo Contendere.** A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the nature of the charge and the

complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. ***The court shall hold a hearing on any timely motion to withdraw a plea of guilty***, a conditional plea of guilty, or a plea of nolo contendere.

(Emphasis added.)

In *Jackson v. State*, 358 Md. 612 (2000), the Court of Appeals addressed the fundamental importance of holding a hearing. In *Jackson*, defendant appealed her convictions for first-degree felony murder, robbery with deadly weapon, and several lesser included offenses. While the appeal was pending, she filed a motion for a new trial on the basis of newly discovered evidence. The circuit court denied the motion without a hearing, and defendant appealed that ruling, asserting the trial court erred in denying the motion without a hearing. The Court of Appeals, in reliance on Rule 4-331(e), held that the rule requires the opportunity for a hearing and the “only basis for the court to deny a hearing is . . . a determination that the motion was filed late and did not comply with the requirements of § (d) of the Rule.” *Jackson v. State*, 358 Md. 612, 622–23 (2000). Further, the Court of Appeals noted that a rule containing wording such as “the court shall hold a hearing on any timely motion to withdraw a plea of guilty” is a rule that “expressly require[s] a hearing, not just the opportunity for one.” *Id.* at 624 n.5 (referring to Rule 4-242(g), the predecessor of Rule 4-242(h)). The Court stressed that “the right to a hearing is of

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consequences of the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.



fundamental importance,” and “when not waived, we are loathe, in the absence of extraordinary circumstances, to find its denial harmless.” *Id.* at 625.

Here, appellant’s motion captioned “REQUEST FOR NEW TRIAL/TO WITHDRAW PLEA” was timely and specifically requested that appellant be allowed to withdraw his plea. As Rule 4-242(h) only requires the motion be timely, the court erred by ruling without a hearing. We therefore remand this case for a hearing on appellant’s motion to withdraw his guilty plea. We decline however to address the merits of his claim.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY IS VACATED  
AND REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION; COSTS TO BE PAID BY  
APPELLEE.**