

Circuit Court for Prince Georges County  
Case No. CT961449X

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 1944

September Term, 2021

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JAMAL SHEFFIELD

v.

STATE OF MARYLAND

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Arthur  
Kehoe  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

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Opinion by Raker, J.

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Filed: February 21, 2023

\*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.

\*\* At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

On October 10, 1997, appellant Jamal Sheffield was convicted of second-degree murder, attempted first-degree murder, and related firearm offenses. Appellant was sentenced to a total term of life plus 50 years. Following post-conviction proceedings, on February 1, 2022, appellant was resentenced to a term of life.

This case raises the question of whether the court erred in failing to order a competency evaluation prior to resentencing, failing to determine whether appellant was competent prior to resentencing, and failing to stay resentencing until finding appellant competent. Before this Court, the State and appellant agree that a criminal defendant has a right to competency at sentencing.<sup>1</sup> We agree with both parties and shall hold, on non-constitutional grounds, that the trial court erred in failing to order a competency evaluation before resentencing appellant.<sup>1</sup>

Because we shall hold that under Md. Code Ann., Crim. Proc. § 3-104 of the Criminal Procedure Article, (when the issue of competency is raised or when the trial court

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<sup>1</sup> Appellant raises the following five issues on appeal for our consideration:

1. “Did the court err by failing to order a competency evaluation prior to resentencing, failing to determine whether appellant was competent prior to resentencing, and failing to stay resentencing until finding appellant competent?”
2. Did the court violate appellant’s right to allocution?
3. Did the court abuse its discretion by denying the joint request for postponement of sentencing?
4. Did the court abuse its discretion in imposing sentence?
5. Did the court abuse its discretion by failing to address appellant’s request to discharge counsel?”

has reason to question competency), the trial court is obligated to determine whether the defendant is competent at sentencing, we do not address the remaining issues raised by appellant.

I.

**Procedural History**

This is a case with a lengthy and complex procedural history. We provide some context to frame this opinion.

**1997 Prince George’s County Circuit Court Trial**

On October 10, 1997, in the Circuit Court for Prince George’s County, appellant was convicted of attempted murder, second-degree murder, and two counts of use of a handgun in connection with a felony or crime of violence. He was sentenced to life imprisonment. Appellant displayed some indications of mental illness prior to his criminal actions. Appellant’s counsel, however, did not request an evaluation for appellant’s possible mental illness or argue that it was a mitigating factor during sentencing. Originally a notice of appeal was filed; however, in July 1998, appellant’s counsel filed a notice to dismiss the appeal.

**First Post-Conviction Hearing and Transfer to Clifton T. Perkins**

On December 27, 2018, in the Circuit Court for Prince George’s County, appellant filed a Petition for Post-Conviction Relief along with a motion seeking transfer to Maryland’s mental health facility, Clifton T. Perkins Hospital. The petition presented seven

grounds for relief: (1) trial counsel failed to raise competency at sentencing and the defense of not criminally responsible by reason of mental illness, (2) that trial counsel failed to properly and adequately prepare and investigate the case, (3) that trial counsel should not have requested the introduction of post-Miranda silence of defendant, (4) that trial counsel failed to request a mistrial, (5) that trial counsel elicited harmful and prejudicial evidence, (6) that trial counsel failed to object to the testimony of Ms. Ward, and (7) that appellate counsel failed to pursue any appeal. The motion for transfer to Perkins contained a report from Dr. Solomon Meltzer, a psychiatrist in private practice who is board certified in general and forensic psychiatry. Dr. Meltzer diagnosed appellant with schizophrenia. The report contained the following synopsis:

“Based on review of all available information it is evident that Appellant currently exhibits psychotic symptoms. He endorsed beliefs in extensive delusional system. He also demonstrated disorganized and illogical thought processes on examination. For these reasons I have diagnosed Appellant with Schizophrenia.”

In his report, Dr. Meltzer included an “Assessment of Trial Competence.” Dr. Meltzer’s report came to the following conclusion, “to a reasonable degree of medical certainty, as the defendant is unable to understand the nature and object of the proceedings against him or to assist in his own defense, he is not competent to stand trial.”

In a hearing on appellant’s motion for post-conviction relief and his motion for transfer, on July 5, 2019, the Prince George’s County Circuit Court found appellant incompetent to proceed and ordered him transferred to Clifton T. Perkins Hospital. The

court ordered him to remain there until he was either found competent to assist in his post-conviction proceedings, or his mental illness was deemed permanent.

On July 26, 2019, the Maryland Department of Health (MDH) appealed the order granting appellant's motion to transfer to Perkins. On July 29, 2020, this Court held in *Maryland Dep't. of Health v. Sheffield*, 247 Md. App. 154, 156 (2020) that because appellant's 2018 post-conviction petition was a civil proceeding, the trial court lacked the statutory authority to transfer appellant for restoration to competence in the post-conviction proceedings. The trial court's order committing appellant to Perkins was vacated. Appellant was then housed at Western Correctional Institution.

### **Second Post-Conviction Proceedings**

In July of 2021 in the Circuit Court for Prince George's County, appellant and the State filed a Joint Amended Petition for Postconviction Relief. The petition sought a resentencing to remedy appellant's ineffective assistance of counsel at trial, seeking relief on two grounds: First, for failure to raise the issue of competence at appellant's original sentencing, and second, for failure to present mitigation evidence at appellant's sentencing. The court granted post-conviction relief for resentencing on the second ground, failure to present mitigation evidence at sentencing. However, the court held that Maryland's statutory law on sentencing did not allow for consideration of competency at sentencing unless it was challenged previously during the guilt or innocence phase of the trial.

During the 2021 resentencing in the Prince George’s County Circuit Court, Dr. Meltzer testified that appellant was incompetent to assist in his post-conviction proceedings. He reiterated his assessment from 2018 that appellant was not competent.

The joint appellant/State recommendation was that appellant be resentenced to life in prison, with all but 33 years suspended, followed by 5 years’ probation. The court questioned how Dr. Meltzer could find appellant incompetent but at the same time recommend his release. In response, appellant’s counsel state as follows:

“You know, there is a difference between competence in a legal sense and, you know, how somebody would do when they’re in the community or released from prison. And I think that – I think that we can provide some, you know, conditions of probation that would adequately address your concerns.”

The prosecutor suggested sending appellant to Clifton T. Perkins for an assessment on his competency for sentencing, stating that this was a criminal matter, as opposed to the prior civil transfer which had been denied by the Court of Special Appeals.<sup>2</sup> However, the court postponed sentencing.

At appellant’s subsequent sentencing hearing, both his counsel and the State requested a 90-day postponement. Appellant had started to medicate, and more time was needed for the medication to become effective. The court denied the postponement request. The court was doubtful that appellant would continue to medicate post-release. For several

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<sup>2</sup> As mentioned above, in *Maryland Dep’t of Health v. Sheffield*, 247 Md. App. 154, 156 (2020), the Court of Special Appeals, now the Appellate Court of Maryland, held that the Circuit Court for Prince George’s County did not have the authority to transfer appellant to Perkins in a civil proceeding.

reasons, the court expressed a reticence to resentence appellant according to the joint state/defense recommendation.<sup>3</sup> The court was doubtful that appellant would continue his medication post-release. Additionally, the court was concerned regarding appellant's ostensible lack of remorse. Appellant's counsel countered that this was because of his mental illness. The court found that argument unpersuasive, stating as follows:

“Exactly. Because of his mental illness, which is very dangerous . . . But, you know, again, I have to put the public's safety in front of everything else, so. Is there anything else?”

Before his final sentencing, appellant asked the court for the opportunity to address the court. The court denied him the opportunity to allocate. Appellant also requested a new attorney; this request was rejected and the court resented appellant to a total term of life in prison with no time suspended. This timely appeal followed.

## II.

We address appellant's first argument that the trial court erred by failing to determine appellant's competency prior to resentencing. Appellant states that the court relied erroneously on its prior finding that Md. Code Ann., Crim. Proc. §3-104<sup>4</sup> allowed at sentencing a consideration of competency *only* if it had been challenged earlier. Appellant asserts that he was entitled to a finding of competency at resentencing as a matter of U.S.

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<sup>3</sup> The joint recommendation asked the court to sentence appellant to life in prison with all but 33 years suspended, followed by 5 years of probation.

<sup>4</sup> All subsequent references to Md. Code Ann., Crim. Proc. § 3-104 will be Crim. Proc. §3-104.

Constitutional law, Maryland Declaration of Rights, Maryland common law, and based upon a correct interpretation Crim. Proc. §3-104.

Appellant argues that the trial court misinterpreted Crim. Proc. §3-104(c). First, appellant cites a 2006 modification of the statute which changed some relevant language regarding a defendant’s right to competency from “at any time before the trial” to “any time before final judgment.”<sup>5</sup> Appellant argues that the language ‘final judgement’ implies the Legislature’s intent that the right to competency extends to the sentencing phase. Additionally, appellant asserts that any ambiguity in the statute should be construed in favor of appellant. Lastly, appellant argues that the purpose of the statute is to guarantee the common law and due process prohibition on trying an incompetent defendant. Consequently, any interpretation which restricts its scope during trial is erroneous.

As a threshold matter, the State agrees with appellant that there existed an indication of appellant’s incompetency at the time of sentencing sufficient to trigger the court’s statutory obligations to determine whether appellant was competent. If appellant was found incompetent, the court would be required to take further actions prescribed by Crim. Proc. § 3-104. Moreover, the State agrees that the trial court erred in its interpretation of

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<sup>5</sup> The pre-2006 amendment version of Crim. Proc. §3-104(c) stated: “At any time during the trial and before verdict, the court may reconsider the question of whether the defendant is incompetent to stand trial.” The post-2006 amendment statute now states: “At any time before final judgment, the court may reconsider the question of whether the defendant is incompetent to stand trial.”

Crim. Proc. §3-104 and in its failure to determine whether appellant was competent to proceed to sentencing.

Although appellant presents three bases to support his argument of reversible error, *i.e.*, the right to due process under the United States Constitution and Maryland Constitution, Maryland common law, and Maryland statutory law, the State urges us based on the canon of constitutional avoidance to avoid the constitutional grounds and to decide this case by construing the statute to avoid a constitutional conflict. We agree with the State and will follow the State’s suggestion.

In pertinent part, Crim. Proc. §3-104 states as follows:

“(a) If, before or during a trial, the defendant in a criminal case or a violation of probation proceeding appears to the court to be incompetent to stand trial or the defendant alleges incompetence to stand trial, the court shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial.

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(c) At any time before final judgment, the court may reconsider the question of whether the defendant is incompetent to stand trial.”

The key language in the statute giving rise to the issue herein is the phrase “before or during a trial” in subsection (a) and “may reconsider” in subsection (c).

The State asserts that the court was correct in determining that the final judgment is the imposition of the sentence. However, the court found that the inclusion of “reconsider” in subsection (c) means that a defendant’s competency may only be considered at sentencing if it was raised earlier in the trial. First, according to the State, the language “before or during trial” in subsection (a) encompasses the sentencing phase. Second, in

2006 the language of Md. Crim. Proc. § 3-104 underwent a critical change. Prior to 2006, the statute read that “At any time during the trial and before verdict, the court may reconsider the question whether the defendant is incompetent to stand trial.” After 2006, the language was changed to read “At any time before final judgment . . .” This change, according to the State, makes clear that a defendant may be found incompetent after the verdict has been announced. Consequently, according to the canon of constitutional avoidance, in interpreting the Maryland statute, this Court should reject the trial court’s interpretation of Crim. Proc. §3-104 and we should remand this matter to the trial court for a competency evaluation and hearing.

### III.

We review questions of statutory interpretation under a *de novo* standard of review. *Schisler v. State*, 394 Md. 519, 535 (2006). “The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature.” *State v. Bey*, 452 Md. 255, 265 (2017). Importantly, we do not presume that the Legislature intended to enact unconstitutional legislation and, if it did so, we would limit a statute to only those situations in which it would pass constitutional muster. *See. Burruss v. Bd. of Cnty. Commissioners of Frederick City.*, 427 Md. 231, 263-64 (2012).

We agree with the State and interpret Crim. Proc. §3-104 to require the trial court, to determine appellant’s competency, when triggered, before proceeding to sentencing.

Construing Crim. Proc. §3-104 without a competency requirement during sentencing gives rise to a due process violation. Criminal defendants are entitled to the

protections of the 14<sup>th</sup> Amendment Due Process Clause. *Sapero v. Mayor and City Council of Baltimore*, 398 Md. 317, 343 (2007). The Supreme Court of Maryland<sup>6</sup> has held that the State cannot prosecute a defendant who is incompetent. *Powell v. Maryland Department of Health*, 455 Md. 520, 527 (2017). Although Maryland courts have yet to hold explicitly that this due process right extends to competency at sentencing, appellant cites various federal, and our sister state courts that have held that a court cannot sentence an incompetent defendant.<sup>7</sup>

Two principles of statutory construction guide us. The first principle is that courts avoid constitutional questions when an alternative basis of decision fairly presents itself. *Ariz. v. Evans*, 514 U.S. 1, 33 (1995) (stating “. . . [a]nd it is out of sync with the principle that this Court will avoid constitutional questions when an alternative basis of decision fairly presents itself.”); *Bank of Am. v. Stine*, 379 Md. 76, 86 (2002) (stating “[i]n our

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<sup>6</sup> Prior to December 14, 2022, the Supreme Court of Maryland was known as the Maryland Court of Appeals. For our purposes, we will refer to it by its current name.

<sup>7</sup> Various federal and state appellate courts have held that the right to competency under the Due Process Clause of the 14<sup>th</sup> Amendment extends to the sentencing phase of a trial. *See United States v. Gonzalez-Ramirez*, 561 F.3d 22, 28 (1<sup>st</sup> Cir. 2009) (“A defendant’s due process right to a fair trial includes the right not to be tried, convicted or sentenced while incompetent.”); *Saddler v. United States*, 531 F.2d 83, 86 (2<sup>d</sup> Cir. 1976) (“[T]he court should not proceed with sentence unless the defendant is mentally competent); *Hall v. United States*, 410 F.2d 653, 658 (4<sup>th</sup> Cir. 1969) (“The idea of sentencing an insane person to prison remains offensive and is incompatible with the dignity of the judicial process”); *People v. Brown*, 476 N.E. 2d 469, 472 (Ill. App. Ct. 1985) (“Requiring a defendant to stand trial or be sentenced when he is not competent to do so constitutes a denial of due process of law”); *Middleton v. State*, 129 A.3d 962, 967 (Me. 2015) (“To sentence a criminal defendant while he is incompetent is a deprivation of his right to be heard and is therefore a violation of his constitutional right to due process”); *Jackson v. State*, 391 S.W. 3d 139, 141 (“[A] defendant must be mentally competent to be sentenced.”).

endeavor to harmonize the provisions of all of the relevant statutes, this Court will prefer an interpretation that allows us to avoid reaching a constitutional question.”). The second principle is “the canon of constitutional avoidance,” which provides that courts will construe a statute to avoid conflict with the Constitution whenever it is reasonably possible to do so, even to the extent of applying a judicial gloss to interpretation that skirts a constitutional confrontation. *Koshko v. Haining*, 398 Md. 404, 425-26 (2007).

Accordingly, we will interpret the statute on non-constitutional grounds and, in a way that does not present any possible constitutional conflict. We focus on the statutory construction, prioritizing the intent of the Legislature. *State v. Bey*, 452 Md. 255, 270 (2017). The plain meaning of Crim. Proc. §3-104(a) states that “before and during a trial” a court can determine whether a defendant is competent to stand trial. We hold that “during a trial” encompasses the sentencing phase. *Hunt v. State*, 321 Md. 387, 432 (1990).

Legislative history proves instructive in interpreting Crim. Proc. §3-104(c). “Generally, a substantive amendment to an existing statute indicates an intent to change the meaning of that statute.” *In re Criminal Investigation No. 1-162*, 307 Md. 674, 689 (1986). Courts must consider the full context of the amendment. Amendments conducted in isolation bear greater weight than those enacted as a component of a comprehensive review. *Id.* In 2006, the Legislature only made one change to Crim. Proc. § 3-104(c). The Legislature changed the language from “at any time during the trial and before verdict” to “at any time before final judgment.” The Legislature made an intentional choice to allow

reconsideration of competency at any time before final judgment. This change would encompass the sentencing phase of the trial.

Accordingly, we interpret this statute in a manner that avoids any constitutional violation and embodies the intent of the Legislature. We hold that Crim. Proc. §3-104 includes the right to competency at sentencing, even if the issue had not been raised prior to the sentencing phase.

**SENTENCE VACATED. CASE  
REMANDED TO THE CIRCUIT  
COURT FOR PRINCE GEORGES  
COUNTY FOR RESENTENCING.  
COSTS TO BE PAID BY PRINCE  
GEORGES COUNTY.**

The correction notice(s) for this opinion(s) can be found here:

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