UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

MARTHA R. THOMPSON

v.

STATE OF MARYLAND

No. 1036, September Term, 2015

JOSEPH C. HARROD

v.

STATE OF MARYLAND

No. 1043, September Term, 2015

TREVON MARQUISE BUTLER

v.

STATE OF MARYLAND

No. 1069, September Term, 2015

ROBERT ALAN MANDLEY, JR.

v.

STATE OF MARYLAND

No. 1501, September Term, 2015

Graeff,
Friedman,
Harrell, Glenn T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 26, 2016

Appellants, Martha R. Thompson, Joseph C. Harrod, Trevon Marquise Butler, and Robert Alan Mandley, Jr., in these cases consolidated for the purpose of this opinion, appeal from the decisions of the Circuit Court for St. Mary's County to impose the suspended portion of their respective sentences after finding that each appellant violated the terms of his or her probation. Each appellant was sentenced by the same judge, and they contend that it is this particular judge's "approach to sentencing" that is the focus of appeal. Specifically, they assert that, after finding a violation of probation, the judge summarily reimposes the previously suspended sentence based on the failure to meet the obligations under the probation agreement, as opposed to considering, as it is required to do, the specific circumstances of each person at the time of the revocation.

Appellants present the following question for this Court's review:

> Did the circuit court fail to exercise its discretion, and, alternatively, did it abuse its discretion by summarily reimposing appellants' previously suspended sentences in their entirety following its finding that appellants violated their probation?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Martha R. Thompson

On April 2, 2012, Ms. Thompson appeared in the Circuit Court for St. Mary's County and pleaded guilty to conspiracy to commit robbery and theft in an amount greater than $500. The State proffered that Ms. Thompson, an employee of a bank, gave information to her boyfriend, which he and others used to rob the bank of approximately $250,000. The judge imposed concurrent 10 year sentences for each count, suspending

eight years and six months of each sentence.[1] The court also imposed probation, with a number of conditions, including that she report to her supervising agent as directed and pay restitution in the amount of $3,000. During the sentencing portion of the hearing, the following colloquy occurred:

> [JUDGE:] So I'm going to let you have a local sentence because I'm going to follow their recommendations. I really don't know you but I know some of the people sitting in here and I trust them. So I'm going along with this, but understand this, do you know anything about what happens if you have a violation of probation with me?
>
> [MS. THOMPSON:] I don't.
>
> [JUDGE:] You want to tell her, [defense counsel]?
>
> [DEFENSE COUNSEL:] It's not good. You get your backup time. Your backup time is 10 years.
>
> [JUDGE:] That's absolute. That's not negotiable because you're not getting a 10 year sentence today. You're getting an 18 months sentence. And that eight and a half year backup time, that's over your head for the next five years after you're done with your time at Three Oaks. If you come back in front of me from drugs or another charge, then you will get eight and a half years, that means missing graduations from school, that means missing birthdays, Christmases, Mother's Day. Do you understand?
>
> [MS. THOMPSON:] Yes, sir.
>
> [JUDGE:] So the keys are in your pocket. You keep it there. I don't want it. I want [you] to keep it. But that's up to you. Make myself clear?
>
> [MS. THOMPSON:] Yes, sir.

In February 2015, the Maryland Department of Public Safety and Correctional Services, Division of Parole and Probation, charged Ms. Thompson with violating her

[1] Pursuant to her plea agreement, Martha R. Thompson was permitted to serve the eighteen months at the Three Oaks Shelter, so she could remain with her children.

probation, alleging that she failed to report to her supervising agent and failed to pay restitution. On April 13, 2015, Ms. Thompson reappeared before the judge, and she admitted that she failed to report to her probation supervisor for an entire year and, at the time of the filing of charges, had paid only $20 of the $3,000 of restitution that she was ordered to pay.[2] Accordingly, the court found Ms. Thompson in violation of her probation. He agreed, however, to postpone her sentencing so she could "get some things lined up."

On May 11, 2015, Ms. Thompson appeared before the court for sentencing. Agent Jason DuBard, speaking on behalf of Parole and Probation, testified that Ms. Thompson failed to report for an entire year, and she had paid only a fraction of the restitution that she was required to pay. He also testified that, in the interim between the violation of probation (VOP) hearing and sentencing, Ms. Thompson had missed a drug test because she was "going to [test] dirty," and she had not been participating in her substance abuse program and had stopped seeing her mental health counselor. Accordingly, Agent DuBard asked the court to impose Ms. Thompson's "back-up time." The State's Attorney made the same request, stating: "[W]e're all sad to see her here today. But she was given this sentence for robbing a bank. So all of the things that are in her favor were taken into consideration in the original sentence."

Defense counsel argued that Ms. Thompson "did the best she could." She had gone to "hair school," was employed, and had completed a drug program. Counsel noted that

[2] In the time between the filing of the violation of probation charges and the April 13, 2015, hearing, Ms. Thompson paid an additional $50 in restitution, bringing the total amount of restitution paid to $70.

Ms. Thompson's probation violation was due to a failure to report, not because she committed another criminal offense. He reminded the court that Ms. Thompson had several children who relied upon her, and he stated that Ms. Thompson's sister would not be able to provide care for the children for the full back-up time, but she could care for them for a shorter time. Counsel noted, however, that his arguments "might be falling on deaf ears because the deal was the deal and the crime was the crime, and she failed to rectify her situation fully; therefore, she is going to get her back-up time."

Ms. Thompson apologized to the court, acknowledging that she "messed up." She stated: "I had a lot going on. Like, I have six kids, and one passed away in February. And it's been really hard." She stated that she could not pay restitution because she had been unemployed, but she finally had obtained a job. With respect to failing to report, she stated: "[H]onestly, I was just, like, scared."

The judge stated: "I understand." It then reimposed the suspended portions of Ms. Thompson's sentences, stating:

> But the problem that we have here is, you can't escape what you promised.
>
> * * *
>
> Now, [defense counsel] very eloquently and very emotionally, quite frankly, has argued on your behalf that we should ignore what brought you here in the first place. And the fact of the matter is that you had what is called an ABA plea. In return for that ABA plea, you made certain promises as to the condition of your probation.
>
> And no matter what the situation is with your family, you found for one full year -- from 8/6/2013 until 8/21/2014, there was no contact with the agent.

> Probation only works when people follow through on the conditions. The whole purpose of probation is to give an individual an opportunity to help themselves.
>
> And almost everyone who walks into a violation of probation hearing says the same thing: Give me one more chance. Your chance was the original case.
>
> Now, the restitution is not paid, so that means the victims are being ignored.
>
> You [were] promised a sentence which was within the guidelines and was suspended down because of -- I believe you were also testifying or willing to testify against the other parties. But now you are here because you didn't do what you were supposed to do.
>
> It doesn't make me feel good to do this, but the sentence that you agreed to in return for those conditions was a sentence of 10 years suspended to 18 months, which leaves 8 years and 6 months back-up time. And that is the time you are going to receive.
>
> * * *
>
> I wish I didn't have to do this to you; but I want to remind you, you placed yourself in this position. All right, good luck to you.

On June 10, 2015, Ms. Thompson filed an application for leave to appeal, which this Court granted. On June 18, 2015, Ms. Thompson filed a Motion for Reconsideration.[3]

Joseph C. Harrod

On October 22, 2010, Mr. Harrod appeared in the Circuit Court for St. Mary's County and pleaded guilty to two counts of reckless endangerment. The judge sentenced Mr. Harrod to four years of incarceration for each count, to run consecutively, with three years of each sentence suspended and three years of supervised probation following his

[3] The circuit court has not ruled on that motion.

release. The court placed a number of conditions on his probation, including that he obey all laws and "[p]ermit [his] supervising agent to visit [his] home."[4] During the sentencing portion of the hearing, the judge stated: "You understand what will happen if you come back in front of me with a violation?" Mr. Harrod responded: "Yes, I get DOC time."

In June 2013, the Maryland Department of Public Safety and Correctional Services, Division of Parole and Probation, charged Mr. Harrod with violating his probation, alleging that he had been charged with two counts of assault and he failed to permit his supervising agent to visit his home. On October 21, 2014, Mr. Harrod reappeared before the judge and admitted that he had violated his probation by incurring new criminal charges. Accordingly, the judge found Mr. Harrod in violation of his probation. He agreed, however, to postpone Mr. Harrod's sentencing because Mr. Harrod was recovering from an infected stab wound and needed additional medical treatment.

On December 8, 2014, Mr. Harrod returned to court for sentencing. The State asked that the court impose all of Mr. Harrod's "backup time." Defense counsel argued that Mr. Harrod had no failures to report and no positive drug tests. Defense counsel then stated: "[F]rankly, your Honor, [Mr. Harrod] was here when he took the pleas originally, and he knows what your philosophy is on probation. However, he was the victim of a very

[4] On January 14, 2011, the court amended Mr. Harrod's sentence. As part of Mr. Harrod's plea agreement, he was supposed to be confined locally, but his consecutive sentences required him to serve his sentences with the Department of Corrections. To remedy this, the court suspended the sentence for one of the counts to time served, but it left the sentence for the other count, as well as the probation conditions, unaltered.

serious stabbing case." The judge agreed to postpone sentencing a second time, stating as follows:

> [JUDGE:] All right. Here is what we're going to do, Mr. Harrod. I want you to get through your medical before you get sentenced, because in all likelihood -- and not to sweet-talk it -- you know what you are probably going to end up with.
>
> MR. HARROD: Six years.
>
> [JUDGE:] Yes. But I want you also to be healed before you go.

On March 2, 2015, Mr. Harrod appeared once again, and the judge, again, postponed Mr. Harrod's sentencing due to his ongoing medical issues. The court stated: "He knows he is going to get his backup time, but I would rather him be safe medically . . . before he goes up to DOC."

On May 11, 2015, Mr. Harrod returned to court for sentencing. Defense counsel asked for a local sentence so that Mr. Harrod could continue seeing his doctors, stating:

> I understand what your philosophy is on violations of probation, but I would ask for that consideration based on events that have happened subsequent to the plea, subsequent to the sentencing, and things like that.
>
> * * *
>
> I know what your philosophy is; he knows what your philosophy is. But since -- excuse me. Since that incident, it has been an eye-opening . . . experience, as far as what is important in life and things of that matter.

Mr. Harrod then thanked the judge for giving him "a lot of chances," and he asked if he could "turn [him]self in" so he could attend his uncle's funeral. The judge granted that request, delaying the start of his sentence so Mr. Harrod could attend the funeral. He

did, however, reimpose the suspended portions of Mr. Harrod's sentences, stating as follows:

> [JUDGE:] Now, the reason you were allowed to have, quite honestly, with this member of the bench, an extraordinary amount of time for continuances, was to get your health back.
>
> * * *
>
> [JUDGE:] But it is time for you to come to an understanding with your sentence, and that is based on the fact that you agreed to a compromise way back in 2010, Mr. Harrod.
>
> MR. HARROD: Yes, sir.
>
> [JUDGE:] So it is not a surprise to you what the sentence is going to be; but I'm going to give you a little bit of leeway today.

On June 10, 2015, Mr. Harrod filed an application for leave to appeal, which this Court granted. On June 18, 2015, Mr. Harrod filed a Motion for Reconsideration.[5]

Trevon Marquise Butler

On May 18, 2012, Mr. Butler appeared in the Circuit Court for St. Mary's County and pleaded guilty to possessing a regulated firearm while under the age of 21. On October 15, 2012, the court imposed a sentence of two years, all but 30 days suspended. It also sentenced Mr. Butler to three years of probation, with the condition that he report to his supervising agent as directed. The judge then informed Mr. Butler of the consequences of violating his probation:

> [JUDGE:] Now the problem that I have with you, young man, is that if you come back in front of me with a violation, you know what's going to happen?
>
> [MR. BUTLER:] Yes, sir.

[5] The circuit court has not ruled on that motion.

> [JUDGE:] You're no longer in the juvenile court. You're now in adult court. That was your choice. . . . However, the adult courts [sic] system, if you violate your probation, you will get every single day of your backup time. In your case that will be in the Department of Corrections. Do you understand?
>
> [MR. BUTLER:] Yes, sir.

In January 2014, the Maryland Department of Public Safety and Correctional Services, Division of Parole and Probation, charged Mr. Butler with violating his probation, alleging, *inter alia*, that he failed to report to his supervising agent as directed.[6] On May 11, 2015, Mr. Butler appeared in court and admitted that he had violated his probation by failing to report. Accordingly, the judge found Mr. Harrod in violation of his probation.

Before sentencing Mr. Butler, the judge heard argument from the parties. Agent Jason DuBard, arguing on behalf of Parole and Probation, indicated his desire to work with Mr. Butler, but because Mr. Butler failed to report and fulfill his responsibilities, he recommended that the court close the case as "unsatisfactory."

Defense counsel then argued on behalf of Mr. Butler, noting the judge's philosophy on probation, but asserting that Mr. Butler may not have fully understood the gravity of his actions:

> He is 20 years old, but when this case happened he was 17. He still sounds like a young man to me when I'm talking to him about –

[6] The court summarized the charge as follows:

> The State is alleging that you failed to report; and as of 1/6/2014's report you had not reported since 9/10/2013; that you have not provided documentation regarding you treatment; that you only provided a November 12, 2012, letter stating you were unable to do an assessment because you had come in specific times; and that his has been going on for quite a while.

> I mean, when I look at the report and I see what's going on, it's like Parole and Probation is all about reporting, not picking up charges, things like that. But at the same time, they don't know what's going on when they don't report. I'm talking to him, he understands that; and I think in his mind, he was doing the best that he could.
>
> But after I was given that opportunity this morning to explain to him that when you make a plea deal with [the judge], that is the bargain. You say it every time. And I'm sure he heard it when you said it to him when he was 17 and didn't fully process what was going on.
>
> And then dealing with [Agent DuBard] on top of it, who has basically reinforced it every time that he has met with the young -- I'm sure that he has reinforced it every time that he is with this young man that he has been trying to get that point across to him.
>
> Now, on his -- as far as what I know in dealing with him today, is he had a brain aneurysm that was putting pressure on his head, and got to a point where he was prescribed OxyContins [sic] to deal with the pain and deal with that issue. He deals with memory loss as part of that situation.

Defense counsel conceded that Mr. Butler's "track record" at the time of the hearing was "bad," but he asked the judge to defer sentencing "to see how this young man can do over the next two months."

The judge denied counsel's request to defer sentencing and reimposed the suspended portion of Mr. Butler's sentence, stating as follows:

> You agreed to a sentence of 1 year and 11 months. I haven't seen any paperwork that shows that you are not competent and don't understand what you're supposed to do. If you had done anything during the year and a half that that bench warrant was sitting out there, reporting, then this could be a local sentence. But frankly, you don't deserve any type of break here. You agreed to a sentence. You agreed to do certain conditions. You didn't do those conditions.

On June 10, 2015, Mr. Butler filed an application for leave to appeal, which this Court granted. On June 18, 2015, Mr. Butler filed a Motion for Reconsideration.[7]

Robert Alan Mandley, Jr.

On February 17, 2012, Mr. Mandley appeared in the Circuit Court for St. Mary's County and pleaded guilty in three cases to third degree sex offense, third degree burglary, and conspiracy to commit extortion. The judge sentenced Mr. Mandley as follows: (1) five years for the sex offense, all but two years suspended; (2) three years, consecutive, for the burglary offense, all three years suspended; and (3) one year, consecutive, for the conspiracy offense. The court also imposed five years of supervised probation following his release, with the conditions that he report to his supervising agent as directed, not possess or use any illicit drug, submit to drug and alcohol testing, successfully complete drug and alcohol treatment and education programs, and obey all laws. During the sentencing portion of the hearing, the judge stated: "And you understand that you're on probation with me, if there's any violations what will happen, I don't think they're going to happen but I hope they won't. . . . You keep the key in your pocket as I tell folks."

In February 2015, the Maryland Department of Public Safety and Correctional Services, Division of Parole and Probation, charged Mr. Mandley with violating his probation, alleging, *inter alia*, that he failed to successfully complete alcohol and drug treatment, tested positive for cocaine, and admitted to smoking marijuana. On May 11, 2015, Mr. Mandley reappeared before the judge and admitted that he had violated his

[7] The circuit court has not ruled on that motion.

probation as the State had alleged. Accordingly, the court found Mr. Mandley in violation of his probation.

Before sentencing, the judge heard argument from the parties. Agent Sherona Thompson, arguing on behalf of Parole and Probation, asked the court to impose Mr. Mandley's "back-up time." Heather Nelson, the mother of Mr. Mandley's child, testified that Mr. Mandley just "fell off of his wagon," and their daughter missed him. She stated that Mr. Mandley was a "perfect person" and a good father when he was not drinking.

Defense counsel reiterated that Mr. Mandley's incarceration was hard on his daughter. He also argued that Mr. Mandley was employed and actively working on his alcohol problem. Counsel asked that the judge impose a local sentence so Mr. Mandley's daughter could continue to visit him at the detention center and that he be permitted to have work release so he could keep his job and support his family.

Mr. Mandley also asked the court for a local sentence, for the same reasons. He admitted that he "did mess up," but he stated that he "was doing the best that [he] could." He explained that he "just got sidetracked a little bit and started drinking a couple times, which violated [his] probation."

The judge reimposed the suspended portion of Mr. Mandley's sentences, stating as follows:

> Today, two different groups, two different defendants didn't get all of their back-up time; because what they had done in their violation, although not excused, wasn't particularly offensive because everything else that they have done.

> But in your case, you keep talking about drinking. But you didn't test positive for drinking; you tested positive for cocaine. You were given plenty of opportunity to do [substance abuse treatment]. You were discharged, and you had new criminal convictions that took place during it.
>
> So frankly, I think what you agreed to originally back on 2/17/12 is what you should be receiving today, and that is what you are going to receive.

On June 10, 2015, Mr. Mandley filed an application for leave to appeal, which this Court granted. On June 18, 2015, Mr. Mandley filed a Motion for Reconsideration.[8]

DISCUSSION

Appellants present essentially identical arguments on appeal. They each concede that they were in violation of their probation, but they argue that the sentence imposed was erroneous because the "circuit court failed to exercise its discretion, and, alternatively, it abused its discretion by summarily reimposing the previously suspended in its entirety following its finding that appellant[s] violated [their] probation." They assert that, pursuant to well-established law, when a matter is placed within the discretion of a judge, the judge must actually exercise his or her discretion, the record must clearly show that exercise of discretion, and no exercise of "discretion can be inferred where the judge treats a violation of probation, in effect, as a breach of contract." They argue that, in each of the cases pending appeal, the judge "reimposed the previously suspended sentence following a finding of violation of probation, based on the failure to meet a condition or 'promise'

[8] In July 2015, the circuit court ordered that Mr. Mandley's motion be held in abeyance. The court has taken no further action with respect to the request for reconsideration.

made years before," and not, as required, on the facts and circumstances at the time of the revocation hearing.

The State argues that appellants' claims are not preserved for this Court's review because none of the appellants "took issue with the court's actions at their respective VOP hearings." In any event, the State argues that the "circuit court correctly recognized and exercised its discretion in re-imposing the suspended sentence[s] upon appellants' respective admissions to violations of their probations."

I.

Probation Revocation Generally

Before addressing the particular cases involved here, we address generally the law regarding probation revocation. A revocation of probation case "'typically involves two distinct components: (1) a retrospective factual question whether the probationer has violated a condition of probation; and (2) a discretionary determination by the sentencing authority whether violation of a condition warrants revocation of probation.'" *State v. Dopkowski*, 325 Md. 671, 677 (1992) (quoting *Wink v. State*, 317 Md. 330, 332 (1989)).

Once a trial court determines that a probationer has violated a condition of probation, it has several options. *Maus v. State*, 311 Md. 85, 107 (1987). As the Court of Appeals has explained: "These options vary from continuing the probation to reimposing the full remaining term of a suspended sentence. The court's discretion must guide it as it chooses among the options, looking at both society's interests and those of the offender." *Id.*

In reviewing the circuit court's ruling in this regard, we will reverse only for an abuse of discretion. *Dopkowski*, 325 Md. at 678. An abuse of discretion occurs "only if the trial court has erroneously construed the conditions of probation, has made factual findings that are clearly erroneous, or has acted arbitrarily or capriciously in revoking probation." *Id.* (quoting *Herold v. State*, 52 Md. App. 295, 303 (1982)). In this regard, it is an abuse of discretion to fail to exercise discretion when circumstances require it. *State v. Wilkins*, 393 Md. 269, 278 (2006) ("[T]he trial judge's failure to exercise discretion . . . amounted to a misunderstanding of the law, an abuse of discretion, and reversible error."); *Gray v. State*, 368 Md. 529, 565 (2002) ("[O]ur cases hold that the actual failure to exercise discretion is an abuse of discretion.").

This Court has addressed the propriety of fixed sentencing policies in several contexts other than probation revocation. *See Holland v. State*, 122 Md. App. 532, 547 ("That a veteran and experienced judge develops over the years a consistently applied and deeply ingrained sentencing philosophy . . . [and] may fall into predictable and identifiable sentencing habits and patterns does not mean that that judge has thereby failed to exercise discretion."), *cert. denied*, 351 Md. 662 (1998); *Dennison v. State*, 87 Md. App. 749, 763 (trial court errs when it "recognizes its right to exercise discretion but then declines to exercise it in favor of adhering to some consistent or uniform policy"), *cert. denied*, 324 Md. 324 (1991). In the context of revocation of probation, however, where a judge must exercise his or her discretion in determining the sanction for any violation of probation, based on the interests of society and the offender, *Maus*, 311 Md. at 107, it would be an

abuse of discretion for a judge to have a predetermined policy that a violation of probation automatically results in a revocation of probation and imposition of the suspended sentence. *See Smith v. State*, 306 Md. 1, 7 (1986) ("Nor will a wilful violation of probation automatically result in the revocation of probation as the final determination of the appropriateness of revocation is within the discretion of the trial judge.").[9]

The State does not contend otherwise. Rather, it asserts that the facts of each case on appeal show that the circuit court properly exercised its discretion in reinstating the prior suspended sentence. We thus turn to the individual cases on appeal.

II.

Preservation

We address first the State's argument that appellants' arguments were not raised below, and therefore, they are not preserved for this Court's review. This Court has made clear that challenges to sentencing determinations generally are waived if not raised during the sentencing proceeding. *Clark v. State*, 218 Md. App. 230, 257 (2014); *see also Ellis v. State*, 185 Md. App. 522, 550 (2009) ("[A] timely objection is required to prevent waiver

[9] We note that a judge is not prohibited from taking a hardline stance against recalcitrant probationers and having a consistent sentencing policy, as long as the sentencing is done in light of the facts and circumstances presented to the court in each case, and not as an immutable policy. Moreover, we note that the violations of probation found in each of the present cases were not "technical" or minor violations, but rather, they were serious and of long duration.

of a defendant's claim that the sentencing judge relied upon impermissible sentencing considerations.").[10]

Here, in all four cases, defense counsel argued on behalf of their client, providing the judge with various mitigating facts calculated to persuade the court to defer sentencing, impose something less than the appellant's full sentences, or grant the appellant some other leniency. None of the appellants, however, argued below, as they do on appeal, that the judge had an improper "policy" regarding violations of probation, which rendered imposition of the suspended sentence erroneous. Indeed, defense counsel in each case made a comment indicating knowledge that the suspended sentence likely would be imposed. If appellants had expressed their concerns about the propriety of the judge's alleged sentencing "policy," the judge could have considered appellants' arguments and clarified what factors he was considering in revoking probation. Appellants did not, however, bring any challenge to the sentence to the court's attention. It was not until appeal that any concern was expressed regarding the judge's "approach to sentencing." That is pure appellate afterthought. The issue is not preserved for review.

[10] One exception to this preservation rule is for an illegal sentence. *See* Md. Rule 4-345(a) ("The court may correct an illegal sentence at any time."). Appellants do not contend, for good reason, that their sentences were "illegal." As the Court of Appeals has made clear, a "trial judge's alleged failure to exercise discretion in the imposition of a sentence does not render the sentence illegal within the contemplation of a motion to correct an illegal sentence." *Pollard v. State*, 394 Md. 40, 47 (2006). As the Court of Appeals has explained, "any illegality must inhere in the sentence, not in the judge's actions. In defining an illegal sentence the focus is not on whether the judge's 'actions' are *per se* illegal but whether the sentence itself is illegal." *State v. Wilkins*, 393 Md. 269, 284 (2006).

In their reply brief, appellants requested that the Court review their claim under the doctrine of plain error. We recently rejected a similar request.

In *Horton v. State*, 226 Md. App. 382, 419-20 (2016), this Court stated:

> We are not similarly moved to exercise our discretion to excuse appellant's failure to raise any objection in the circuit court in response to the sentencing judge's comments. In *Reiger v. State*, 170 Md. App. 693 (2006), we observed that such objections should be brought to the attention of the sentencing judge while there is an opportunity to clarify the court's motivations:
>
> > **When, as in this case, a judge's statement from the bench about the reasons for the sentence gives rise to the claim of impermissible sentencing considerations, defense counsel has good reason to speak up.** A timely objection serves an important purpose in this context. Specifically, it gives the court opportunity to reconsider the sentence in light of the defendant's complaint that it is premised upon improper factors, or otherwise to clarify the reasons for the sentence in order to alleviate such concerns. *See* Md. Rules 4-342, 4-345. As recognized in the rule, it is the availability of an opportunity to ask for and obtain immediate relief from the sentencing court that determines whether a contemporaneous objection is necessary. **Simply stated, when there is time to object, there is opportunity to correct.** . . .
>
> 170 Md. App. at 701 (footnote omitted) (emphasis added).
>
> . . . . We are not persuaded that appellant is raising an error that is "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *State v. Hutchinson*, 287 Md. 198, 203 (1980). We decline to exercise our discretion to overlook appellant's failure to raise the issue in the circuit court.

This analysis applies to the present case. The record is unclear (in large part due to appellants' failure to bring their complaints to the attention of the judge) whether the judge was making his probation revocation and sentencing decisions based on the facts and circumstances of each case, or whether he was revoking probation and imposing

appellants' suspended time in a summary fashion pursuant to a rigid "policy." To be sure, some comments, such as the judge's comments in reimposing Ms. Thompson's suspended sentence that she "made certain promises," "agreed to" a sentence, and "could not escape what [she] promised," suggest a "breach of contract" philosophy. Other comments, however, such as the judge's statements in Mr. Mandley's case, that he decided not to reimpose the full backup time of two other defendants because their probation violations were not "particularly offensive," but Mr. Mandley's violations warranted the imposition of his backup time, indicate a consideration of all the circumstances of the case. Because appellants' failure to raise their concerns prevented the judge from further explaining the rationale of his sentence, we will not find plain error requiring reversal of the sentences.[11]

JUDGMENTS OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. APPELLANTS SHALL PAY THE COSTS, 25% EACH.

[11] This does not prevent the circuit court from considering the discussion in this opinion of the discretionary nature of probation revocation in addressing appellants' motions for reconsideration.