

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2280

September Term, 2024

DERRICK JOHNSON

v.

STATE OF MARYLAND

Reed,
Shaw,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 3, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a conditional guilty plea in the Circuit Court for Baltimore City, Derrick Johnson, appellant, was convicted of possession with intent to distribute clonazepam and making a false statement to a law enforcement officer. His sole claim on appeal is that the court erred in permitting the State to amend the indictment to charge him with possession with intent to distribute clonazepam rather than possession with intent to distribute PCP. The State concedes that the court erred in allowing the amendment to the indictment. For the reasons that follow, we shall reverse the judgments.

Appellant was charged by indictment with one count of possession with intent to distribute PCP and one count of making a false statement to a law enforcement officer. On the day of trial, the State moved to amend the indictment to charge appellant with possession with intent to distribute clonazepam instead of possession with intent to distribute PCP. Appellant objected on the ground that the amendment changed the character of the offense charged. He further argued that the amendment was especially prejudicial because, although PCP is “per se unlawful,” clonazepam may be lawfully possessed with a prescription, which he claimed to have. The State asserted that the amendment should be allowed because the two drugs look similar, and the possession of both carried the same penalty when possessed with the intent to distribute. The court ultimately granted the motion on the grounds that “the State has charged your client with the possession to distribute a controlled dangerous substance” and “[w]hatever that substance is . . . it can be argued that he doesn’t have a right to distribute it.”

Following that ruling, the parties reached a plea agreement, wherein appellant agreed to plead guilty to possession with intent to distribute clonazepam and making a false

statement to a law enforcement officer. The terms of the plea called for a sentence of time served and was conditioned on appellant being allowed to appeal the court’s decision to allow the amendment to the indictment. This appeal followed.

Maryland Rule 4-204 governs amendments to a charging document and provides:

On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the parties is required. If amendment of a charging document reasonably so requires, the court shall grant the defendant an extension of time or continuance.

As we stated in *Albrecht v. State*, 105 Md. App. 45, 68 (1995):

Generally speaking, amendments that have been deemed to be merely changes of form have been such things as a clerical correction with respect to the name of a defendant, the substitution of one name for another as a robbery victim, a change in the description of money, changing the name of the owner of property in a theft case, and changing the date of the offense. An amendment as to substance, by contrast, would change the very character of the offense charged.

In our view, this case is controlled by *Johnson v. State*, 358 Md. 384 (2000). There, the defendant was charged with possession with intent to distribute marijuana and simple possession of marijuana. *Id.* at 386. Prior to trial, the State was allowed to amend the charge to replace marijuana with cocaine. *Id.* The Supreme Court of Maryland concluded that the character of the offense had been changed and the amendment should not have been permitted. *Id.* The Court reasoned that ““the identification of the particular controlled dangerous substance involved in a given offense is so inextricably tied to the critical matters of the appropriate unit of prosecution and the permissible or mandated punishment that it must be treated as an element of the offense.”” *Id.* at 391 (quoting *State v. Simpson*,

318 Md. 194, 198 (1989)); *see also Webster v. State*, 221 Md. App. 100, 122 (2015) (holding that amending the indictment to charge possession of BZP rather than possession of MDMA changed the character of the offense even though both drugs were identified under Schedule I and carried the same penalty).

So too here. The amendment to the indictment to change the controlled substance from PCP to clonazepam changed the character of the offense. Because appellant did not consent, the court thus erred in allowing the amendment. Consequently, we shall reverse the judgment of the circuit court and remand the case so that appellant may be allowed to withdraw his guilty plea. *See Maryland Rule 4-242(d)(3)* (“A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.”).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
THE MAYOR AND CITY COUNCIL OF
BALTIMORE.**