

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2697

September Term, 2014

STATE OF MARYLAND

v.

JAMES McMILLAN

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: April 18, 2016

*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.

In 2006, James McMillan pleaded guilty, in the Circuit Court for Allegany County, to second degree assault on an employee of a correctional facility. In 2014, McMillan filed a petition for post-conviction relief, in which he requested a new trial. After that petition was granted, the State filed an application for leave to appeal, claiming that the court erred in so ruling. For the reasons that follow, we grant that application and vacate the judgment of the circuit court.

Following the entry of his plea, McMillan filed a *pro se* petition for post-conviction relief. That petition was subsequently supplemented by post-conviction counsel. The supplement included the contention that the court had failed to “announce on the record that [McMillan] pleaded guilty voluntarily, with understanding of the nature of the charge and the consequences of the plea,” in violation of Maryland Rule 4-242(c), which provides that “[t]he court may not accept a plea of guilty . . . until after an examination of the defendant on the record in open court[,] *the court determines and announces on the record that . . . the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea.*” (Emphasis added.) Nonetheless, as the post-conviction court observed, “the determination was not announced on the record as required.” It, therefore, vacated the conviction and awarded a new trial.

The State contends that that ruling was in error. We agree. At the time of the plea, Rule 4-242(c) stated: “The court may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court” that “the defendant is pleading

voluntarily, with understanding of the nature of the charge and the consequences of the plea[.]” The requirement that a court announce its determination on the record was not added to the Rule until 2008. Thus, the trial court at McMillan’s plea hearing did not err in failing to announce its determination on the record, and, hence, the post-conviction court erred in vacating McMillan’s conviction and awarding a new trial. Accordingly, we grant the application for leave to appeal and vacate the judgment of the post-conviction court.

**APPLICATION FOR LEAVE TO APPEAL
GRANTED. JUDGMENT OF THE CIRCUIT
COURT FOR ALLEGANY COUNTY
VACATED. CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE PAID
BY RESPONDENT.**