Circuit Court for Harford County
Case No. 12-K-14-001943

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0722

September Term, 2022

BRIAN MICHAEL BILLINGS

v.

STATE OF MARYLAND

Wells, C.J.,
Shaw,
Adkins, Sally D.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Shaw, J.

Filed: July 7, 2023

**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.

Appellant, Brian Michael Billings, appeals from an order of the Circuit Court for Harford County reimposing his original sentence. Appellant presents three questions for our review:

1. Where the [C]ircuit [C]ourt modified Appellant's sentence in order to send him to a drug treatment program but failed to place Appellant on probation, did the court err when it reimposed the balance of his sentence after he did not complete the program?
2. Assuming arguendo that the [C]ircuit [C]ourt placed Appellant on probation, did the court err in revoking that probation and reimposing a sentence without conducting a violation hearing?
3. Was Appellant's failure to complete drug treatment a technical violation of probation?

BACKGROUND

Brian Michael Billings, Appellant, pled guilty to second-degree assault and indecent exposure in the Circuit Court for Harford County on February 20, 2015. He was sentenced to five years' imprisonment for second-degree assault, with all but four months suspended, a concurrent sentence of three years imprisonment for indecent exposure, with all but four months suspended, and three years' supervised probation.

In 2016, Appellant was charged with violating his probation and on October 28, 2016, at a hearing, Appellant admitted that he violated its terms. The court revoked his probation and imposed the balance of his sentence, to be served consecutively to a five-year sentence he received in an unrelated District Court case.

In 2017, Appellant filed a petition in the Circuit Court, requesting a drug treatment evaluation pursuant to Health-General Article § 8–507. His request was denied without a hearing. Appellant also filed a motion for modification of sentence, which was denied by

the court in 2018. Appellant filed a second petition seeking a treatment evaluation and the court granted his request on January 11, 2019. The Department of Health subsequently completed an evaluation and notified the court that Appellant qualified for treatment.

On May 31, 2019, the court held a hearing on Appellant's petition and granted his treatment request. The court stated:

> In this case then I will grant the modification and offer Mr. Billings an opportunity to treatment through a Section 8–507 treatment program. That would be Gaudenzia. All of the rules that apply there have to be adhered to. Otherwise, I will reinstate the balance of the sentence in this case.

The court then issued an order committing Appellant to the Department of Health for inpatient treatment, stating that Appellant would be supervised by "the Maryland Department of Health in that the Defendant remains in the custody of a local correctional facility."

On December 16, 2019, the court ordered that Appellant be transitioned to a halfway house. Four days later, the Department of Health notified the court that Mr. Billings had been removed from treatment after an investigation into another patient's missing credit card revealed that Appellant had reported a patient had given him the credit card and told him that he could use it.

The court issued a bench warrant for Appellant's arrest on December 27, 2019, and Appellant filed a motion to quash the warrant, which was denied by the court. On July 21, 2021, the court issued an order directing Mr. Billings to show cause why his "probation

should not be revoked[.]" A "violation of probation" hearing was scheduled for November 19, 2021, and at the conclusion of that hearing, the court stated:

> I think we all had some misunderstanding as to the procedural posture, whether it was a violation of probation. It wasn't a violation of probation. He was in the Division of Corrections. He then got the benefit of an 8–507 to allow him to do treatment instead of continuing to serve a sentence, but technically he was still committed to the Division of Corrections. So, when he left as a result of the findings of Gaudenzia and they didn't want him there anymore, even if Mr. Billings had turned himself in into the Court, the Court would have returned him back to the DOC. We have just taken longer to get to that point.
>
> So, he is going to be given all of the credit for the times that he was either in the DOC serving his sentence as well as the credit for the times that he was at Gaudenzia, and that amounts to 388 days. So, I'm just reimposing the sentences of the four years and eight months on the assault and imposing concurrent to that on the indecent exposure the two years and eight months and giving Mr. Billings the 388 days credit for time served.

Appellant timely appealed.

DISCUSSION

Standard of Review

Generally, a trial judge "is vested with virtually boundless discretion in devising an appropriate sentence." *Brown v. State,* 470 Md. 503, 514 (2020). "After imposing a sentence, the judge has discretion to modify that sentence subject to certain conditions." *Id.* On appeal, this court examines whether the judge's decision to modify a sentence was an abuse of discretion. As the Supreme Court of Maryland[1] has stated, the decision to modify "is a decision committed to the discretion of the circuit court and, accordingly, to

[1] On December 14, 2022, by subsequent gubernatorial proclamation, the name of the Court of Appeals was changed to the Supreme Court of Maryland. We shall use the current appellation of that court throughout this opinion.

be reviewed under the differential abuse-of-discretion standard." *Id.* at 553. An "[a]buse of discretion" occurs "'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

While courts have discretion, courts, do not "have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Morton v. Schlotzhauer*, 449 Md. 217, 231 (2016) (quoting *Wilson-X v. Dep't of Hum. Res.*, 403 Md. 667, 674-75 (2008)). "[A] failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion." *Wilson-X v. Dep't of Hum. Res.*, 403 Md. 667, 676 (2008).

I. The Circuit Court erred in failing to reimpose Appellant's sentence.

Maryland Health-General Article § 8–507 provides:

> a) (1) Except as provided in paragraph (2) of this subsection and subject to the limitations in this section, a court that finds in a criminal case or during a term of probation that a defendant has an alcohol or drug dependency may commit the defendant as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment, to the Department for treatment that the Department recommends, even if:
>
> (i) The defendant did not timely file a motion for reconsideration under Maryland Rule 4–345; or
>
> (ii) The defendant timely filed a motion for reconsideration under Maryland Rule 4–345 which was denied by the court.
>
> * * *
>
> (e) (1) A court may not order that the defendant be delivered for treatment until:
>
> (i) Any detainer based on an untried indictment, information, warrant, or complaint for the defendant has been removed; and

(ii) Any sentence of incarceration for the defendant is no longer in effect.

Md. Health-Gen. Code Ann. § 8–507.

Appellant argues the court erred in reimposing his sentence at the November 2021 hearing. He contends that during the May 2019 hearing, the court committed him to the Department of Health, did not place him on probation and "effectively" suspended his sentence as the court stated that if he failed to adhere to the rules, she would "reinstate the balance" of his sentence. As a result, in November 2021, he no longer had a split sentence, there was no mechanism that would permit the court to reinstate any suspended portion of his sentence and any sentence the court did impose was illegal. Appellant cites *Cathcart v. State*, 397 Md. 320 (2007) in support.

The State agrees that at the May 2019 hearing, the court did not expressly suspend Appellant's sentence or place him on probation. The State argues that the court's order did not comply with the requirements of Health-General Article § 8–507, and therefore, it was a nullity. In November 2021, according to the State, "when the circuit court reinstated [Appellant's] sentence, the court was merely returning matters to the proper status quo as if the commitment order had never issued. [Appellant] received the benefit of drug treatment, as well as credit for time spent while in drug treatment, but he is not entitled to further remedy." The State cites *Howsare* to support its argument. *Howsare v. State*, 185 Md. App. 369 (2009). The State argues that *Cathcart* is not applicable because, unlike the present case, it did not involve a request for drug treatment and there was no suggestion by the court that probation was ordered.

In *Cathcart*, the appellant was convicted of false imprisonment and first-degree assault and sentenced to ten years' incarceration for first-degree assault to be served consecutive to a life imprisonment sentence for false imprisonment, with all but ten years suspended. *Cathcart*, 397 Md. at 322. On appeal, Cathcart argued that a life sentence for false imprisonment with a suspended term and no period of probation was an illegal sentence because it was cruel and unusual, and it precluded parole, thus intruding on an executive function in violation of the separation of powers principle of the Maryland Declaration of Rights. *Id.* at 324.

The Supreme Court of Maryland, in holding that the sentence was not illegal, cited its *Shearin* opinion[2], stating:

> What is relevant from *Shearin* is the principle that, because the Maryland Constitution has vested in the General Assembly the power to enact legislation providing for the suspension of sentences, if the Legislature, pursuant to that authority, enacts such legislation setting conditions or limitations on the suspension of sentences, courts are not authorized to ignore or act inconsistently with those conditions or limitations.

Id. at 328.

The Court then held that "[a]bsent conditioning the suspension of a period of probation, the sentence would no longer be a split sentence, for without such a provision, there would be no ability for the court ever to direct execution of the suspended part of the sentence." *Id.* at 329. The Court noted that a "[f]ailure to impose a period of probation does not necessarily make the sentence illegal but simply precludes it from having the

[2] *State ex rel. Sonner v. Shearin*, 272 Md. 502 (1974).

status of a split sentence under CP § 6–222." *Id.* at 330. The Court ultimately remanded the case to the trial court with instructions to amend the sentence to reflect that it was a term of years and not a life sentence. *Id.*

In *Howsare*, the appellant was indicted on various sex crimes and sentenced to twenty years' imprisonment for the sexual abuse of a minor and ten years imprisonment for second-degree rape, suspended, and five years of supervised probation. *Howsare v. State*, 185 Md. App. 369, 372-73 (2009). Howsare filed a petition for post-conviction relief, and at his post-conviction hearing, the judge agreed to sign an order for a drug treatment evaluation by the Maryland Department of Health and Mental Hygiene (DHMH). *Id.* at 373.

Following the appellant's evaluation, the court held a hearing to consider DHMH's recommendation, and the court agreed to commit him to a treatment program. *Id.* at 374, 376. At the hearing, the court stated: "[w]e will stay . . . we will not suspend, not modify, but stay" the sentence. *Id.* at 375. Howsare completed the treatment program, and at a hearing held on his motion to modify his sentence, he asked the court "to reimpose the original sentence but suspend all of it in favor of probation." *Id.* at 378. The court denied his motion but gave him credit for time spent in treatment. *Id.* at 379.

On appeal, Howsare argued, and the State agreed, that by staying his sentence, the court made an illegal modification because the court had no power to stay a sentence "more than five years after the original sentence." *Id.* at 388. This Court noted that "if a person, presently incarcerated, files a petition for drug treatment under H.G. Art., § 8–507, the only

way the court can order treatment is if the court suspends the executed portion of the sentence." *Id.* at 387-88. Since the judge's stay of sentence was not authorized by any Rule, the disposition was illegal. *Id.* at 390. We were, however, unable to correct the illegality because Howsare had served the balance of his sentence. *See id.* at 394. *Howsare* is not applicable to the present case because there, the judge expressly stayed and did not suspend the appellant's sentence.

Here, the court, at the May 2019 hearing, granted Appellant's request for drug treatment and stated that if Appellant did not comply with the program's rules, she would "reinstate the balance of the sentence." The court then signed orders for Appellant to complete an inpatient treatment program at Gaudenzia and for Appellant to be supervised by the Department of Health. The court did not specify that it was suspending the sentence, did not issue a new commitment record, did not outline the length of or any conditions of probation and appellant did not sign a probation agreement.

Appellant suggests the necessary import from the court's May 2019 language was that it was suspending his sentence, but the court failed to expressly place him on probation. According to him, "the court effectively imposed a sentence of time served." The State argues that if the necessary import from the court's language was that it was suspending Appellant's sentence, then the court intended to place him on probation with the condition that he successfully complete drug treatment.

In our view, while the court may have intended to suspend Appellant's sentence and place him on probation, the court did not explicitly do so. The court's statements, however,

clearly indicated that Appellant's sentence was being modified and would be reinstated if any program violations occurred. We note that under H.G. Art., § 8–507, a court may not order the defendant be committed for treatment unless "no sentence of incarceration" for the defendant "is currently in effect." Thus, we agree with Appellant that, under these circumstances, the court's order was not a nullity and the court did comply with the requirements of H.G. Art., § 8–507 because Appellant's sentence of incarceration was no longer in effect when he was committed to treatment.

We hold that this case is in accord with *Cathcart*, where the Supreme Court of Maryland held, a "[f]ailure to impose a period of probation does not necessarily make the sentence illegal but simply precludes it from having the status of a split sentence under CP § 6–222." *Cathcart*, 397 Md. at 330. "Because the effect of the omission is to limit the period of incarceration to the unsuspended part of the sentence, that becomes, in law, the effective sentence." *Id.*

As such, at the November 2021 hearing, the court lacked authority to reimpose a sentence that was never suspended as courts "are not authorized to . . . act inconsistently with legislative conditions or limitations." *Id.* at 328. In 2016, Appellant received a sentence at his probation revocation hearing of four years and eight months to be served concurrently with a sentence of two years and eight months which was consecutive to an unrelated case. The 2019 hearing resulted in a modification that constituted a "term of years" sentence. Thus, in 2021, the reimposition of the balance of Appellant's sentence was error by the court.

We note that it is clear from the record that Appellant was not placed on probation and both parties agree. Therefore, we decline to address any issues related to whether Appellant violated probation, whether a violation of probation hearing was required, or whether any such probation should have been revoked.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY VACATED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REIMPOSE THE MAY 31, 2019 SENTENCE: TIME SERVED AS OF THAT DATE. COSTS TO BE PAID BY APPELLEE.