

Circuit Court for Baltimore County
Case No.: C-03-CR-19-000215

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1061

September Term, 2023

TONY ROBERTS

v.

STATE OF MARYLAND

Ripken,
Tang,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 6, 2024

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

In 2019, Tony Roberts, appellant, appeared with counsel in the Circuit Court for Baltimore County and entered an *Alford* plea to sexual abuse of a minor and second-degree rape. The court sentenced him to a total term of 30 years’ imprisonment. In 2023, Mr. Roberts, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence. Relying on *Mohan v. State*, 257 Md. App. 65 (2023), he maintained that his conviction for sex abuse of a minor was defective because he was charged as a “parent” when in fact he is the victim’s stepfather. Hence, he maintained that his sentence for that offense is illegal. The circuit court denied the motion, a decision Mr. Roberts appeals. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Pursuant to a 15-count indictment filed in March 2019, Mr. Roberts was charged with various sex offenses. Pursuant to a plea agreement with the State, Mr. Roberts entered an *Alford* plea to Count 1 (sex abuse of a minor) and Count 2 (second-degree rape). Count 1—the offense at issue here—charged him as follows:

The Jurors of the State of Maryland, for the body of Baltimore County, do on their oath present that TONY MAURICE ROBERTS, on or about October 13, 2016 through and including October 30, 2017 in Baltimore County, did cause sexual abuse to [name omitted], a minor, the defendant being *a parent, household member, family member or other person who has permanent, temporary care, temporary care and custody or temporary responsibility for the supervision* of [name omitted], *in violation of CR 3-602 of the Annotated Code of Maryland, against the peace, government, and dignity of the State. (Sex Abuse Minor, CR.3.602(b)(1), 1 0322.)*

(Emphasis added.)

The State’s proffer of facts in support of the *Alford* plea reflected that Mr. Roberts was married to the victim’s mother and the victim resided with them. When the victim

was 13 years old, she revealed to a friend that, beginning when she was 11 years old, Mr. Roberts would come into her bedroom at night and sexually abuse her. The court accepted the plea and subsequently sentenced Mr. Roberts to 25 years’ imprisonment for sexual abuse of a minor and to a consecutively run five years for second-degree rape.

DISCUSSION

In relevant part, Criminal Law § 3-602 provides:

(b)(1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.

(2) A household member or family member may not cause sexual abuse to a minor.

As he did in the circuit court, Mr. Roberts on appeal relies on *Mohan* to support his claim that he could not have been convicted of sexual abuse of a minor because he is the victim’s step-father, not her biological or adopted father. The State maintains that *Mohan* is distinguishable and, therefore, does not support Mr. Roberts’ contention. We agree with the State.

In *Mohan*, the defendant, like Mr. Roberts, was charged with sex abuse of a minor under Crim. Law § 3-602. 257 Md. App. at 73. Unlike Mr. Roberts, however, Mohan was charged specifically and only as a “parent” of the child victim. *Id.*¹ At the close of the State’s case, and again at the conclusion of trial, Mohan moved for judgment of acquittal on the ground that there was insufficient evidence to convict him as a “parent” of the victim

¹ Count 1 charged that Mohan “did cause sexual abuse to [C.], [a] minor, the defendant being said child’s parent ... CR: 3-602(b)(1).” 257 Md. App. at 73.

because he was the child’s step-father, not her biological or adoptive father. *Id.* The court denied the motion and the jury convicted him of the offense. *Id.* at 73-74.

On appeal, Mohan argued that the trial court erred in finding that he was a “parent” under Crim. Law § 3-602(b)(1). *Id.* at 74. In interpreting the statute, we concluded that the General Assembly did not intend the word “parent,” as used in Crim. Law § 3-602(b)(1), to include persons who are *de facto* parents. *Id.* at 80. We further concluded that there was no indication that the General Assembly intended the term “parent” to include step-parents. *Id.* at 81-82. Thus, we held that the term “parent” in Crim. Law § 3-602(b)(1) “is narrowly construed as biological or adoptive parent only.” *Id.* at 82. Accordingly, we reversed Mohan’s conviction for sex abuse of a minor because he “was charged, tried, and convicted specifically and only as a ‘parent’ of [the child victim].” *Id.* at 96.

Here, in contrast, Mr. Roberts was not charged specifically and only as a “parent.” Rather, Mr. Roberts was charged generally under Crim. Law § 3-602. Count 1 charged that he “did cause sexual abuse to [name omitted], a minor, the defendant being a parent, household member, family member *or* other person who has permanent, temporary care, temporary care and custody or temporary responsibility for the supervision of [name omitted] in violation of CR 3-602 of the Annotated Code of Maryland[.]” (Emphasis added.) When the word “or” is used in a statute, it “generally has a disjunctive meaning, that is, the word is used to indicate an alternative between unlike things, states, or actions.”

State v. Williams, 255 Md. App. 420, 445 (2022) (cleaned up). Hence, Mr. Roberts was charged as having the status of at least one (but not necessarily all) of the states listed.²

Although a citation to Crim. Law § 3-602(b)(1) appears at the end of Count 1, that fact does not support Mr. Roberts’ contention that he was charged only as a parent. Rule 4-202(a) provides: “The statute or other authority for each count shall be cited at the end of the count, *but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.*” (Emphasis added.) Moreover, the Maryland Supreme Court has noted that “[t]his reference [to the statutory authority] exists as a matter of convenience to the parties and the court, and thus possesses no substance of its own.” *Ayre v. State*, 291 Md. 155, 168 n. 9 (1981).

Because Mr. Roberts’ was not convicted of an offense improperly charged, his conviction is valid. Consequently, the circuit court did not err in denying his motion to correct an illegal sentence.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

² “‘Family member’ means a relative of a minor by blood, adoption, or marriage.” Crim. Law §3-601(a)(3). A step-parent would fall within the definition of family member. *See Mohan*, 257 Md. App. at 82.

“‘Household member’ means a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse.” Crim. Law §3-601(a)(4). The proffer of facts in support of the *Alford* plea supports a finding that Mr. Roberts resided in the same house as the victim at the time of the abuse.