Circuit Court for Baltimore County
Case No. C-03-CR-22-000161

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1269

September Term, 2023

CHARLES WALTER GETNER, IV

v.

STATE OF MARYLAND

Friedman,
Shaw,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: September 4, 2024

This is an appeal from the Circuit Court for Baltimore County. Appellant, Charles Getner, IV, entered a guilty plea and was convicted of the unlawful possession of a firearm after a disqualifying conviction and impersonating a police officer. At the conclusion of the hearing, Appellant requested that the court sentence him to home detention and following a subsequent hearing, his request was denied. The court sentenced him to fifteen years' imprisonment, all but five years' suspended, without parole, for the unlawful possession of a firearm charge and upon his release, three years' supervised probation; and two years' imprisonment for impersonating a police officer, to run concurrently. Following sentencing, Appellant filed an application for leave to appeal which was granted by this Court. Appellant presents one question for our review:

1. Did the trial judge have the authority to order that [Appellant's] mandatory minimum sentence be served in home detention?

For the following reasons, we affirm the judgment of the circuit court.

BACKGROUND

Appellant was charged by indictment in the Circuit Court for Baltimore County with six counts, including in relevant part: unlawful possession of a firearm after a disqualifying conviction and impersonating a police officer. At a hearing held on August 30, 2022, Appellant pled guilty to possession of a firearm after a conviction for a crime of violence under Public Safety Article, Section 5-133(c) and impersonation of a police officer.

The circuit court judge found him guilty of those two crimes. The State recommended a term of fifteen years' imprisonment, with all but five years suspended on count one and a concurrent sentence on count six. Appellant requested that his sentence

be served on home detention for three reasons: (1) so that Appellant could participate in the Community Psychiatry Program at Franklin Square Hospital; (2) because Appellant had a sixteen-year career in the Department of Public Safety and Correctional Services, and thus would be in danger if placed in the general prison population; and (3) because spending time in protective custody posed a danger to Appellant's mental health due to confinement in a cell for twenty-three hours per day.

The court then stated: "For the illegal possession of the firearm after that conviction, I have no choice but to sentence you to five years without parole . . . that is the mandatory minimum." Appellant asked to present a memorandum of law on the subject of the court's authority to order home detention. The court granted Appellant's request and postponed sentencing.

On November 2, 2022, Appellant filed a "Request for Home Detention," stating that he had been approved for participation in a home detention program monitored by a third-party. Appellant also filed a memorandum of law in support of his request. The parties appeared before the court on February 10, 2023, and Appellant presented argument on his request for home detention. The State opposed Appellant's request, and the court ultimately denied it. The court reasoned that Public Safety Article, Section 5-133(c) uses the word "imprisonment," which has the plain meaning of "served in prison." The court then imposed a sentence of fifteen years' imprisonment, with all but five suspended on count one, and a concurrent term of two years, followed by three years of supervised probation on count six.

On February 23, 2023, Appellant filed an application for leave to appeal, which was granted.

STANDARD OF REVIEW

When a trial court's order "involves an interpretation and application of a statute and case law, an appellate court must determine whether the lower court's conclusions are legally correct under a de novo standard of review." *Blickenstaff v. State*, 393 Md. 680, 683 (2006). *See also Johnson v. State*, 236 Md. App. 82, 88 (2018) (trial court's interpretation of a statute is reviewed *de novo*).

DISCUSSION

I. The court lacked authority to order that Appellant's sentence be served on home detention.

Appellant argues the circuit court erred in determining that it lacked authority to order that his mandatory minimum sentence be served on home detention. Appellant argues that he did not ask to circumvent the mandatory penalty of incarceration. Rather, he contends that home detention is custodial confinement and can be the functional equivalent of incarceration. The State argues that the court correctly concluded that it lacked the authority, and further, that even if the court possessed the authority, the court, nonetheless, would have denied the request.

Trial judges are "vested with very broad discretion in sentencing criminal defendants." *Jackson v. State*, 364 Md. 192, 199 (2001) (citations omitted). It is well established that a trial judge should tailor a "criminal sentence to fit the facts and circumstance of the crime committed and the background of the defendant, including his

or her reputation, prior offenses, health, habits, mental and moral propensities, and social background." *Jones v. State*, 414 Md. 686, 693 (2010) (quotations omitted) (quoting *Jackson v. State*, 364 Md. at 199). In cases involving mandatory minimums, trial judges do not have such discretion. *See Yoswick v. State*, 347 Md. 228, 242 (1997). "A mandatory minimum sentence is one where the court has no discretion on whether to impose a particular or automatic sentence." *Id*. As stated by the Maryland Supreme Court, mandatory minimums "strip the sentencing judge of the discretion to fit the sentence to the particular case and may transfer power over the disposition from the court to the prosecution." *Oglesby v. State*, 441 Md. 673, 703 (2015).

Maryland's Public Safety Article, Section 5-133(c)(1) states:

> A person may not possess a regulated firearm if the person was previously convicted of:
>
> (i) a crime of violence;
>
> (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or
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> (iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

Section 5-133(c)(2) provides that, "a person who violates this subsection is guilty of a felony and on conviction is subject to **imprisonment** for not less than 5 years and not exceeding 15 years" (emphasis added).

Under Section 4-205 of the Criminal Law Article:

> (a) Notwithstanding § 14-102 of this article or any other provision of law, except with respect to a sentence prescribed in § 4-203(c)(2) of this subtitle, a court may not:
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> (1) enter a judgment for less than the mandatory minimum sentence prescribed in § 4-203 or § 4-204 of this subtitle in a case in which a mandatory minimum sentence is specified under § 4-203 or § 4-204 of this subtitle; or
>
> (2) suspend a mandatory minimum sentence prescribed in § 4-203 or § 4-204 of this subtitle.

In the case at bar, we are tasked with examining the above mandatory minimum handgun statute to determine whether the trial judge had the authority to order a sentence of home detention in lieu of imprisonment. Based on our de novo review and statutory interpretation, we hold that the circuit court did not have such authority. We decline to adopt Appellant's interpretation of the term "imprisonment" to include home detention.

In interpreting a statute, our job is to determine the intent of the legislature in enacting it. *Mayor & City of Balt. v. Chase*, 360 Md. 121, 128 (2000). "To ascertain the intent of the General Assembly, we begin with the normal, plain meaning of the statute." *Johnson v. Mayor & City Council of Balt.*, 430 Md. 368, 383 (2013). We assign words their ordinary and natural meaning. *Lewis v. State*, 348 Md. 648, 653 (1998) (quoting *Gardner v. State*, 344 Md. 642, 647–48 (1997)). When the plain language of the provision "is clear and unambiguous, our inquiry ordinarily ends[.]" *Christopher v. Montgomery Cnty. Dep't of Health & Human Servs*., 381 Md. 188, 209 (2004) (quotation marks and citation omitted). However, to confirm our analysis, "we may resort to legislative history

to ensure that our plain language interpretation is correct." *Neal v. Balt. City Bd. of Sch. Comm'rs*, 467 Md. 399, 424 (2020) (citations omitted).

The statute at issue, Public Safety Article Section 5-133(c), provides that, "a person who violates this subsection, on conviction, is subject to **imprisonment** for not less than 5 years and not exceeding 15 years" (emphasis added). The statute does not specifically define the term "imprisonment." However, Black's Law Dictionary defines the term "imprisonment" as:

> **1.** The act of confining a person, esp. in a prison <the imprisonment of Jackson by the authorities was entirely justified>. — Also termed *incarceration.* **2.** The quality, state, or condition of being confined <Jackson's imprisonment>. Cf. FALSE IMPRISONMENT. **3.** The period during which a person is not at liberty <14 years' imprisonment>.

Black's Law Dictionary (12th ed. 2024).

In our view, this term and its commonly used definition clearly discerns that the legislature's intent is that the sentence be served in prison. Based on its ordinary meaning, we conclude that "imprisonment" as used in Public Safety Article Section 5-133(c) refers to incarceration or confinement in prison. Thus, the statute requires a sentence to be served in a correctional facility.

We note that while the statute's language is clear and unambiguous, the statute's archival legislative history is further instructive, and it confirms our analysis. "Archival legislative history includes legislative journals, committee reports, **fiscal notes**, amendments accepted or rejected, the text and fate of similar measures presented in earlier sessions, testimony and comments offered to the committees that considered the bill, and

debate on the floor of the two Houses. . . ." *Johnson v. State*, 467 Md. 362, 375 (2020) (emphasis added).

Section 5-133(c) was formerly codified as Article 27, Section 449(e), in the Responsible Gun Safety Act of 2000. The Act created the five-year mandatory minimum sentence applicable to a defendant with a prior disqualifying conviction who possessed a regulated firearm. Article 27, Section 449(e). The Fiscal Note from the Act's Bill, Senate Bill 211 makes evident the Legislature's intent that the sentence would be served in prison, as it expected an increase in the population of "DOC facilities" and predicted that a "new prison facility" would be necessary. The fiscal note, further, makes no reference to costs or the deferral of costs to be associated with home detention programs.

The Fiscal Note states:

> This bill's provisions that change the crime of illegally possessing a firearm, when there has been a prior violent or felony offense, from a misdemeanor to a felony means that: (1) such persons would be subject to considerably stiffer sentencing; (2) such cases will be filed in the circuit courts rather than the District Court; and (3) **some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions.**
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> In fiscal 1999, the Division of Correction (DOC) had 574 intakes for handgun-related violations, and the Division of Parole and Probation had 740 such intakes. **Accordingly, it is assumed that this bill would increase both the number of persons incarcerated per year by over 1,300 persons. It is also estimated that the term of incarceration for each new handgun offense intake would increase by 18 months.** The new intakes represented here do not include those with misdemeanor handgun convictions who now serve their sentence (less than one year) in a local detention facility. Requiring each violation to be considered a separate offense would also tend to add to DOC costs, but cannot be reliably estimated.

> **In any event, general fund expenditures could increase significantly as a result of the bill's stiffer incarceration penalties due to significantly more people being committed to DOC facilities for longer periods of time and increased payments to counties for reimbursement of pretrial inmate costs. This bill could increase the average daily population in DOC facilities to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility will be necessary. Based on a cost of approximately $105,000 per bed, the cost of building a new medium security 1,300 bed prison facility is currently estimated at $136.5 million**
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> **Persons serving a sentence longer than one year are incarcerated in DOC facilities.** Currently, the average total cost per inmate, including overhead, is estimated at $1,700 per month. The average variable cost of housing a new inmate (food, medical costs, etc.), excluding overhead, is $260 per month. For illustrative purposes only, under the bill's mandatory minimum sentencing provisions the average time served would be 18 months greater than that for current intakes. Assuming full inmate costs of $1,700 per month, State costs could increase by $30,600 for each person imprisoned under the bill, and by $40,208,400 assuming 1,300 persons are subject to the sentencing provisions of the bill. Such an increase in costs would not be felt until after fiscal 2006 (emphasis added).

Fiscal Note (Revised) for Senate Bill 211 (March 30, 2000).

We also examined Maryland's Public Safety Article for a definition of "imprisonment." We found the history of Section 13-903(b), although providing the punishment for an unrelated crime, nevertheless instructive. It states that "[a] person who violates this section is guilty of a misdemeanor and on conviction is subject to **imprisonment** not exceeding 1 year or a fine not exceeding $500 or both" (emphasis added). In tracing the section's legislative history, we observed that the statute, when passed in 2003, was originally Senate Bill 1, where a former reference, "in jail" was deleted as implicit in the term "imprisonment." Thus, the Legislature considered the phrase "in jail" to have the same meaning as the word "imprisonment," which at least suggests that they meant the same thing here too.

Appellant contends that Section 14-102 of the Criminal Law Article, would allow the court to sentence him to home detention. It states, in pertinent part, "if a law sets a maximum and a minimum penalty for a crime, the court may impose instead of the minimum penalty a lesser penalty of the same character." Md. Code Ann., Crim. Law § 14-102. In our review, the issue of whether Section 14-102 applies to mandatory minimum penalties has been examined and held by this court and the Supreme Court not to apply in these circumstances. *See Woodfork v. State*, 3 Md. App. 622, 624 (1968) ("As a general rule, where the punishment for a criminal offense is fixed by statute, that imposed by the court must conform thereto."). *See also State ex rel. Sonner v. Shearin*, 272 Md. 502, 519 (1974).

Appellant also relies on *Dedo v. State*, to support his argument that the term "imprisonment" includes home detention. 343 Md. 2, 9 (1996). We find his reliance misplaced. The Supreme Court of Maryland in *Dedo* considered whether the defendant was entitled to credit for time spent on home detention because of his commitment to the custody of the Warden of the Wicomico County Detention Center (WCDC) following his conviction, but prior to sentencing. *Id.* The defendant argued that he was in constructive custody of WCDC through their home detention program because he could be potentially charged with escape. *Id* at 8. The State argued that the defendant's participation in the program was voluntary and that he was not in custody. *Id*. The trial court denied the defendant credit for time spent on home detention prior to sentencing on the ground that home detention was not jail. *Id* at 6-7. On appeal, we held that the relevant statute did not require credit to be awarded for time spent in home detention prior to sentencing. *Id* at 7.

The Supreme Court of Maryland reversed, finding that the defendant was entitled to credit for the time spent because he was committed to the custody of the Wicomico County Department of Corrections, and he was subject to prosecution for escape or an unauthorized absence from his home. *Id* at 13.

Similarly, in *Johnson v. State*, this Court examined whether a defendant should receive credit for time spent on home detention while he awaited his appeal. 236 Md. App. 82 (2018). We held that the defendant's home detention qualified as "custody" and thus, the defendant was entitled to receive credit for time served in home detention. *Id.* at 84.

Appellant argues that both opinions are instructive, however, neither *Dedo* or *Johnson* stands for the proposition that a sentence of home detention qualifies as a term of "imprisonment," as required by the statute. Both cases address custody and sentence crediting issues and unlike *Dedo* and *Johnson*, Appellant, here, is requesting home detention in lieu of incarceration.

The sentence proposed by Appellant in the present case could potentially fall within the purview of the Division of Corrections (DOC), as the sentence is for a period of more than eighteen months. Section 3-402 of the Md. Code Ann., Corr. Servs. Article provides that "[w]ith the Secretary's approval, the Commissioner may establish a home detention program under which an incarcerated individual in the custody of the Commissioner may live in a private dwelling that the Commissioner or the Commissioner's designee approves."[1] Section 3-405 states:

[1] There are additional Maryland authorities that authorize a court to place a defendant on home detention, however they are not relevant to the case at bar. Instead, these provisions

> An incarcerated individual may be placed in the program if:
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> (1) the incarcerated individual agrees to waive the incarcerated individual's right to contest extradition;
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> (2) the Commissioner or the Commissioner's designee approves the placement; and
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> (3) the incarcerated individual has served any statutorily imposed minimum sentence, less the allowances for diminution of the incarcerated individual's term of confinement provided under Subtitle 7 of this title and § 6-218 of the Criminal Procedure Article.

A key aspect of the program is the lack of confinement. Section 6-108 sets forth that: "(b) An offender in the program shall be supervised by means of: (1) electronic devices; and (2) direct contact by employees of the Division." The statute further provides:

> (d) While in the program, an offender must remain in the offender's approved dwelling except: (1) with the approval of the Director, to go directly to and from: (i) the offender's approved place of employment; (ii) a medical or mental health treatment facility; or (iii) offices of the Department; (2) as required by legitimate medical or other emergencies; or (3) as otherwise allowed or directed by the Director.

The statute makes no provisions for a judge to order a defendant into the program. Rather, it is an administrative determination. *See Resper v. State*, 354 Md. 611, 620 (1999) (holding that the court may not sentence defendant directly to the Patuxent Institution because "[j]udges, in sentencing convicted persons to imprisonment to be served at a State correctional institution, shall sentence such persons to the jurisdiction of the Division of Correction, and as such, cannot sentence persons to any particular institution") (citing

govern pretrial detention and pretrial release. *See* Md. Code Ann., Crim Proc. § 5-202(c)(5); *see also* Md. Code Ann., Crim. Proc. § 5-201(b); *see also* Md. Rule 4-349.

State v. Parker, 334 Md. 576, 592 (1994)). While Appellant may apply for acceptance, the program would require him to serve his statutorily imposed minimum sentence of five years in prison before he could become eligible. The program's parameters are, thus, further evidence of the legislature's intent that a mandatory sentence be a term of imprisonment in a penal facility.

Maryland courts have long held that a "statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense." *Wheeling v. Selene Fin. LP*, 473 Md. 356, 377 (2021). Based on our review, we hold that the term "imprisonment" in Section 5-133(c) requires that the sentence be actually served in prison. The circuit court did not err in its interpretation of the statute when it stated:

> That word "imprisonment," has a plain meaning. That means required to be served in prison, and for that reason, sir, among others, the Court declines to grant home detention on this particular case.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.