Circuit Court for Cecil County
Case No. C-07-CR-21-000383

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1270

September Term, 2023

HAKEEM M. EVANS

v.

STATE OF MARYLAND

Wells, C.J.,
Arthur,
Ripken,

JJ.

Opinion by Wells, C.J.

Filed: March 20, 2024

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from the Circuit Court of Cecil County's denial of appellant Hakeem Evans' motion to withdraw his guilty plea. Evans pleaded guilty to second-degree murder, attempted second-degree murder, use of a handgun in a crime of violence, and illegal possession of a firearm. Later, Evans moved to withdraw the guilty pleas. After a hearing, the circuit court denied the motion. The court sentenced Evans to thirty years on the second-degree murder count, thirty years, consecutively, for attempted second-degree murder, and two consecutive ten-year sentences, with all but five years without parole, on each of the handgun counts.

Evans filed this timely appeal asking whether the court's denial of his motion to withdraw his guilty pleas "violate[d] both Maryland Rule 4-242(c) and his constitutional right to due process." Perceiving no abuse of discretion, we affirm.

BACKGROUND

Because of the nature of this appeal, we focus on the two proceedings at issue: (1) the hearing at which Evans entered pleas of guilty and (2) the hearing on Evans' motion to withdraw his guilty pleas. We begin with the plea hearing.

On October 24, 2022, the circuit court conducted a hearing for Evans to plead guilty to certain charges in the indictment. At the hearing, the prosecutor set forth the terms of the plea agreement. In return for Evans entering pleas of guilty to second-degree murder,

attempted second-degree murder,[1] use of a handgun in a crime of violence, and illegal possession of a firearm, the State would recommend the following sentences:

- On Count One (as amended), Second-Degree Murder: forty years with all but thirty years suspended;
- On Count Two (as amended), Attempted Second-Degree Murder: thirty years, to be served consecutively to Count One;
- On Count Five, Use of a Handgun in a Crime of Violence: twenty years, suspend all but ten years, five years of which would be a mandatory term of incarceration, to be served consecutively to Count Two;
- On Count Ten, Illegally Possessing a Firearm: fifteen years, suspend all but ten years, five years of which would be a mandatory term of incarceration, to be served consecutively to Count Three.

The State would also recommend a period of probation, restitution, and request a "no contact" order with the victims' family and business.

As part of the agreement, Evans requested: (1) postponing sentencing to a later date; (2) that the Department of Parole and Probation prepare a Presentence Investigation Report ("PSI")[2]; and (3) that he be free to argue for a lower sentence on each count. The court

[1] As part of the agreement, the State agreed to amend the original charges of first-degree murder and attempted first-degree murder to second-degree murder and attempted second-degree murder.

[2] Maryland Rule 4-341 governs presentence investigations and reports. The Rule states:

> Before imposing a sentence, the court in accordance with Code, Correctional Services Article, § 6-112 (c) and Code, Criminal Procedure Article, § 11-727 shall, and in other cases may, order a presentence investigation and report. A copy of the report, including any recommendation to the court, shall be mailed or otherwise delivered to the defendant or counsel and to the State's

agreed with these terms; it would impose no more than the sentences the State recommended and would consider Evans' request for less time.

The court then asked one of Evans' attorneys to examine him pursuant to Rule 4-242(c),[3] to ensure he understood the nature of the charges to which he was pleading guilty, the consequences of doing so, and that he was proceeding voluntarily. At the start of the colloquy, counsel elicited the following background information from Evans:

- That his name is Hakeem Evans;
- He was twenty-eight years old;
- He has a tenth-grade education and read, wrote, and understood the English language;

> Attorney in sufficient time before sentencing to afford a reasonable opportunity for the parties to investigate the information in the report. Except for any portion of a presentence report that is admitted into evidence, the report, including any recommendation to the court, is not a public record and shall be kept confidential as provided in Code, Correctional Services Article, § 6-112.

The Maryland State Commission of Sentencing Policy website informs that "pre-sentence investigation reports (PSI) are prepared by the Division of Parole and Probation in an effort to provide background information on defendant and case characteristics. The information contained within PSIs is designed to assist the courts in the sentencing process." *https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/000000/000022/unrestricted/20030034e.pdf.*

[3] **(c) Plea of Guilty.** The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

- At that time, he was not under the influence of any mind-altering substance, such as drugs or alcohol;

- He was not under the care of a psychiatrist or psychologist, nor had he been admitted to a mental health facility within the previous five years.

Counsel then explained that they were supposed to begin a jury trial that morning but because Evans was pleading guilty to some of the charges under the plea agreement, there would not be a jury trial or a court trial.

Next, counsel explained in detail the elements of each of the four charges to which Evans agreed to plead guilty. After the explanation of each charge, Evans acknowledged that he understood what evidence the State would have to produce that would lead to a conviction for each count.

Counsel then returned to the fact that Evans was giving up his right to have a trial by jury or by judge. In either case, counsel explained, the State would have to prove each element of each offense for the trier of fact to find Evans guilty beyond a reasonable doubt. Counsel also stressed that as part of the plea agreement, the State amended the more serious offenses from First- to Second-Degree Murder. If Evans chose to go to trial, he would be facing First-Degree Murder as the flagship count. Evans stated that he understood this information.

Counsel explained what a jury trial was, what preemptory strikes are and how they are employed, that the jury was required to reach a unanimous verdict, and if they were unable to, that would result in the court declaring a mistrial, and the State could retry Evans. Counsel acknowledged that he had done "a lot of talking," but Evans stated that he

understood what he was told. Counsel ended this part of the colloquy by explaining that Evans was relinquishing his right to challenge the State's evidence, call and examine witnesses, and testify on his own behalf. He would have the right to ask for a lesser sentence, however. Evans stated that he understood this as well.

Finally, counsel explained to Evans that because he was pleading guilty, he would not have an automatic right to an appeal to this Court, as he would if he had been convicted after a trial. Counsel explained the four bases upon which he could appeal after entering a guilty plea: jurisdiction, legality of sentence, effectiveness of counsel, and challenging whether the plea was free and voluntary. Evans said that he understood his appellate rights. As a coda, counsel explained that because Evans was on probation when he allegedly committed these offenses, a guilty plea could result in a violation of probation. Evans acknowledged he understood this fact.

After this colloquy, the court found that Evans was knowingly and voluntarily waving his right to a jury trial. Further, the court found that Evans was "entering these guilty pleas to the counts noted—amended counts noted—freely and voluntarily with a full understanding of the nature of those charges and the consequences thereof." The court then asked the prosecutor to provide a factual basis for the pleas.

We reproduce the statement of facts found in the State's brief:

> On the night of March 5, 2021, police responded to the New Eastern Inn in Cecil County. Police entered the apartment located behind the main office and found Usha Patel on the floor with wounds to her chest. Usha was pronounced dead, and her cause of death was a gunshot wound to the chest. Dilip Patel was found leaning against a couch with a gunshot wound to his abdomen. Surveillance video from the hotel showed an African American

> man get into an argument with the victims in the lobby. The suspect pulled out a handgun and fired three shots at the Patels while they tried to flee. The suspect left the lobby and was seen entering a room that was rented by Evans's mother. There were witnesses who identified Evans as the suspect in the video. Evans was arrested that evening and made "several utterances that he had . . . screwed up that evening."[4]

The court found that there was a factual predicate to sustain findings of guilt for each of the charges and entered Evans' guilty pleas to second-degree murder, attempted second-degree murder, use of a firearm in a crime of violence, and illegal possession of a firearm by a person with a felony conviction. As agreed, the court ordered a PSI and set sentencing for January 19, 2023.

Later, by written motion, Evans sought to withdraw his guilty pleas. On April 5, 2023, the court convened a hearing to address the motion. According to Evans' new trial counsel, he had two grounds for withdrawing the plea: (1) the waiver of his right to trial was not knowing and voluntary; and, as a result, (2) Evans' right to due process was abridged. At that time, counsel argued, as he does now before us, that Evans

> did not understand what, in fact, he was pleading guilty to, that he was not advised properly about the factual defenses and legal defenses that he was waiving, that he was not asked about whether he was threatened or promised anything inducing his guilty plea, whether -- that Mr. Evans was not advised about the maximum sentence of his guilty plea, and finally, that there was no mention of the trial court's ability to reject the plea bargain.

[4] The State also provided a factual basis for the firearms charges in its recitation at the plea taking. We note that Evans does not challenge the voluntariness of his plea due to a deficiency of evidence on any of the charges.

The State argued against the necessity of withdrawing the pleas because the proper advisements were given, and the record showed Evans knowingly and voluntarily waived his right to trial and knowingly and voluntarily wished to plead guilty.

Apparently, the court had a copy of the transcript of the plea hearing before it, because in rendering its oral ruling the court seemed to be reading and summarizing passages in the plea-taking colloquy between Evans and his attorney. The court also noted the factual proffer from the State, that it had ordered a PSI, and set a sentencing date. The court finished its review and summary of the plea hearing by saying:

> So again, upon review of this matter, the Court does not find any violations either by the Court or Counsel and makes no finding that the withdrawal of the guilty pleas back on October 24th would serve the interest of justice. So for those reasons, the Court is going to deny the motion to withdraw the guilty plea [ ].

Evans subsequently filed this timely appeal. Additional facts will be discussed as needed.

DISCUSSION

Md. Rule 4-242(h) provides that, "[a]t any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves the interest of justice." This Court reviews the denial of a motion to withdraw a plea for abuse of discretion. *Blinken v. State*, 291 Md. 297, 309, *cert. denied*, 456 U.S. 973 (1982). Further, under the rule, the court must hold a hearing on a timely motion to withdraw a plea of guilty. Md. Rule 4-242(h).

We turn to the specific sub-allegations that Evans raises. *First*, he asserts that the court did not discuss with him "the factual or legal defenses being waived." Evans cites no

support for this specific claim of error because none exists. In the colloquy between Evans and his trial attorney at the time he entered the pleas of guilty, counsel informed Evans that he was relinquishing his right to challenge the State's evidence and the State's witnesses through cross-examination, call his own witnesses, and to testify himself. The Rule does not impose upon the court a specific requirement to discuss the factual and legal defenses being waived.

Second, Evans claims the court failed to ask him if he was threatened or made promises to induce his pleading guilty. Again, Rule 4-242 imposes no requirement that the court make this specific inquiry. Indeed, Evans raises no factual allegation that someone threatened or promised him anything to induce him to plead guilty. One could argue that the entire colloquy between the court, defense counsel, and Evans, was to determine whether threats or promises that would inhibit the voluntariness of the plea are exposed. In this case, Evans raised nothing of the sort at the plea taking.

Third, Evans complains that it was error that he was not advised of the maximum possible sentence before he entered his guilty pleas. He cites *Bryant v. State*, 47 Md. App. 551 (1981), in support. There, Bryant pleaded guilty to escape and received a two-year term of imprisonment, to be served consecutively to a sentence he was then serving. *Id.* at 552. On direct appeal to us, he argued he did not understand the consequences of the plea because he was never informed of the maximum penalty he could face. *Id.* at 554–55. This Court agreed and vacated the judgment. *Id.* at 556–57. We observed that, before accepting

a guilty plea, a court must ensure that the defendant understands the "consequences of the plea." *Id.* at 555.

At the time that Evans entered his guilty pleas, the prosecutor explained the charges to which he was pleading guilty and that he would receive the maximum penalty for each offense, forty years in the case of second-degree murder, thirty years "max" for attempted second-degree murder, twenty years for use of a handgun in the commission of a crime of violence, and fifteen years for possession of a regulated firearm, with some portion of that sentence suspended for each count. The State advised Evans of the statutory maximum penalties, even though the prosecutor did not explicitly mention this fact. We have held that where the record contains a clear reference to the statutory maximum period of incarceration that a criminal defendant faced, although it was not characterized as the statutory maximum, the requirement that the defendant be advised of the maximum penalty under Rule 4-242 has been satisfied. *See Pitt v. State*, 144 Md. App. 49, 65 (2002).

Additionally, the State explained the sentence it would seek at the time of sentencing. Evans was going to argue for a lesser sentence. At sentencing, the court imposed a sentence consistent with the plea agreement. Based on the totality of the circumstances, we conclude the record contains a reference to the maximum penalty for each charge to which Evans pled guilty.

Fourth, Evans argues the court should have told him that it had the power to reject the plea agreement. Neither Rule 4-242 nor appellate authority requires a court to inform a

defendant of this fact. The court accepted Evans' pleas of guilt and sentenced him according to the plea agreement.

Finally, Evans maintains (1) "the court did not dispute its violation of [his] rights;" and (2), he contends the State would not have been prejudiced by allowing him to withdraw his pleas of guilty, therefore, the court should have permitted him to withdraw his pleas. What Evans means by the first sub-contention is that the court's remarks during the hearing on the motion to withdraw the pleas somehow acknowledged the errors he alleges. We disagree. The judge who presided when Evans entered the pleas of guilty was the same judge who presided at the motion to withdraw the pleas. The judge reviewed the plea hearing transcript, reciting and summarizing portions of the hearing in rendering its decision to not allow Evans to withdraw his pleas of guilty. Our independent review of the plea taking shows that counsel carefully examined Evans about his desire to voluntarily enter the pleas in this case. The court found that Evans knowingly relinquished his right to be tried and was pleading guilty voluntarily.

On the last point Evans raises, we note that simply because the State could have re-prosecuted Evans and he was not explicitly told that fact does not invalidate the plea taking or mean that his pleas should be withdrawn. Overall, we cannot conclude that the court's decision not to allow Evans to withdraw his guilty pleas was an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED APPELLANT TO PAY THE COSTS.