

Circuit Court for Caroline County
Case Nos. C-05-CR-20-000050, 20-000121, and 21-000151

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1483

September Term, 2023

MICHAEL GRIFFITH

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 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.

Convicted by the Circuit Court for Caroline County of two counts of second degree rape, one count of sexual abuse of a child, and one count of violation of a protective order, Michael Griffith, appellant, presents for our review a single issue: whether the court, in re-sentencing Mr. Griffith, “erred or abused [its] discretion by receiving disputed victim impact statements and . . . permitting a portion of the prosecutor’s argument.” For the reasons that follow, we shall affirm the judgments of the circuit court.

We recount some of the pertinent facts from our previous opinion in Mr. Griffith’s case:

On December 16th, 2019, Ridgely Police Officers were contacted by the Department of Social Services in regard to reports of sexual assaults disclosed by two minor children, A.B., born in April 2008, and B.B., born in September 2009. A.B. and B.B., sisters, disclosed on December 13, 2019 during a therapy session that their mother’s boyfriend, [Mr.] Griffith, had been sexually assaulting them since the fall of 2019. They further stated that the abuse was occurring when [Mr.] Griffith babysat and when he was alone in rooms with them. The girls recited the most recent incident in detail, which took place on December 7, 2019, at their grandmother’s house located in Federalsburg, Caroline County. Based on these disclosures, the therapist referred the matter to the Department of Social Services, and cases were opened and assigned to Child Protective Services (“CPS”) Investigator, Sarah Lepore.

[Ms.] Lepore conducted forensic interviews of A.B. and B.B., as well as their oldest sister, C.B., born in May 2007. The girls each stated that on December 7, 2019, [Mr.] Griffith was babysitting them while their mother, grandmother, and a friend were playing Bingo. He took the girls to the Federalsburg house to check on their dog. While there, all three girls went upstairs to a room and, shortly after, [Mr.] Griffith entered that room and closed the door. [Mr.] Griffith asked the minor children if they wanted to have sex and proceeded to take off his pants and lay on the bed. [Mr.] Griffith had the two youngest children, A.B. and B.B., take their pants off as well, and [Mr.] Griffith ordered them to get on top of him and rub their private parts against his penis. [Mr.] Griffith also had them put their mouths on [Mr.] Griffith’s penis and [Mr.] Griffith ejaculated. [Mr.] Griffith had “sex cards” depicting different sexual positions, which he used to direct the girls to

different positions. During the interview with Ms. Lepore, the girls were each able to draw in detail some of the sexual positions depicted on those cards.

The girls further stated that on other occasions, [Mr.] Griffith would come into their mother's house, located in Ridgely, Maryland, to supervise them. On some occasions when the mother was absent, [Mr.] Griffith would enter the girls' rooms and have them perform fellatio on him. A.B. stated that he taught her about "the tip of his penis," and "made her suck his penis" by "grabbing her head and putting her mouth on his penis." She was able to draw a picture of his penis during the interview. B.B. gave a similar account of this assault.

Griffith v. State, Nos. 443 & 444, Sept. Term 2021 (filed March 22, 2022), slip op. at 1-3 (footnote omitted).

On May 18, 2021, Mr. Griffith "proceed[ed] to trial on an agreed-upon statement of facts[.]" *Id.* at 1. The court subsequently "found [Mr.] Griffith guilty of one count of child sex abuse and two counts of second [] degree rape." *Id.* "The court also found [Mr.] Griffith guilty of violating a protective order[.]" *Id.* at 12 n.4. During the sentencing phase, the State offered a written victim impact statement from each of the three sisters. Defense counsel objected to the admission of the statement by C.B. on the ground that she was "not a victim of any of the crimes [of which Mr. Griffith was] adjudicated guilty." The court admitted the statement on the grounds that C.B. was "a victim of the violation of the *ex parte*," "she was present" for "at least [some of] the . . . offenses," and "a sister close in age that was present from there is probably appropriate as . . . one of the victims' representations [sic]." The court also noted that Md. Code (2001, 2018 Repl. Vol., 2020 Supp.), § 11-403(b) of the Criminal Procedure Article ("CP"), "allow[s] the victim or the victim's representative to address the court under oath before the imposition of sentence or

other disposition,” and that CP § 11-401 classifies “a member of the victim’s immediate family” as a “victim’s representative.” Defense counsel then stated that “there was in these victim impact statements from the three girls . . . sort of instructions as to what they think would be an appropriate action sentence,” and “ask[ed]the [c]ourt to disregard that.” The court agreed to “do that.”

Following argument, the court sentenced Mr. Griffith for the first count of second degree rape to a term of imprisonment of twenty years, all but ten years suspended. For the second count of second degree rape, the court sentenced Mr. Griffith to a term of imprisonment of twenty years, all but ten years suspended, to run consecutively to the sentence for the first count of second degree rape.¹ “For the child sex abuse charge, the court sentenced [Mr.] Griffith to twenty-five years incarceration, concurrent with the first two sentences.” *Griffith* at 1. For the violation of a protective order, the court sentenced Mr. Griffith “to one year incarceration concurrent with the other sentences.” *Id.* at 12 n.4.

On appeal, Mr. Griffith contended that the court erred “in denying [his] motion to suppress [a] confession and apology letter as the product of improper inducements and promises and hence involuntary and inadmissible[.]” *Id.* at 12 (quotations omitted). We affirmed the judgments, holding “that the officers’ statements did not constitute improper

¹In *Griffith*, we stated that the terms of imprisonment for the counts of second degree rape were “to be served concurrent to each other.” *Id.* at 1. It appears from the record that this statement is incorrect. The transcript of the May 18, 2021 hearing and the court’s commitment record clearly reflect that the court intended for the sentence for the second count of second degree rape to run consecutively to the sentence for the first count of second degree rape. Also, in his brief, Mr. Griffith recognizes that the sentences for second degree rape were “to run consecutively.”

inducements or promises, nor did [Mr.] Griffith rely on any of the statements he argues were improper in making his confessions,” and hence, the “confessions were voluntary[.]” *Id.* at 12-13.

On April 12, 2022, Mr. Griffith filed a petition for post-conviction relief. It appears from the record that on or about September 20, 2023, the State and Mr. Griffith entered an agreement under which the petition for post-conviction relief would be resolved by awarding Mr. Griffith “a re-sentencing hearing . . . under the original plea agreement,” and at which the post-conviction judge would preside. It further appears from the record that the court approved the agreement.

On September 26, 2023, the parties appeared for the re-sentencing hearing, and the following colloquy occurred:

[PROSECUTOR]: Thank you, Your Honor. I’ll keep my contribution to this record brief. The State agreed to this resentencing because the State is confident that this Court will reimpose the original sentence from the original judge. The State didn’t want to burden the record with a whole hearing about the inequities of Judge Newell and felt that it would distract from what is the ultimate point of this sentencing hearing, the victims. Your Honor, the victims will be able to expound on this, on how profoundly and permanently the Defendant’s actions have affected them, how it has shattered their family and how they have, they remain nearly mentally broken as a result of this. They will go into that in more eloquent and greater detail than I ever could. What I’m here to talk about is the Defendant’s actions following his, following his initial sentencing. The Defendant . . . entered a not guilty on an agreed statement of facts to preserve his appellate rights. The Court of Special Appeals, or the appellate court, whatever you want to call it, denied that. This is his, now his final attempt to, to bring that sentence down. Throughout all of this, Your Honor, the Defendant has not accepted any responsibility, not had any moment of self reflection, not undergone any treatment, not undergone anything that would show that there’s been any form of correction in our correctional facility. The Defendant’s initial post conviction is still continuing to complain about lack of DNA, corrupt officers, corrupt DA’s. The Defendant’s . . . 60 page

attempt to reach, to reach out to Judge Murphy, ex parte, talks about going through phones, the FBI says this case should have been thrown out. The only thing worse than the monstrous actions of the Defendant is that . . .

[DEFENSE COUNSEL]: Objection, Your Honor, to the characterization of monstrous.

THE COURT: I'll allow it, it's argument. Go ahead.

[PROSECUTOR]: Is that the Defendant is at this point unrepentant about those monstrous actions. The, Your Honor, at the conclusion of, and the reason I'm holding this to the end is to not force the juvenile victims of the Defendant to listen to his voice. Roughly at the end of August, the Defendant contravening his probation orders, his stay away orders and the sentence of the Court, directly called [the victims' mother], continuing to proclaim his innocence and attempting to influence her testimony here today. The Defendant's sentence should remain, should remain in place and the State has indicted the Defendant on further counts of witness tampering and filed a violation of probation in this case as well. Your Honor, the prior Court was a, an imperfect vessel to deliver a perfectly legal sentence. The Defendant was sentenced to 25 years . . . of executed incarceration. That wasn't the statutory cap, nor was it even the cap of the guidelines. And Your Honor, I have a copy of the sentencing guidelines at the time if the Court would like to see it that shows the Defendant's sentencing guidelines showed 15 to 30 years of executed incarceration. If I could present this to the Court.

* * *

(Pause – Court reviewing)

[PROSECUTOR]: Your Honor, the sentence that the previous Court imposed in this matter was not only not excessive, it was fair, it was just. The State sees no compelling reason why the original sentence should not be put in place. But, as far as, I told the Court I would be brief, and I'd like to stick to that promise. I would now ask to, for the victim impact statement from [one of the victims].

THE COURT: Certainly.

[PROSECUTOR]: Okay. [One of the victims] has prepared a written victim impact statement, if I could present that to the Court?

THE COURT: Yes, you have a copy of that?

[DEFENSE COUNSEL]: I have one, Your Honor.

[PROSECUTOR]: Permission to approach.

THE COURT: Yes, sir, thank you. Thank you. If I could have a moment please.

(Pause – Court reads victim impact statement)

THE COURT: Thank you.

[PROSECUTOR]: Your Honor, as to the statements of [the second] and [third victims], they've indicated to the State that they are, that they, it was too much for them to put pen to paper this time. So, I would ask that the Court review what's already in the record from the May 18th, 2021, sentencing, if I could approach.

THE COURT: Any objection?

[DEFENSE COUNSEL]: Your Honor, at this point, I'd just like to make, perhaps a continuing objection. Criminal Procedure 11-403(b) allows for a statement by a victim or a victim's representative. I understand that there are two alleged victims in this case, so two victim impact statements might be appropriate. Any statements in excess of that, we would object to as more prejudicial than probative and contravening to the Rule.

THE COURT: Anything you want to tell me?

[PROSECUTOR]: Only that the, there is nothing in the statute that mandates that a victim be, be the sole victim, otherwise the legislature would have used that word sole. Your Honor, the Defendant's actions have caused a profound ripple effect throughout this family and the Defendant's attempts to silence those who have been affected by the Defendant's actions stands, we'll call it counter to the idea of justice.

THE COURT: I'm going to receive the statements, note your objection.

[DEFENSE COUNSEL]: And Your Honor, just briefly, to the extent that any statements, written or oral, make a recommendation as to a particular sentence, we would object to those portions of the statements as inappropriate for a victim impact statement.

THE COURT: I'll allow, I've read the statement written by [the first victim]. I'm going to admit that.

The prosecutor subsequently elicited testimony from the victims' aunt and mother.

Following argument, the court stated, in pertinent part:

I note in connection with this matter today for sentencing and the Court has had an opportunity to consider the information that has been presented. The Court read carefully the statements presented by the victims, listened carefully to the victim impact statement made by [the victims' aunt] and [mother]. I have listened to the recommendations of the State's Attorney, recommendations of Mr. Griffith's attorney. Court notes there are a number of purposes for sentencing, takes those into consideration as well as the sentencing guidelines. Some observations that I make in connection with this matter. I commend the, the children's strength and their family's strength. I am convinced they will move forward with success and continued strength. Blame in this situation rests solely with Mr. Griffith. No child should have to go through what these children and their family have had to go through. And that's one of the children's statements and that's certainly correct. After considering all the information, I note in connection with this matter there are three cases for sentencing, CR 20-050, Mr. Griffith was found guilty of two counts of rape in the second degree. As to Count 1, Court's going to impose a sentence of 20 years. I'm going to suspend all but 10 years to serve. As to Count 2, 20 years, suspend all but 10 years to serve. That count will be consecutive to Count 1. . . . As to, and I believe the sentence commences, from looking at the file, December 17, 2019. CR-20-121, Mr. Griffith was found guilty of Count 20, sexual abuse of a minor. Court's going to impose the sentence of 25 years, DOC. That also commences December 17, 2019. No portion of that sentence will be suspended. The remaining case, CR-21-151, penalty in connection with that matter is one year. That sentence will be concurrent to CR-20-050. . . . And I believe CR-20-121 is to be concurrent with CR-20-050.

Mr. Griffith first contends "that the court . . . erred by admitting a victim impact statement from a person who was not a named victim of the crimes of which he was convicted." We disagree. As the initial sentencing court noted, C.B. is a victim of Mr. Griffith's violation of the protective order. Also, CP § 11-403(b) expressly allows a victim

or victim’s representative to address the court, and CP § 11-401 expressly classifies a member of the victim’s immediate family as a victim’s representative. Finally, the Supreme Court of Maryland has stated that “the victim impact statutes do not limit the sentencing court from considering additional victim impact evidence,” and “any victim impact evidence beyond the minimum required by statute is within the sentencing judge’s discretion to consider.” *Lopez v. State*, 458 Md. 164, 184 (2018) (citations omitted). Hence, the court did not err in admitting C.B.’s statement.

Mr. Griffith next contends that “[t]o the extent that the victim impact statements received by the court . . . made reference to the sentence cap of 25 years to which the State and defense had agreed, such references fell outside of the permissible content of victim impact statements.” We disagree. Although CP § 11-402 requires that a victim impact statement include certain information, neither the statute nor any other authority cited by Mr. Griffith requires the exclusion from a statement a request that the court impose a particular term of imprisonment. Hence, the court did not err in admitting those portions of the victim impact statements.

Finally, Mr. Griffith contends that the court erred in “permitting the prosecutor to refer to the ‘monstrous actions of the Defendant.’” We disagree. While a prosecutor’s argument to a jury implying that a defendant is a “monster” is “inappropriate,” *Lawson v. State*, 389 Md. 570, 599 (2005), Mr. Griffith does not cite any authority that prohibits a prosecutor, at sentencing before a judge, from describing a defendant’s acts as monstrous. Even if such a description is inappropriate, we note that “[t]rial judges are presumed to know the law and to apply it properly.” *Ball v. State*, 347 Md. 156, 206 (1997). We further

note that the court imposed the same total term of imprisonment as that imposed by the first sentencing court, and that the court did not make any statement indicating that the description caused the court to impose sentences greater than it otherwise would have imposed. From these circumstances, we conclude that Mr. Griffith was not prejudiced by the prosecutor's description.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CAROLINE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**