Circuit Court for Baltimore City
Case No. 123054015

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1818

September Term, 2023

Y.D.

v.

STATE OF MARYLAND, *et al.*

Berger,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: January 14, 2025

*This is an unreported opinion. This opinion 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).

In this appeal from the Circuit Court for Baltimore City, Appellant Y.D. is the representative of a minor sexual assault victim. Y.D. alleges that the circuit court accepted Appellee Marcos Antonio Ramirez's guilty plea and imposed sentence without Y.D., or the minor victim, being present. Y.D. alleges that because she had asked to be notified of "all events related to this case," and was not notified of the plea-and-sentencing hearing, her rights as the victim's representative were violated when the circuit court proceeded in her absence. Y.D. asks that Mr. Ramirez's conviction be vacated and that the case be remanded for another hearing. Appellees, the State of Maryland and Mr. Ramirez, urge instead that we dismiss Y.D.'s appeal.

Y.D. presents one question for our review,[1] which we rephrase as:

1. Were Y.D.'s rights as a victim's representative violated when Y.D. alleges, but no record reflects, that she was not given prior notice of Mr. Ramirez's plea-and-sentencing hearing and could not herself present the victim impact statement to the circuit court before acceptance of the plea agreement and imposition of sentence?

We do not reach this question because Y.D. bases her request on facts that are not in the record. Accordingly, we dismiss this appeal.

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[1] Y.D. phrased her question as follows:

> Did the State's Attorney and Circuit Court violate Appellant's rights by (1) failing to notify [Y.D.] of the date, time, and location of the new hearing, making it so she could not be present, and (2) by denying [Y.D.] the ability to be heard and orally present her victim impact statement to the Court before acceptance of the plea agreement and imposition of the sentence?

BACKGROUND

We need not recount the details of Mr. Ramirez's crime. In February 2023, the State of Maryland charged Mr. Ramirez with sexual abuse of a minor and other related crimes. In March 2023, the State's Attorney provided to the victim a copy of a pamphlet notifying victims and their representatives of the rights, services, and procedures provided under Article 47 of the Maryland Declaration of Rights and State law. The State's Attorney also provided the victim a notification form through which a victim or their representative could request to be notified under Section 11-104 of the Criminal Procedure Article. Y.D. filed the notification form on May 8, 2023. On May 31, 2023, a hearing was scheduled for October 16, 2023.

On the afternoon of October 16, 2023, Mr. Ramirez entered a guilty plea in the circuit court to one count of sexual abuse of a minor. The circuit court sentenced Mr. Ramirez to ten years of incarceration, with all but five years suspended, and five years of supervised probation, among other things.

Neither Y.D. nor the minor victim were present at the October 16, 2023 hearing. The prosecutor stated that "the victim and [Y.D.] [were] on call[]" and that Y.D. had asked that a victim impact statement she produced with the University of Maryland Advocacy Clinic be read into the record. The prosecutor read Y.D.'s statement, which was admitted into evidence.[2]

[2] Y.D. expressed her opposition to the plea agreement in the victim impact statement.

On October 25, 2023, Y.D. timely filed this appeal. Y.D. alleges in her brief that she was "prepared to attend Mr. Ramirez's hearing" and that her counsel was present at the Baltimore City Circuit Court on October 16, 2023. Y.D. alleges that approximately an hour after the hearing was set to take place that morning, her counsel was instructed by a bailiff that the case was "over." According to Y.D., a witness advocate for the State's Attorney's Office also told her that she "should not come to the courthouse" and that the hearing would not proceed that day because the plea agreement had been rejected by a judge and because the father of Mr. Ramirez's counsel had died. Y.D. alleges that she was informed later in the afternoon on October 16, 2023, after the hearing had concluded, that "Mr. Ramirez's case had been closed, that the State had found another judge to accept the plea, and that Mr. Ramirez had been sentenced to 10 years suspend all but 5 after pleading guilty to one count of sex abuse of a minor."

Y.D. requests that we vacate Mr. Ramirez's conviction and remand for a new hearing. Y.D. also asks that we "order the State to provide proper notice to [Y.D.] of all rescheduled matters" in compliance with her constitutional and statutory rights as a victim's representative.

DISCUSSION

I. Appellees' Arguments for Dismissal Under Maryland Rule 8-504

The State urges us to dismiss this appeal or, in the alternative, remand the case. The State in its brief does not dispute that Y.D., as the victim's representative, had the right to notice of the hearing, the right to be present at the hearing, and the right to

present a victim impact statement at the hearing. However, the State does not respond to whether Y.D.'s rights were violated in this case because it argues that under Maryland Rule 8-504, the lack of a record warrants dismissal or, in the alternative, remand to the circuit court for further proceedings.[3]

Mr. Ramirez similarly notes the absence of a reviewable record. He moves for dismissal under Rule 8-504 and Rule 8-602.[4] He argues that because Y.D. cites nothing—and because there is nothing—in the record to support her claim, the appeal should be dismissed or, in the alternative, the judgment of the circuit court should be affirmed.

II. Y.D.'s Arguments in Response to Appellees' Arguments for Dismissal

Y.D. acknowledges that the facts upon which she relies are not in the record before us.[5] In other words, she does not contend that she supplied all that is required by Title 8 of the Maryland Rules, which governs appellate review in this Court and the

[3] Maryland Rule 8-504 provides that briefs shall include "[a] clear concise statement of the facts material to a determination of the questions presented" and that "[r]eference shall be made to the pages of the record extract or appendix supporting the assertions." Md. Rule 8-504(a)(4). Section (c) of this rule further provides that the appellate court may, among other options, dismiss the appeal for noncompliance. Md. Rule 8-504(c).

[4] Maryland Rule 8-602 provides that a "court may dismiss an appeal if . . . the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or *8-504*[.]" Md. Rule 8-602(c)(6) (emphasis added).

[5] The only item in the appendix to Y.D.'s appellate brief was a transcript of the October 16, 2023 hearing.

Supreme Court. Instead, Y.D. urges us to exercise our discretion to overlook this lapse or, in the alternative, to remand for an evidentiary hearing before the circuit court.

III. Without a sufficient factual record demonstrating a violation of Y.D.'s rights, we dismiss this appeal.

Y.D.'s appeal is deficient because it relies on factual allegations that are not in the record below. Y.D. has appealed from a final order. As such, she must supply a full, standard appellate record.[6] *See* Md. Rule 8-413(a). And, she must cite to the record to identify those portions that support her argument. Md. Rule 8-504(a)(4). She has done neither.

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[6] Appellants typically must provide the full record, including transcripts, and, with limited exceptions, "all original papers filed in the action in the lower court." Md. Rules 8-411 and 8-413(a). Only if both parties to the appeal agree to proceed on a Statement of Case in Lieu of Entire Record may appellant's appeal proceed on less than the entire record. In that case, "the parties agree that the questions presented by an appeal can be determined without an examination of all pleadings and evidence," and "file a [Statement of Case in Lieu of Entire Record] showing how the questions arose and were decided, and setting forth those facts or allegations that are essential to a decision of the questions." Md. Rule 8-413(b) (explaining that the parties' statement, the lower court judgement from which the appeal is taken, and the lower court's opinion are the record for the purposes of such an appeal).

By contrast, for an interlocutory appeal:

> the record shall contain (A) the application; (B) any response to the application filed by the defendant, a child or liable parent under Code, Criminal Procedure Article, § 11-601, the State's Attorney, or the Attorney General; (C) any pleading regarding the victim's request including, if applicable, a statement that the court has failed to consider a right of the victim; and (D), if applicable, any order or decision of the court.

Md. Rule 8-204(c)(4).

To be sure, as the victim's representative, Y.D. has the right to appeal to this Court from a final order that denies or fails to consider enumerated rights secured to the victim by the Maryland Code.[7] Md. Code Ann., Criminal Procedure ("CP") § 11-103(b). These rights include, as relevant to this appeal: the right to attend any proceeding at which the defendant has the right to appear; the right to be notified of all court proceedings, plea agreement terms, and of the right to submit a victim statement impact (which the court must consider when sentencing); and the right to address the court under oath before sentencing. CP §§ 11-102, 11-104, 11-402, and 11-403.

But, there is nothing in CP § 11-103(b) that suggests that a victim's representative, in pursuing that appeal, may overlook the Maryland Rules that enable meaningful appellate review. Briefs before Maryland appellate courts shall include "[a] clear concise statement of the facts material to a determination of the questions presented," and "[r]eference shall be made to the pages of the record extract or appendix supporting the assertions." Md. Rule 8-504(a)(4). Although the Maryland Rules provide for correction

[7] CP § 11-103(b) provides:

> Although not a party to a criminal or juvenile proceeding, a victim of a crime for which the defendant or child respondent is charged may file an application for leave to appeal to the Appellate Court of Maryland from an interlocutory order or appeal to the Appellate Court of Maryland from a final order that denies or fails to consider a right secured to the victim by subsection (e)(4) of this section, § 4-202 of this article, § 11-102 or § 11-104 of this subtitle, § 11-302, § 11-402, § 11-403, or § 11-603 of this title, § 3-8A-06, § 3-8A-13, or § 3-8A-19 of the Courts Article, or § 6-112 of the Correctional Services Article.

CP § 11-103(b).

of a material error or omission in the appellate record either on motion or by the court's own initiative, the appellate court "ordinarily may not order an addition to the record of new facts, documents, information, or evidence that had not been submitted to the lower court." Md. Rule 8-414.

Here, Y.D.'s statement of the case makes assertions without reference to or support from the record. Many of her statements are about events and communications that occurred outside of the October 16, 2023 hearing and about which there is no information in the record. Importantly, Y.D.'s assertion that she was told that the hearing would not proceed on the morning of October 16, 2023, is not supported by the record. Y.D.'s argument that her rights as a victim's representative were violated relies on this statement and others about communications that allegedly occurred between Y.D. and the State, but which are not in the record.

Y.D.'s reliance on factual allegations that are not in the record is particularly problematic because the record suggests that Y.D.'s rights were not violated. Specifically, the State's Attorney provided notice of the rights, services, and procedures available to victims, and the circuit court file documented Y.D.'s request for notification. The October 16, 2023 hearing transcript shows that the prosecutor read Y.D.'s victim impact statement into evidence, apparently acting at her request. The victim and Y.D. were not present at the hearing but were, according to the prosecutor, "on call."

Our role as an appellate court is not that of a fact-finder: we do not "choose among differing inferences that might possibly be made from a factual situation." *Smith v. State*,

415 Md. 174, 183 (2010). Y.D. argues that she wanted to attend the October 16, 2023 hearing, but, as Appellees point out, the transcript could be read to suggest the opposite. The prosecutor had and read the victim impact statement prepared by Y.D., which could suggest that she was intentionally not present at the hearing. We do not express an opinion on what inference should be drawn from these limited facts.

Noncompliance with Rule 8-504 can be grounds for dismissal of an appeal: Rule 8-504 provides that "[f]or noncompliance with this Rule, the appellate court may dismiss the appeal . . . " and Rule 8-602 provides that a "court may dismiss an appeal if . . . the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or *8-504*[.]" Md. Rules 8-504(c) and 8-602(c)(6) (emphasis added).

The Maryland Rules "are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and . . . are to be read and followed." *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 197 (2008) (alteration in original). In *Rollins*, the appellant's brief relied on facts contained in documents that were not part of the record. *Id.* at 200. Further, significant portions of the brief consisted of statements of fact unsupported by any citation, violating Maryland Rule 8-504(a)(4). *Id.* at 201. While "recogniz[ing] that dismissing an appeal on the basis of an appellant's violations of the rules of appellate procedure is considered a 'drastic corrective' measure[,]" this Court held that the appellant's substantial violations "represent[ed] a complete disregard of the rules of appellate practice" and therefore

warranted dismissal. *Id.* at 202–03.

In an attempt to avoid dismissal, Y.D. urges us to exercise our discretion under Maryland Rule 8-604(d)(1) and remand for an evidentiary hearing before the circuit court.[8] To be sure, "[t]here are certain times and types of cases where the limited remand is the proper disposition, but Rule 8-604(d) is neither an 'antidote' for the errors of the State or of counsel nor a method to correct errors committed during the trial itself." *Southern v. State*, 371 Md. 93, 106 (2002) (discussing previous cases in which a limited remand was proper). *Southern* held that because the State failed to meet its burden of proof on a motion to suppress, the "appropriate appellate response is a reversal with a new trial, not a remand for the taking of additional evidence in a reopened suppression proceeding in the same case." *Id.* at 112 (reversing this Court's order of a limited remand under Rule 8-604(d)(1)). Our Supreme Court noted that "[t]here is a line of cases permitting the introduction of new evidence on remand, but the cases permitting new evidence on remand usually do so to correct some action taken by the trial court in a

[8] Maryland Rule 8-604(d)(1) provides:

> If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

Md. Rule 8-604(d)(1).

proceeding collateral to the trial itself which results in unfairness to a party." *Id.* at 107; *see also Portillo Funes v. State*, 469 Md. 438, 475 (2020) (explaining that "[a] limited remand is proper where the purposes of 'justice will be served by permitting further proceedings' *see* Md. Rule 8-604(d)(1), and the issue is discrete from the issue at trial . . . such as cases like this where the trial court failed to make findings of fact and effectively failed to rule on the suppression motion prior to trial.") (citing *Southern*, 371 Md. at 104–05).

We are not persuaded that a limited remand is appropriate here. To start, the issues that Appellant raises are not discrete from the plea-and-sentencing hearing. Appellant seeks to have Mr. Ramirez's plea, and the sentence that followed, vacated. As such, she challenges the entire disposition of the case, and with it, the expectations that the State and Mr. Ramirez had in that disposition. Y.D.'s challenge is not merely to a ruling that is collateral to the disposition.

Nor can we overlook the opportunity that Y.D. had to develop the factual record below. Appellants carry the burden of persuasion on appeal that the trial court erred, and "part of this burden is the making of an adequate record." *MLT Enterprises, Inc. v. Miller*, 115 Md. App. 661, 679 (1997). In extraordinary cases, an appellant may be relieved of the burden of making an adequate record if, under specific circumstances, the appellant did not have the ability to do so. *Denicolis v. State*, 378 Md. 646, 657–58 (2003). Here, though, Y.D. had that ability. On learning that the plea-and-sentencing hearing had occurred without her, Y.D. could have, and should have, filed a motion

requesting relief in the circuit court. *See* CP § 11-103(e). Had Y.D. done so, the circuit court would have been able to make findings on the factual issues underlying Y.D.'s claim and could have granted an appropriate remedy if it found that Y.D.'s rights had not been considered or had been denied. Or, if the circuit court denied Y.D. relief, she would have been able to appeal to this Court after having developed a sufficient factual record to show that her rights were not considered or violated. *See* CP § 11-103(b).

Attempting to overcome this conclusion, Y.D. argues in her reply brief that "there is nothing in the statute that requires [her] to file both a motion in the Circuit Court and an appeal in the Appellate Court." For this proposition, Y.D. cites to *Griffin v. Lindsey*, 444 Md. 278, 291 n.11 (2015), but that footnote does not support her argument. Footnote 11 of *Griffin* concludes that "a victim is not precluded from simultaneously applying for leave to appeal in an appellate court and moving for reconsideration in a trial court." *Id.* However, *Griffin* interprets an earlier version of CP § 11-103, which has since been amended to no longer require leave to appeal when a victim appeals from a final order, as Y.D. did here. CP § 11-103. *Griffin* does not relieve Y.D. of the obligation of developing a factual record. Y.D.'s contention that this requirement "impos[es] a duty to pursue two cases simultaneously" is inaccurate.

Two previous victims' rights cases illustrate how a victim or victim's representative could, if needed, develop a factual record at the circuit court level. The first case is *Antoine v. State*, upon which Y.D.'s brief heavily relies. Mr. Antoine, the victim, had been told by the prosecutor that "nothing substantive would occur" and "not

to appear" in court on the defendant's scheduled trial date. *Antoine v. State*, 245 Md. App. 521, 535 (2020). In fact, the defendant accepted a plea offer at a hearing before the circuit court that day without Mr. Antoine present, and no victim impact statement was presented. *Id.* at 535–36. After learning of the plea hearing, Mr. Antoine filed a motion in the circuit court, asking that the court set aside the plea and disposition on account of the violations of his victim's rights. *Id.* at 536. Mr. Antoine submitted an affidavit to the trial court stating that he had "had a victim impact statement written and was available to give it to the court had [he] been notified that the defendant intended to enter a guilty plea." *Id.* at 547 (alteration in original). Shortly thereafter, the circuit court addressed Mr. Antoine's motion at a hearing and denied Mr. Antoine's request, erroneously citing a lack of authority to grant the requested relief. *Id.* at 536–37. Mr. Antoine appealed and, based on the record demonstrating a violation of his rights as a victim, this Court vacated the circuit court's approval of the plea agreement so that the court could consider the victim impact evidence. *Id.* at 556–57, 561.

Similarly, in *Hoile v. State*, the victim first initiated action in the circuit court following a violation of her rights. *Hoile v. State*, 404 Md. 591, 598–601 (2008). There, the circuit court had held hearings related to the defendant's motion for reconsideration of sentence and ultimately modified the defendant's sentence. *Id.* at 597–98. Following these hearings and the sentence modification, the victim wrote a letter to the trial judge stating that she had not been notified of the hearings despite previously requesting such notification. *Id.* at 599–600. The circuit court held a hearing and "found as a fact that the

victim had not been notified properly, as required by [the relevant sections of the Maryland Code and the Maryland Rules].” *Id.* at 600. In order to remedy the violation of the victim’s rights, the circuit court vacated the altered sentence.[9] *Id.* at 600–01.

Without the facts to determine that Y.D. is entitled to a remedy based on a violation of (or failure to consider) her rights as a victim’s representative, we cannot review this appeal and decide whether to vacate the conviction or to affirm it. The record does not disclose any violation of (or failure to consider) Y.D.’s rights as a victim’s representative, and the circuit court did not hold a hearing or make findings on the issues raised by Y.D. Accordingly, we hold that dismissal is appropriate.

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.

[9] We note that in *Hoile*, the defendant appealed the circuit court’s decision and our Supreme Court held that the circuit court did not have the authority to vacate the defendant’s sentence based on the violation of the victim’s rights. *Hoile*, 404 Md. at 629. However, since *Hoile* was decided, the General Assembly has made “several important changes to § 11-103, including changes aimed at superseding aspects of *Hoile*[.]” *Antoine*, 245 Md. App. at 541. Now, a court may provide a remedy that modifies a sentence of a defendant based on a violation of a victim’s rights, provided that the victim requests relief within 30 days of the alleged violation of the victim’s right. CP § 11-103(e)(3).