Circuit Court for Baltimore City
Case No. 114176057

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2075

September Term, 2022

LABRIA PAIGE

V.

STATE OF MARYLAND

Arthur,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: July 17, 2024

*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).

Appellant, Labria Paige, pled guilty to felony murder and conspiracy to commit robbery with a dangerous weapon. This appeal concerns appellant's motion for post-conviction relief. Appellant presents the following question for our review:

> "Did the post-conviction court err by finding that the State had not breached the clear and unambiguous language of the promise made to Ms. Paige at her plea hearing when it opposed her motion to modify her sentence imposed pursuant to a binding plea agreement."

Finding no error, we shall affirm.

I.

On February 17, 2016, appellant pled guilty to felony murder and conspiracy to commit robbery with a dangerous weapon pursuant to a plea agreement with the State. The agreement was dependent on appellant's cooperation and testimony against her alleged co-conspirators in pending cases. Provided that appellant cooperated, the State agreed to a binding plea agreement with a sentence of life imprisonment with all but twenty years suspended for felony murder and a concurrent term of incarceration of twenty years for conspiracy to commit robbery with a dangerous weapon. If appellant did not cooperate, she would receive a sentence of life imprisonment with all but forty years suspended for felony murder and a concurrent term of incarceration of twenty years for conspiracy to commit robbery with a dangerous weapon. On May 9, 2016, after appellant's cooperation with the State in the trial of her co-defendants, appellant was sentenced to life imprisonment with all but twenty years suspended for felony murder and a concurrent term

of incarceration of twenty years for conspiracy to commit robbery with a dangerous weapon, as promised by her plea agreement.

However, one year later, on May 17, 2017, appellant moved for modification of her sentence on grounds that she had assisted the State with an additional case. Appellant alleged that the terms of her plea agreement, as set forth by the court, required the State to consent to the modification. This allegation stemmed from the interactions between appellant and the court at her guilty plea hearing.

At that hearing, the court began by discussing the terms of the plea agreement with counsel for both parties before appellant was in the room. Counsel established that several things were not in the plea agreement:

> "[DEFENSE COUNSEL]: There are a couple of things that are not in that agreement because the State can't guarantee them. One is, you know, moving her to the local prison to get out of the Jessup facility. They're making all the efforts they can to do that. The second thing we're not – we haven't put in here for her own safety is she may have information on [an] outstanding, unsolved 2008 City murder. And we don't quite know – well, [if] that's going to pan out or not so we've agreed we'll file a motion for modification.
>
> [THE STATE]: And we'll deal with that at some other time if and when –
>
> [DEFENSE COUNSEL]: It bears true.
>
> [THE STATE]: – there's something to deal with. So there's no specific agreement what we would or wouldn't do, just that it's not covered by this agreement.
>
> [DEFENSE COUNSEL]: And we just wanted to leave a mechanism open –
>
> [THE STATE]: Or any other –

[DEFENSE COUNSEL]: Yeah.

[THE STATE]: – cooperation on other matters that are not covered by this agreement.

[DEFENSE COUNSEL]: Right."

Once appellant was in the room, the court set out the agreement for her. Regarding her requested prison transfer and the potential for resentencing if appellant provided more information, the court stated as follows:

"[THE COURT]: There are other circumstances that were mentioned to me. Let me get these on the record. You are presently being housed in Jessup?

[APPELLANT]: Yes, sir.

[THE COURT]: And you are requesting, and the State will attempt to get it done, that you would be moved from the Women's Detention Center at Jessup to a local detention center, pending the outcome of these matters.

[APPELLANT]: Yes, sir.

[THE COURT]: And that if, in fact, you had information about more crimes than what we are talking about here today as part of this formal agreement, that you could provide that information to the State and the State would be amenable to recommending to the Court that the sentence to be imposed in this case be modified based upon any further cooperation about other cases involving other people. Is that your understanding what's happening?

[APPELLANT]: Yes, sir.

[THE COURT]: Now, other than those two considerations, has anyone made you any kind of a promise to get you to plead guilty?

[APPELLANT]: No, sir."

In her motion for modification, appellant interpreted the court's statement that "if in fact you had information about more crimes, . . . that you could provide that information to the State and the State would be amenable to recommending to the Court that the sentence to be imposed in this case be modified," as a promise that, if she provided more information to the State, the State would not oppose modification.

At the modification hearing, the court rejected this argument. The court interpreted the agreement as setting forth two requirements for a modification of appellant's sentence:

> "I have – and I appreciate the opportunity to hear the [hearing judge's] colloquy at the plea negotiation, and I find that it – a bit of a run-on sentence, a bit of a compound sentence, but I find that what the Court said to be a conjunctive clause, that Ms. Paige was required to both have information and provide that information and the State would need to be amenable to recommending to the Court the sentence he imposed in this case be modified. There's two conditions that had to be met, and those are that there's information, and it's provided, and the State deems that information to be worth and is amenable to modifying the sentence."

Because the State did not consent to modification, the circuit court held that it could not modify appellant's sentence imposed pursuant to a binding plea agreement.

Appellant did not appeal the denial of the motion for modification. However, on March 22, 2021, appellant filed a motion for post-conviction relief, once again alleging that the State was required to consent to the modification of her sentence. After a hearing, in an order, the circuit court reasoned that the State had promised to be amenable to modification, but that a promise to be amenable does not equate to a promise to make any particular recommendation. Indeed, in the eyes of the court, it would not make sense to interpret the plea agreement as asserting that the State would preemptively surrender its

right to object to modification given the unspecified nature of the information appellant had. The court ruled that the State's further action was rooted in the State's discretion.

The circuit court denied appellant's motion for post-conviction relief. This timely appeal followed.

II.

Appellant argues, as she did in both proceedings below, that a reasonable person in appellant's position would understand the terms of the plea agreement, as it was explained to her in court, to include a provision that, if she had facts about an additional crime and provided those facts to the State, then the State would be amenable to a modification of her sentence. Appellant argues that the State was bound to be amenable to modification, provided that she gave the State information. She further argues that the State being "amenable" to modification required the State not to oppose any modification the court found justified. In withholding consent to the modification, therefore, the State breached the binding plea agreement. Appellant argues that her sentence is illegal.

The State asks us to consider whether this appeal is properly before us. The State's entire argument on this point appears in a footnote which reads:

> "In its brief, the State will primarily focus on the construction of the plea agreement. However, for the reasons set forth in the Answer, Paige does not establish that this claim was properly raised."

The State presents no further argument on the subject in its brief. Below, the State argued that appellant had waived her ability to seek post-conviction relief by failing to take a direct appeal from the motion to modify. The lower court rejected this argument.

In the alternative, the State makes two arguments, tracking the opinions of the two circuit judges below. First, the State argues that the plea agreement set out by the court did not require the State to be "amenable" to modification at all. The State argues that the trial court set out two conditions that appellant must satisfy in order to receive a modified sentence: first, that appellant provide information to the State and, second, that the State be amenable to modification. The State argues that we should read the circuit court's assertion that "if in fact you had information about more crimes, . . . that you could provide that information to the State and the State would be amenable to recommending to the Court that the sentence to be imposed in this case be modified," not as an assertion of a condition and a result, but as an assertion of two conditions.

Second, even if the court set forth a promise that the State would be amenable to modification, the State argues that this does not require the State to *consent* to modification. It simply requires the State to be open to persuasion on the subject of modification. The State argues that a requirement that the State be open to persuasion is a more logical reading of the word "amenable" given how little sense it would make for the State to agree to support any proposed modification before hearing the information appellant had to offer.

III.

We begin by addressing the State's cursory contention that this appeal is not properly before the court. We note that the State has not raised this issue appropriately. The brief must state a party's argument on an issue, not merely the conclusion the party wishes the court to reach. Md. Rule 8-504(a)(6). Incorporation by reference of the party's arguments in a memorandum submitted to the court below is not sufficient and excuses this Court from considering the party's arguments on the relevant point. *Monumental Life Ins. Co. v. U.S. Fid. & Guar. Co.*, 94 Md. App. 505, 544 (1993). Accordingly, we do not address appellants' supposed waiver by failure to address the plea agreement on direct appeal from the motion to modify.

We turn, then, to the merits of the issue. When a court accepts a binding plea agreement with a specified sentence, the court is precluded from modifying the sentence unless the State consents. *Bonilla v. State*, 217 Md. App. 299, 308 (2014). Thus, the court in appellant's case could not modify appellant's sentence without the State's consent. The State did not consent, and therefore, the court's ability to modify appellant's sentence was constrained to the scenario in which appellant's plea agreement bound the State to consent. It is possible, theoretically, for a plea agreement to bind the State to consent to or to not oppose a particular judicial action. Md. Rule 4-243(a)(1)(E). We review the lower court's determination *de novo* as to whether such an agreement exists and, if so, whether it has been breached. *Cuffley v. State*, 416 Md. 568, 581 (2010).

We construe a binding plea agreement as we would construe a contract. *Solorzano v. State*, 397 Md. 661, 668 (2007). Our interpretation is guided by contract principles and

by "[d]ue process concerns for fairness and the adequacy of procedural safeguards." *Id.* All of the terms of the plea agreement contract must be set out on the record in the defendant's presence prior to the plea. *Cuffley*, 416 Md. at 581-82. We look only to the record of the portion of plea hearing for which the defendant was present to determine the terms of the agreement. *Id.* In this case, we disregard the portion of the hearing in which the court discussed the plea agreement with counsel before appellant entered the room.

When considering the terms of the agreement, the operative question is what a reasonable layperson in the defendant's shoes would have understood the plea agreement to mean when she pled guilty, even if said meaning was not the one intended by the court or by the attorneys. *Id.* at 581. If the record makes clear what a defendant would have reasonably believed based on the record of the plea agreement, the defendant is entitled to specific enforcement of the agreement. *Id.* at 583. If the record of the plea agreement is ambiguous on a particular point, the ambiguity is resolved in the defendant's favor. *Id.*

We must determine, first, whether a reasonable layperson would interpret the court's comments about the State's amenability as setting forth two conditions necessary for a modification of appellant's sentence (as the State maintains), or whether a layperson would interpret it as a promise that "the State would be amenable" provided that appellant gave the State information (as appellant maintains). We think the correct interpretation of the sentence is the latter for two reasons: the grammar of the sentence better supports appellant's reading, and the court's later colloquy with appellant suggests that this was meant to set forth a promise by the State.

The sentence at issue reads:

> "And that if, in fact, you had information about more crimes than what we are talking about here today as part of this formal agreement, that you could provide that information to the State and the State would be amenable to recommending to the Court that the sentence to be imposed in this case be modified based upon any further cooperation about other cases involving other people"

It begins with an "if." A conditional clause beginning with "if," must have a corresponding result clause. Reading the sentence as the State would have us do, turns the entire sentence into a conditional clause with multiple conditions: appellant has information that appellant provides to the State, and the State is amenable. But there is no result clause in sight. We acknowledge that this was a verbal summary, and the court's grammar need not be perfect, but the State's proposed meaning of the sentence would be an odd construction indeed.

By contrast, appellant's proposed reading of the sentence produces a coherent conditional clause, "if, in fact, you had information about more crimes than what we are talking about here today as part of this formal agreement," and a coherent result clause containing a promised exchange of consideration, "you could provide that information to the State and the State would be amenable to recommending to the Court that the sentence to be imposed in this case be modified." Under this reading, the sentence explains that, upon the condition of appellant having and offering information, appellant and the State would engage in an exchange: information for the State's amenability. This reading seems more grammatically plausible.

Second, the court's next comment to appellant was "Now, other than those two considerations, has anyone made you any kind of a promise to get you to plead guilty?"

Clearly, the "two considerations" referred to were the State's promise to attempt to move appellant from one prison to another, and some promise contained within the sentence at issue in this case. We read that sentence to contain a promise, not merely a set of conditions. Once again, this supports a reading upon which the State agreed to be "amenable," provided that appellant gave the State information. Under this reading, because appellant *did* provide the State with information, the State was obliged to "be amenable to recommending to the Court that the sentence to be imposed in this case be modified."

We turn to the next issue we must consider: what does it mean for the State to be "amenable" to recommending modification? In construing the word "amendable" in an unrelated context, the Maryland Supreme Court set out a number of dictionary definitions:

> "*Black's Law Dictionary* (11th ed. 2019) defines 'amenable' as 'acknowledging authority; ready and willing to submit' giving as an example 'suitable for a particular type of treatment.' *The Merriam-Webster Dictionary* defines the term as 'ready or willing to answer, act, agree, or yield; open to influence, persuasion, or advice; agreeable; submissive; tractable' and 'capable of or agreeable to being tested, tried, analyzed, etc.' *Webster's New Universal Unabridged Dictionary* (2nd ed. 1979) defines the word as including 'willing to follow advice; open to suggestion; submissive.'"

Davis v. State, 474 Md. 439, 463 (2021).

These dictionary definitions make clear that "amenability to recommending" does not necessarily require *actually* recommending. Rather, it requires an openness to the possibility of recommending. Other courts have noted that there is a difference between indicating amenability and indicating commitment. *Great Lakes Commun. Corp. v. AT&T*

Corp., 124 F. Supp. 3d 824 (N.D. Iowa 2015) (holding that indicating that one is "amendable to settling" on certain terms is different from announcing acceptance). As a result, what the court promised on behalf of the State was not that the State committed to recommending modification provided that appellant gave the State information, but that the State would be open to the possibility of recommending modification. Openness to the possibility of recommendation does not command eventual follow-through. The State did not breach the plea agreement simply by failing to consent to modification. Absent some argument by appellant that the State failed to be open to negotiating, the circuit court did not err in denying post-conviction relief on those grounds.

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