Case Law Summary: Maryland

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This summary of Maryland appellate case law addresses five topics: the availability of and general standards for appellate review, standards and allowable grounds for departure, constitutional requirements for proof of facts permitting upward departure (*Blakely v. Washington*), constitutional requirements for proof of facts that increase the minimum sentence (*Alleyne v. United States*), and other important appellate sentencing decisions.

1. Availability of and General Standards for Appellate Review.

Maryland does not allow parties to appeal sentences that are inconsistent with the guidelines. A judge's failure to follow the sentencing guidelines is not grounds to vacate a sentence, "a mistaken application of, or failure to apply, the Guideline provisions by the sentencing judge who purports to be governed by their substance, does not require vacation of the sentence and a new sentencing hearing."[1] Moreover, sentencing guidelines or principles "complement rather than replace the exercise of discretion by the trial judge," and nothing requires that they be applied.[2]

As long as the sentence is within statutory limits, a judge has wide discretion in sentencing; "[i]t is well established in Maryland that a trial judge is 'vested with virtually boundless discretion' in determining a sentence."[3] Only three grounds of appellate review are recognized: (1) whether the sentence constitutes cruel and unusual punishment or otherwise violates constitutional requirements; (2) whether the sentencing judge or trial court was motivated by ill will, prejudice or other impermissible considerations; and (3) whether the sentence is within the statutory limitations.[4] The impermissible considerations component has been used to appeal a wide array of cases, from those involving victim impact videos,[5] to whether a defendant's decision not to plead guilty can be considered in sentencing.[6]

Illegal sentences are appealable and correctable under Maryland law, and must actually inhere in the sentence itself rather than come from a trial court error or procedural illegality.[7] An appeal of an illegal sentence can take place regardless of the fact that no objection was made when the sentence was imposed, that the defendant purported to consent to it, or that the appeal was not timely-filed.[8] A Circuit Court cannot correct a sentence that is *not* illegal unless a defendant can show fraud, mistake, or irregularity.[9] However, the appellate rule does not preclude a trial court from acting on its own initiative.[10] Illegal sentences that are appealable should not require additional fact-finding because their errors should be obvious and facial. Common facial errors occur when a sentence exceeds the sentencing cap or when it should not have been imposed in the first place.[11] For example, in *Johnson v. State*, the Maryland Court of Appeals found that a

[1] *Teasley v. State*, 470 A.2d 337, 340 (Md. 1984).
[2] *Id*.
[3] *Douglas v. State*, 747 A.2d 752, 758 (Md. Ct. Spec. App. 2000) (citing *State v. Dopkowski*, 602 A.2d 1185, 1189 (Md. 1992)).
[4] *Sharp v. State*, 133 A.3d 1089, 1099 (Md. 2016) (citing *Jones v. State*, 997 A.2d 131, 135 (Md. 2010)).
[5] *Lopez v. State*, 181 A.3d 810 (Md. Ct. App. 2018) (determining that victim impact videos are permissible to use in the court and that the Eighth Amendment does not prohibit sentencing judges from considering such videos in noncapital sentencing proceedings).
[6] *Sharp v. State*, 133 A.3d 1089 (Md. Ct. App. 2016) ("[T]he circuit court's statements do not give rise to the inference that the circuit court might have been motivated by the impermissible consideration of [the defendant's] decision not to plead guilty.").
[7] *Johnson v. State*, 47 A.3d 1002, 1009 (Md. 2012) (citing *Matthews v. State*, 36 A.3d 499 (Md. 2012)).
[8] *Chaney v. State*, 918 A.2d 506, 509 (Md. 2007).
[9] *Evans v. State*, 914 A.2d 25, 34 (Md. 2006); Md. R. Crim. Causes 4-345(b) (2018). One exception to this is that under Md. Code Ann., Crim. Law § 5-609.1, a court can modify certain mandatory minimum sentences for drug crimes pronounced on or before September 30, 2017.
[10] *Carlini v. State*, 81 A.3d 560, 566 (Md. Ct. Spec. App. 2013); Md. R. Crim. Causes 4-345(a) (2018).
[11] *Id*. at 570.

defendant's sentence for assault with intent to murder should not have been imposed because he was neither charged nor convicted of assault with intent to murder.[12]

A number of Maryland cases have made clear that appellate review of a sentence is not allowed simply because the sentence diverges from the guidelines.[13] The cases have emphasized the advisory nature of the guidelines and the discretion left with judges to determine sentences within statutory limits. Even a mistaken application of the guidelines does not require that sentence be vacated and re-determined.[14] Generally speaking, appellate review presumes that the action of a trial court is correct, placing the burden on the appellant to come up with and prove that a clear error occurred.[15]

2. Standards and Allowable Grounds for Departure.

Since the Maryland sentencing guidelines are purely advisory, there is no standard that limits departure. A judge is allowed to depart from the guidelines, and is only required by statute to consider them.[16] However, judges must sentence within statutory limits and must not impose a sentence based on impermissible considerations.[17] If a judge does depart from the guidelines, they are required to document their reasons for doing so on the sentencing worksheet.[18]

3. Constitutional Requirements under *Blakely v. Washington* for Proof of Facts that Permit Upward Departure

The Maryland sentencing guidelines are advisory, and were not affected by the decision in *Blakely v. Washington*.[19] The guidelines are not binding on judges and they do not have the force and effect of law. As was held in *United States v. Booker*, guidelines of this type "could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, [and therefore] do not implicate Sixth Amendment concerns" that were pivotal in *Blakely*.[20] Judges have broad authority to impose sentences that fall within the statutory range, and in Maryland they have "virtually boundless discretion."[21] Other cases that have mentioned *Blakely* have generally done so in reference to *Apprendi v. New Jersey*[22] and that case's implications for statutory sentencing enhancements, but not the sentencing guidelines.[23] The guidelines allow for a range within which the sentencing judge can customize punishment based on the individual and specific nature of the offense without it being considered a departure.[24]

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[12] *Johnson v. State*, 47 A.3d 1002 (Md. Ct. App. 2012).
[13] *See, e.g.*, *Teasley v. State*, 470 A.2d 337, 340 (Md. 1984).
[14] *Hill v. State*, 494 A. 2d 757, 760 (Md. Ct. Spec. App. 1985) (citing *Teasley v. State*, 470 A.2d 337 (Md. 1984)).
[15] *See, e.g.*, *State v. Wilkins*, 900 A.2d 765, 774 (Md. Ct. App. 2006) (citing Chaney v. State, 918 A.2d 507 (Md. 2007)).
[16] Md. Code Ann., Crim. Proc. § 6-216(a)(1)(i–ii) (West 2019).
[17] *Johnson v. State*, 75 A.3d 322, 324 (Md. Ct. Spec. App. 2013) (citing *Collins v. State*, 861 A.2d 727 (Md. 2004)).
[18] Md. Code Regs. 14.22.01.05 (Lexis Advance 2019).
[19] *Blakely v. Wash.,* 542 U.S. 296 (2004).
[20] *See, e.g. Kang v.* State, 877 A.2d 173, 186 (Md. Ct. Spec. App. 2005) (citing *United States v. Booker*, 543 U.S. 220 (2005)).
[21] *Id*. (determinng that a judge's decision to sentence a man to fifteen years in prison for domestic violence was within the sentencing range and did not constitute cruel and unusual punishment or other constitutional violations) (citing *State v. Dopkowski*, 602 A.2d 1185, 1189 (Md. Ct. App 1992)).
[22] *Apprendi v. N.J.,* 530 U.S. 466 (2000).
[23] *See, e.g.*, *Phillips v. State*, 101 A.3d 549, 558–59 (Md. Ct. Spec. App. 2014); *Parker v. State*, 970 A.2d 968, 979–81 (Md. Ct. Spec. App. 2009).
[24] *Douglas v. State*, 747 A.2d 752, 758-59 (Md. Ct. Spec. App. 2000) (justifying the consideration of the defendant's brother having killed his girlfriend when sentencing the defendant for assault on his own pregnant ex-girlfriend).

4. Constitutional Requirements under *Alleyne v. United States* for Proof of Facts that Increase the Minimum Sentence

Maryland courts have yet to weigh in heavily on the impact the *Alleyne* decision has on guidelines provisions that impact the minimum sentence such as calculating victim injury or presence of a weapon. *Alleyne* has been brought up in the footnotes of two cases, *Scott v. State* and *Oglesby v. State*, in relation to double jeopardy and the rule of lenity respectively.[25]

5. Other Important Sentencing Decisions

Plea bargains. While trial courts are not bound by the sentencing guidelines, they may be bound by the terms of a plea agreement that they have already approved. Maryland law views plea bargains as contractual in nature.[26] For example, in *Matthews v. State*, the Maryland Court of Appeals held that when a defendant relies on a court's acceptance of a plea agreement, the court no longer has discretion to modify the agreed to sentence.[27] However, enforcement of a plea agreement may be limited where the defendant only partially adheres to the conditions of the agreement.[28]

Consecutive sentencing and judicial discretion. Consecutive sentencing does not *per se* constitute cruel and unusual punishment,[29] and there is nothing *per se* improper about imposing a consecutive sentence.[30] The imposition of consecutive sentences in criminal cases is within the judge's discretion so long as it does not violate the Eighth Amendment, stem from prejudice, or fall outside of the statutory limits.[31] Consecutive sentences must remain within the aggregate statutory maximum for the crimes considered, but can otherwise be imposed even if they effectively constitute a life sentence.[32]

Prosecutorial discretion. Defendants' rights are not violated when the prosecution chooses to charge them under a statute that has harsher outcomes, such as higher mandatory minimums, than a similarly relevant statute. The defendant in *Oglesby v. State* challenged his conviction to a five-year mandatory minimum when a more lenient statute proscribing the same conduct could have been used.[33] The court found that in order for the rule of lenity to be used, the statutes in question had to be ambiguous, and the fact that the statutes overlapped did not render them ambiguous. If the more lenient statute always had to be used, then the harsher one would be moot, which in itself would be against legislative intent.[34] After ruling in favor of the State, the Court used *Oglesby* as an opportunity to suggest that mandatory minimum sentences stripped sentencing judges of their discretion to fit sentences to their particular cases by confining them to what is laid out in the statute that the prosecutor chooses to use.[35]

Double jeopardy. In *Scott v. State*, the Maryland Court of Appeals determined that double jeopardy and collateral estoppel did not bar a trial court from reimposing an enhanced minimum sentence based on a

[25] *Scott v. State*, 164 A.3d 177 (Md. Ct. App. 2017); *Oglesby v. State*, 109 A.3d 1147 (Md. Ct. App. 2015). See below for case summaries.
[26] *See, e.g. Solorzano v. State*, 919 A.2d 652. 656 (Md. 2007); *but see Cuffley v. State*, 7 A.3d 557, 563–64 (Md. 2010) (noting that sometimes contract principles are not enough to resolve disputes over the interpretation of a plea bargain).
[27] *Matthews v. State*, 36 A.3d 499, 505–07 (Md. 2012).
[28] *See, e.g.*, *Y.Y. v. State*, 46 A.3d 1223, 1236 (Md. Ct. Spec. App. 2012).
[29] *Teasley v. State*, 470 A.2d 337, 339-40 (Md. 1984) (stating that sentences for multiple offenses are assumed to be concurrent unless the sentencing judge gives reason for why they should be consecutive, which in this case had happened).
[30] *Kaylor v. State*, 400 A.2d 419, 421 (Md. 1979).
[31] *Id*. (backing up the use of consecutive sentences by saying that they ensure a person who commits separate and distinct crimes experiences the full impact of punishment for their actions).
[32] *Brooks v. Warden*, 226 A.2d 354, 356 (Md. Ct. Spec. App. 1967). Note that although this case precedes the creation of sentencing guidelines, it is still considered good law.
[33] *Oglesby v. State*, 109 A.3d 1147, 1150 (Md. Ct. App. 2015) (attempting to invoke the rule of lenity.).
[34] *Id*. at 1154.
[35] *Id*. at 1165-166.

prior conviction when that enhanced sentence had already been vacated due to insufficient evidence.[36] The defendant argued that in light of *Apprendi* and *Alleyne*, the prohibition on double jeopardy helps to determine whether a prior conviction can be used to enhance a sentence because the existence of prior convictions is essential to justify such punishments. The Court of Appeals rejected the defendant's claims, holding that an appellate court's vacation of an enhanced sentence and remand for resentencing is not equivalent to an acquittal.[37]

[36] *Scott v. State*, 164 A.3d 177, 181–82 (Md. Ct. App. 2017).
[37] *Id*. at 180.