Circuit Court for Baltimore City
Case No. 418332020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 797

September Term, 2019

STATE OF MARYLAND

v.

JEREMIAH TEHOHNEY

Fader, C.J.,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: July 2, 2020

Jeremiah Tehohney, appellee, was charged in the Circuit Court for Baltimore City with possession of a regulated firearm by a person under 21 years of age and related firearm offenses. Tehohney, represented by counsel, appeared before the court for a pre-trial plea hearing on May 14, 2019. During that hearing, the State informed the court that it had made a plea offer, the terms of which provided that the State would recommend a one-year period of incarceration, with credit for time served, in exchange for Tehohney's pleading guilty to possession of a regulated firearm by a person under 21 years of age. Pending Tehohney's acceptance of the State's offer, the court conditionally approved the terms of the agreement, saying: "This [c]ourt would bind itself to one year giving him credit for time served."

After conferring with Tehohney, defense counsel accepted the State's offer on his behalf. A plea colloquy ensued, during which defense counsel questioned Tehohney regarding his understanding of (i) the terms of the plea agreement, (ii) the elements of the crime to which he was pleading, and (iii) the rights that he was waiving by entering a guilty plea. At the conclusion of that colloquy, the court found that Tehohney had tendered his plea freely, knowingly, and voluntarily, and accepted his guilty plea. The State then proceeded to proffer the factual basis for the agreement, stating:

> On November 1st, 2018[,] at 2300 hours, Officer Elias (phonetic) was driving in the 2000 block of West Pratt, southbound, and observed a brown Dodge Charger and a silver Honda following the Charger at a high rate of speed.
>
> The officer followed the silver Honda and ran the Maryland tag on the car[.]

> The officer conducted a traffic stop by activating his emergency equipment on the marked patrol vehicle.
>
> The driver, later identified as Gary Harrison Hall, Jr., stopped the vehicle.
>
> The Defendant, Jeremiah Tehohney, was seated in the front passenger seat.
>
> After receiving Defendant's registration and his inmate temporary ID card, the officer returned to his vehicle to await backup.
>
> Once backup units arrived, the driver sped off from the location at a high rate of speed. The driver was driving aggressively and in a negligent manner, causing the officer to cease pursuit.
>
> Officer Moore observed the car crash into the jersey wall at the end of . . . the intersection of Interstate 295 and Russell Street and the . . . co-Defendant fled from the car . . . to a nearby gas station, where he was apprehended.
>
> Recovered from the driver was suspected CDS and U.S. currency.
>
> . . . Officer Elias conducted a search of the Defendant's person and he . . . recovered a weapon with 14 rounds in the magazine and one in the chamber.
>
> * * *
>
> [W]hile the Defendant was getting out of the car, he kept checking his chest and stomach area by patting himself to give the officer the indication that he may have unknown items in his possession; specifically a gun.
>
> The firearm was examined by forensics examiners and determined to be operable. It is a Glock 24[.]
>
> All events did occur in Baltimore City, State of Maryland.
>
> If called to testify, the officers would identify the Defendant as Jeremiah Tehohney, standing to my right with counsel.

Defense counsel agreed that the testimony of the State's witnesses would be consistent with the State's proffer. The court ruled that the factual basis for Tehohney's plea was "sufficient to find Mr. Tehohney guilty beyond a reasonable doubt of possession

of a firearm by a minor." It then asked the State whether it wished to add anything related to sentencing. The State responded: "[T]he State would move into evidence State's Exhibit 1, a copy of the firearm's [sic] examiner's report and State's Exhibit 2, a certificate of live birth. Nothing further as to sentencing, Your Honor." Defense counsel protested the admission of the State's exhibits, saying: "Your Honor, I would just state that those should have been entered in during the --[.]" Upon prompting by the court, defense counsel moved for judgment of acquittal. Thereafter, the following occurred:

THE COURT:	This case is dismissed.
[THE STATE]:	I apologize, Your Honor.
THE COURT:	It's no problem.
[THE STATE]:	What is the --
THE COURT:	You didn't -- you'll figure it out. The case is dismissed.
[DEFENSE COUNSEL]:	The case is dismissed.
THE COURT:	The motion's granted.
	* * *
[THE STATE]:	Your Honor, for the record the State would object that the documents would not have to [be] entered in during the reading of the facts.
	* * *
THE COURT:	Your case is over.
[THE STATE]:	I'm making an objection for the record, Your Honor.

The court's ruling was docketed as granting the defense motion for a judgment of acquittal.

The State timely appealed, and presents two questions for our review:

1. Did the circuit court impose a sentence in violation of the Maryland Rules when, after "bind[ing] itself" to the plea agreement between Tehohney and the State, and accepting Tehohney's guilty plea as knowing, voluntary, and supported by a sufficient factual basis, the court failed to impose the agreed-upon sentence?

2. If the circuit court's actions constituted a rejection of the guilty plea, did its statements that the defense motion was "granted" and that the "case is dismissed" necessarily constitute a dismissal and not an acquittal, and was that dismissal erroneous?

Tehohney moves to dismiss the appeal, asserting that because the trial judge's ruling constituted a judgment of acquittal, the State had no right to appeal. We shall deny Tehohney's motion to dismiss, vacate the judgment of the circuit court, and remand the case for sentencing in accordance with the terms of the plea agreement.

DISCUSSION

I

In his motion to dismiss the appeal, Tehohney maintains that the trial court's ruling constituted "the grant of a motion for acquittal." Based on that predicate, he contends that the State has no right to appeal the entry of a judgment of acquittal, even if wrongly granted.

Tehohney acknowledges that his argument is at odds with our recent decision in *State v. Smith*, 244 Md. App. 354 (2020). Nevertheless, he "respectfully suggests that the opinion was wrongly decided."

We summarily reject Tehohney's argument. As in *Smith*, the circuit court here terminated a criminal prosecution at a plea hearing, after having already accepted the guilty

plea, because the court apparently believed that the State's factual proffer supporting the plea was inadequate. In *Smith*, after it became apparent that the State did not have a firearm operability report at the plea hearing, defense counsel stated, "Your Honor, I make a motion." *Id.* at 369. The court responded, "Motion is granted. Case is dismissed." *Id.* The clerk's docket entry reflected that the defense "motion for judgment of acquittal" had been granted. *Id.*

Here, after the court accepted the guilty plea and found the factual proffer sufficient, the State offered the firearm examiner's report and a certificate of live birth to prove Tehohney's age. Defense counsel started to object, but the court cut her off, prompting counsel to move "for a judgment of acquittal." The court immediately responded, "This case is dismissed." Moments later, the court stated, "The motion's granted." As in *Smith*, the clerk docketed the ruling as the grant of a motion for judgment of acquittal.

We need not belabor the point because *Smith* is clearly dispositive of Tehohney's motion to dismiss. In nearly identical factual circumstances involving the same trial judge as the instant case, we stated,

> As we will explain, under *Johnson v. State*, 452 Md. 702, 735 (2017), the circuit court's judgments here do not implicate double jeopardy, both because the judgments were not acquittals in substance and because they were entered at a time when the circuit court was "totally without authority to act." Extending *Johnson*, we hold that a trial court's judgment that functions as a dismissal for double jeopardy purposes also functions as a dismissal for statutory appealability purposes. As a result, we will deny Mr. Smith's motion to dismiss the State's appeal, reverse the circuit court's judgments, and remand for further proceedings.

Smith, 244 Md. App. at 366. We likewise deny Tehohney's motion to dismiss.

II.

Before we address an issue not presented in *Smith*—whether the trial court breached a binding plea agreement in violation of Maryland Rule 4-243(c)—we pause momentarily to give our imprimatur to the State's contention that the court committed reversible error when it dismissed the charges based on a perceived inadequacy of the factual proffer supporting Tehohney's guilty plea. In this regard, *Smith* is unequivocal:

> When a trial court considers whether to approve a plea agreement before a trial on the merits, the court lacks the authority to acquit the defendant based on a perceived deficiency in the statement of the factual basis for the plea or the State's failure to present any particular piece of evidence in support of the plea. Instead, the court's options if it finds the statement of the factual basis for the plea insufficient or otherwise finds the plea agreement deficient are as specified in Rules 4-242 and 4-243.

Id. at 409-10. At a minimum, *Smith* requires vacation of the circuit court's judgment.

III.

Having established that the trial court erred, we turn our attention to the State's contention that our remand should instruct the trial court to impose the agreed-upon sentence embedded within the parties' binding plea agreement.

Whether a trial court has approved a plea agreement and whether a plea agreement has been breached are questions of law which we review *de novo*. *State v. Smith*, 230 Md. App. 214, 226 (2016) ("To determine whether there actually is an agreement between the State and a defendant, . . . and . . . to determine whether the agreement was breached are questions of law for the appellate court to decide *de novo*."); *see also Cuffley v. State*, 416 Md. 568, 581 (2010) ("Whether a trial court has violated the terms of a plea agreement is a question of law, which we review *de novo*."). "A plea agreement is a contract between

the defendant and the State." *Ray v. State*, 230 Md. App. 157, 185 (2016) (quoting *Ridenour v. State*, 142 Md. App. 1, 5 (2001)). "Traditionally, a 'plea bargain' or 'plea agreement' contemplates a conditional plea of guilty or nolo contendere to one or more pending charges, the condition usually being either the dismissal or lessening of other charges by one means or another, or some concession being made with respect to disposition, or both." *Custer v. State*, 86 Md. App. 196, 199 (1991) (quoting *Gray v. State*, 38 Md. App. 343, 356 (1977)). "[W]hen the State and a defendant have entered a binding plea agreement, *each party is entitled to the benefit of its bargain*." *Bonilla v. State*, 443 Md. 1, 12 (2015) (emphasis added). "Just as a defendant may enjoy the protection of the Due Process Clause, the State is protected by the principles of fairness and equity." *Smith*, 230 Md. App. at 221. The State may, therefore, appeal from the judgment of a court which is more favorable to a defendant than the terms of a binding plea agreement. *Id.*

Where the State and a defendant have reached a plea agreement, that agreement is not binding unless and until it has been approved by the court to which it is presented. Md. Rule 4-243(c)(2). Upon being advised of the terms of a proposed plea agreement, a court must first determine whether to accept or reject the plea itself. Md. Rule 4-243(c)(1); *see also State v. Smith*, 244 Md. App. 354, 373 (2020). A court's acceptance of a guilty plea—pursuant to a plea agreement or otherwise—is contingent on its compliance with Rule 4-242(c), which provides, in pertinent part:

> 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.

Where a defendant tenders a plea pursuant to a plea agreement, the court's acceptance of that plea is binding only upon its approving the plea agreement as a whole. Rule 4-243(c)(3). If the court rejects the plea agreement, a defendant is entitled to withdraw his or her plea. Rule 4-243(c)(4).

In this case, the State contends, *inter alia*, that the court violated Rule 4-243 by failing to impose the sentence upon which the parties had agreed. Tehohney concedes that the circuit court "accepted the terms of the plea agreement, agreed to a binding plea, and accepted the guilty plea." He further acknowledges that the court expressly found that the factual basis for the plea was adequate. He argues that by omitting from its proffer the fact that Tehohney was under the age of 21 at the time of the incident, the State failed to meet its burden of proving the elements of the crime beyond a reasonable doubt. Absent such evidence, Tehohney contends, the court could not properly have enforced the plea agreement.

We disagree. Tehohney misconstrues the purpose and function of Rule 4-242(c)'s requirement that a court determine that there exists a factual basis for a defendant's plea. As we recently explained in *Smith*, that requirement "does not mean that the State must prove its case before the court may accept a guilty plea[.]" 244 Md. App. at 374–75. Rather, the factual basis inquiry "confirms that the plea is 'truly voluntary,' thus safeguarding against the possibility that a defendant 'plead[s] . . . without realizing that his conduct does not actually fall within the charge' and 'facilitat[ing] [the judge's]

determination of a guilty plea's voluntariness . . . in any subsequent post-conviction proceeding.'" *Id*. (alterations in original) (quoting *State v. Thornton*, 73 Md. App. 247, 255 (1987)); *see also Ward v. State*, 83 Md. App. 474, 483 (1990) ("[A] factual basis is necessary to assure the trial judge and the appellate court that a plea is knowingly and intelligently entered.").

While the protections afforded by the Due Process Clause of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights prohibit a defendant from being convicted of a crime absent proof of every fact necessary to satisfy the elements thereof, in the context of a guilty plea, it is the plea itself—and not the factual proffer—which furnishes the evidence necessary to support a conviction. *See Metheny v. State*, 359 Md. 576, 599 (2000) ("[A] plea of guilty is more than a voluntary confession made in open court. It also serves as a stipulation that no proof by the prosecution need [be] advanced. . . . It supplies both evidence and verdict, [thus] ending [the] controversy." (alterations in original) (quoting *Boykin v. Alabama*, 395 U.S. 238, 242 n.4 (1969))); *see also Smith*, 244 Md. App. at 376 ("[A] 'guilty plea [i]s not a trial,' and at a hearing where such a plea is entered, 'the quantity and quality of the evidence . . . is not an issue.'" (alterations in original) (quoting *Yonga v. State*, 221 Md. App. 45, 71–72 (2015), *aff'd*, 446 Md. 183 (2016))). Contrary to Tehohney's argument, his guilty plea did, in fact, "absolve the prosecution from proving the elements of the crime beyond a reasonable doubt."

Tehohney also errs in suggesting that it is *the prosecutor* who must establish a factual basis for a defendant's guilty plea. Although a prosecutor's summary of the evidence is a "generally accepted method[] of establishing a factual basis for a guilty plea,"

Smith, 244 Md. App. at 375 (alteration in original) (quoting *Thornton*, 73 Md. App. at 257), it is but one means by which that factual basis may be furnished. Establishing a factual basis for a plea does not require "a litany or other ritual which can be carried out only by word-for-word adherence to a set 'script.'" *Thornton*, 73 Md. App. at 263 (quoting Fed. R. Crim. Proc. 11, Notes of Advisory Committee on Crim. Rules). Indeed, "[a] trial court has broad discretion as to the sources from which it may obtain the factual basis for the plea." *Smith*, 244 Md. App. at 375 (quoting *Metheny*, 359 Md. at 603).

In this case, the factual basis for Tehohney's guilty plea was provided in part by the State and in part by the defendant himself. During the plea colloquy, the clerk elicited Tehohney's date of birth, which he identified as January 12, 2000. The clerk also asked Tehohney, "How old are you today?" Tehohney answered, "Nineteen." The defendant's admission that he was under the age of 21 sufficed to ensure that he realized that his age at the time of the incident satisfied the age element of the charge to which he was pleading guilty. Thereafter, in its statement in support of the guilty plea, the State proffered that on November 1, 2018, a police officer discovered a loaded Glock 24 firearm on Tehohney's person, which was later determined to be operable. The defense agreed that the State's proffer accurately reflected the anticipated testimony of the State's witnesses. Given that Tehohney admitted the facts constituting the crime to which he had pled guilty, all that was left was for the court to apply those facts to the elements of the crime and determine whether there existed a sufficient factual basis for the plea. *Id.* at 376 ("[W]hen facts are admitted by the defendant and are not in dispute, the judge need only apply the facts to the legal elements of the crime charged to determine if an adequate factual basis exists."

(quoting *Metheny*, 359 Md. at 603)). The court here determined and announced on the record that the factual basis for Tehohney's plea was "sufficient to find Mr. Tehohney guilty beyond a reasonable doubt of possession of a firearm by a minor." That ruling was proper notwithstanding the State's not having introduced extrinsic evidence.

In sum, a plea hearing is not the equivalent of an abbreviated bench trial wherein the State bears the burden of producing sufficient evidence to prove to a fact-finding judge that a defendant is guilty of a crime or crimes beyond a reasonable doubt. *See id.* at 377 ("[A] guilty plea contains none of the facets of a trial, [such as] evidence production and credibility determinations. . . . When an individual pleads guilty, credibility determinations are not tested, reliability and validity are not challenged, and relevance is not an issue." (alterations in original) (quoting *Yonga*, 446 Md. at 212)). Rather, the nature and scope of such a proceeding are limited to determining whether a defendant's plea is knowingly, intelligently, and voluntarily tendered. Having dispensed with Tehohney's counter-arguments, we turn to the merits of the State's contention.

Under the circumstances of this case, the court violated Rule 4-243(c)(3) by failing to sentence Tehohney in accordance with the terms of his binding plea agreement. A court's conditional acceptance of a guilty plea and its approval of a plea agreement, though "two judicial acceptances[,] are intertwined parts of a single unfolding totality in which the two incipient acceptances may ripen simultaneously." *Smith*, 230 Md. App. at 227. "[O]nce [a court's] conditional acceptance is satisfied, then the conditional acceptance becomes an absolute acceptance," provided that the satisfaction of that condition does not result in an "unexpected revelation." *Smith v. State*, 453 Md. 561, 578 (2017) (citing

Tweedy v. State, 380 Md. 475, 483–84 (2004)).

Here, the State apprised the court of the terms of its plea offer, namely, "an offer of pleading [guilty] to . . . possession of a firearm by a minor, with the State's recommendation of one year straight with credit for time served." The court conditionally approved the terms of the State's plea offer, stating: "This court would bind itself to one year giving him credit for time served." Tehohney, through counsel, expressly agreed to the State's terms. Following the plea colloquy, the court accepted Tehohney's conditional guilty plea, having found that it had been tendered "freely, knowingly, and voluntarily." The State then proceeded to recite the factual basis for the plea, after which the court found "the facts to be sufficient to find Mr. Tehohney guilty beyond a reasonable doubt of possession of a firearm by a minor." The requirements of Rule 4-242(c) and Rule 4-243(c)(1) having been satisfied, the court's conditional approval of the plea agreement "ripened into an absolute one." *Smith*, 230 Md. App. at 227. As dictated by Rule 4-243(c)(3), the court was bound to "embody in the judgment the agreed sentence." By failing to sentence Tehohney accordingly, the court impermissibly violated the terms of that binding agreement. We shall therefore vacate the judgment of the circuit court and remand the case with instructions to impose a sentence in accordance with the terms of the binding plea agreement.

APPELLEE'S MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED TO THAT COURT FOR THE IMPOSITION OF A SENTENCE IN CONFORMITY WITH THE

PLEA AGREEMENT. COSTS ASSESSED TO APPELLEE.