Circuit Court for Baltimore County
Case No. 03K16005353

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 798

September Term, 2017

STATE OF MARYLAND

v.

BRANDON GORHAM

Berger,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: July 5, 2018

The appellee, Brandon Gorham, entered a plea of guilty to a charge of second-degree assault in the Circuit Court for Baltimore County on March 30, 2017. After finding the plea to be voluntary and the supporting factual recitation legally sufficient, the trial judge announced that the verdict would be one of Probation Before Judgment. The State asked the court to mark the conviction as one that was "domestically related" pursuant to Maryland Code, Criminal Procedure Article, Sect. 6–233. The trial judge expressly declined to do so. The State has noted this timely appeal pursuant to Courts and Judicial Proceedings Article, Sect. 12–302(c)(3)(i).

In pertinent part, Sect. 12–302(c)(3)(i) provides:

> (c) . . . In a criminal case, the State may appeal as provided in this subsection.
>
> . . . .
>
> (3) The State may appeal from a final judgment if the State alleges that the trial judge:
>
> (i) Failed to impose the sentence specifically mandated by the Code[.]

(Emphasis supplied).

The State's argument is that the failure of the trial court to append to the sentence the characterization that the underlying offense was "domestically related" was fatally flawed because it was not "the sentence specifically mandated by the Code." The State's argument is based on Maryland Code, Criminal Procedure Article, Sect. 6–233 which covers the subject of "Domestically related crimes."

There was, to be sure, no question but that the relationship between the appellee and the assault victim in this case was a "domestic" one and would have made this case one potentially covered by Sect. 6–233(a). Subsection 6–233(b) provides:

> (b)(1) If a defendant is convicted of or receives a probation before judgment disposition for a crime, on request of the State's Attorney, the court shall make a finding of fact, based on evidence produced at trial, as to whether the crime is a domestically related crime.
>
> (2) The State has the burden of proving by a preponderance of the evidence that the crime is a domestically related crime.

(Emphasis supplied).

If the court were to find that the crime in question is, indeed, "a domestically related crime," subsection (c) then provides:

> (c) If the court finds that the crime is a domestically related crime under subsection (b) of this section, that finding shall become part of the court record for purposes of reporting to the Criminal Justice Information System Central Repository under § 10–215 of this article.

(Emphasis supplied).

Notwithstanding the fact that such a finding, had it been made, would seem to have been completely appropriate under the circumstances of this case and notwithstanding the fact that such a finding might have triggered some collateral consequences, it is our nostra sponte conclusion that the characterization of being "domestically related" was not a "sentence specifically mandated by the Code" and that we are, therefore, without jurisdiction to entertain this appeal.

State v. Manck, 385 Md. 581, 597–98, 870 A.2d 196 (2005), spells out very clearly the austerely limited range of the State's right of appeal:

> Section 12–302(c) of the Courts and Judicial Proceedings Article provides that the State has a limited right to appeal in criminal cases. Unless the issue presented may properly be categorized as one of the actions enumerated in the statute, the State has no power to seek appellate review.

See also Mateen v. Saar, 376 Md. 385, 399–401, 829 A.2d 1007 (2003).

When Courts and Judicial Proceedings, Sect. 12–302(c)(3)(i) speaks of the failure to impose "the sentence specifically mandated by the Code," it is essentially looking to the penalty provisions spelled out for the crime and, in most instances, looking to see if there is a statutorily established minimum sentence for the crime. For a conviction for second-degree assault, which is before us in this case, there is no minimum sentence "specifically mandated." The penalty may be imprisonment for up to 10 years. It may, on the other hand, be for any period of time less than 10 years or be no imprisonment at all. All or part of a sentence, moreover, may be suspended. The penalty may or may not consist of a monetary fine of up to $2,500. It may, however, be in any amount less than that. It may be instead of or in addition to imprisonment or probation. The penalty may be probation, instead of or after a term of imprisonment. It may, as in this case, be probation before judgment. The trial judge here did not fail to impose a "sentence specifically mandated by the Code." There is no "sentence specifically mandated by the Code."

Even on the periphery, incidentally, the most that Criminal Procedure, Sect. 6–233(b) directs is that "the court shall make a finding of fact." It does not specifically mandate what that finding must be, even if other circumstances would seem to point unmistakably in a certain direction.

In any event, it is clear that the State's challenge in this case does not qualify as one of those limited State appeals contemplated by Courts and Judicial Proceedings, Sect. 12–302(c)(3)(i). The failure to make a finding that the underlying assault was "domestically related" was not a "fail[ure]to impose the sentence specifically mandated by the Code." We would be without jurisdiction to entertain the appeal, even if we were so disposed. Under the circumstances, we have no choice but to dismiss this appeal as one not properly before us.

APPEAL DISMISSED; COSTS TO BE PAID BY BALTIMORE COUNTY.