Circuit Court for Baltimore County
Case No. 03K17000109

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 830

September Term, 2017

STATE OF MARYLAND

v.

DEONTE R. JOHNSON

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

JJ.

Opinion by Moylan, J.

Filed: July 5, 2018

On January 9, 2017, the appellee, Deonte Johnson, was indicted by the Grand Jury for Baltimore County for both first-degree and second-degree assault. Pursuant to a negotiated plea agreement, the appellee entered a guilty plea to second-degree assault before the Circuit Court for Baltimore County on March 30, 2017. The court found that the guilty plea was entered knowingly and voluntarily and that the State's recitation of the underlying facts supported the finding of guilt. He found the appellee guilty of second-degree assault.

The sentencing immediately turned into a reconciliation session with general approbation by all parties. Defense counsel asked the court to consider Probation Before Judgment in order to allow the appellee to avoid a criminal record. The appellee and his assault victim had been in a "long-term relationship, boyfriend/girlfriend type of relationship," were living together at the time of the assault, and had had two children together. The victim was, moreover, then pregnant with the couple's third child. At the time of the assault, the appellee had choked the victim for between 30 and 60 seconds. It was he, however, who called the 911 operator, because his girlfriend "never would." He told the police upon their arrival that "it was his fault" and that he had "lost his temper." The judge expressly praised the appellee for having been the party who immediately summoned the police.

At sentencing, the victim communicated, through defense counsel, that "she just wants [the appellee] out of jail to take care of the family, that he is a worker and a provider." Counsel then explained that the appellee's pre-trial incarceration had caused financial

problems for the family and that they were significantly behind on the rent. The victim wanted the appellee to return home, but he indicated that he planned to live with another family but would continue to provide for their children. The appellee addressed the court and expressed remorse and embarrassment for his behavior. The court placed the appellee on Probation Before Judgment.

As the court was rendering its ruling as to Probation Before Judgment, however, the State asked it to make a finding that the second-degree assault on which the PBJ was based was "domestically-related." The court declined to do so. Its failure to make such a finding is the basis for the present State appeal.

At the outset, the appellee moves to dismiss this appeal on the ground that the State's challenge does not fit within the very limited range of those decisions or findings that the State is permitted to appeal in a criminal case. Both parties agree that the permissibility of this appeal is controlled by Maryland Code, Courts and Judicial Proceedings Article, Sect. 12–302(c)(3)(i):

> (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). Was a finding that the assault was "domestically related" such a mandatory sentence? We think not.

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. We grant the appellee's motion to dismiss the appeal as a matter not properly before us.

APPEAL DISMISSED; COSTS TO BE PAID BY BALTIMORE COUNTY.