

Circuit Court for Prince George's County  
Case No. CT161304X

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 850

September Term, 2017

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WALTHER OMAR DIAZ PEREZ

v.

STATE OF MARYLAND

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Nazarian,  
Shaw Geter,  
Davis, Arrie W.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: May 1, 2018

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Walther Omar Diaz Perez was charged in the Circuit Court for Prince George’s County with driving under the influence. He moved to dismiss his case for lack of jurisdiction, claiming that the charges did not subject him to penalties sufficient to confer jurisdiction to the circuit court. The circuit court denied his motion and found that because the State had given notice of its intent to prove that he was a repeat offender, Mr. Diaz Perez was subject to penalties sufficient to establish jurisdiction in circuit court. Mr. Diaz Perez appeals that decision and we affirm.

### **I. BACKGROUND**

Mr. Diaz Perez was arrested after he failed field sobriety tests during a routine traffic stop. On November 3, 2016, Mr. Diaz Perez was charged in the circuit court with driving under the influence (“Count 1”) and driving while intoxicated (“Count 2”), among other charges. On the same day, the State sent Mr. Diaz Perez notice of its intent to seek an enhanced penalty for Count 1 based on his prior convictions for driving under the influence. In the notice, which had not yet been filed at the time Mr. Diaz Perez was charged in the circuit court, the State listed four prior convictions and informed him that pursuant to MD. CODE, § 21-902(a) of the Transportation Article (“TA”), his third or subsequent conviction subjected him to a maximum penalty of \$3,000 and three years’ imprisonment for his newest offense.<sup>1</sup>

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<sup>1</sup> The State’s subsequent offender notice was filed with the circuit court on May 24, 2016, in connection with Mr. Diaz Perez’s guilty plea. At no point did Mr. Diaz Perez ever deny the existence of his prior convictions.

On February 1, 2017, Mr. Diaz Perez moved to dismiss the case for lack of jurisdiction. The circuit court heard arguments on February 3, 2017. While acknowledging that the State had sent him the notice for enhanced penalty, Mr. Diaz Perez contended that he was not subject to the penalties for a third or subsequent offense because, at the time he was charged, his prior convictions were not in the record, included in the charging document, or proven before the circuit court. Accordingly, he argued, he faced only the penalties for a single charge of driving under the influence, which, under MD. CODE (1974, 2013 Repl. Vol.), Cts. and Jud. Proc. (“CJ”) § 4-301(a), fell within the exclusive original jurisdiction of the district court. The circuit court denied the motion and reasoned that “because the penalty for the charges brought here may be confinement to three years or more,” jurisdiction was proper in circuit court.

On May 24, 2017, Mr. Diaz Perez entered a conditional guilty plea to Count 2. On his plea election sheet, Mr. Diaz Perez stated: “Reserving [the] right to appeal jurisdiction of circuit court to hear charge.” During the plea hearing, the State recounted the facts of Mr. Diaz Perez’s arrest, and the court found them sufficient to sustain the guilty plea to Count 2. Mr. Diaz Perez filed a timely notice of appeal. We supply additional facts as necessary below.

## II. DISCUSSION

On appeal, Mr. Diaz Perez argues that the circuit court erred in denying his motion to dismiss because jurisdiction, he contends, rested exclusively in the district court.<sup>2</sup> He

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<sup>2</sup> Mr. Diaz Perez phrased his Question Presented as: “Did the trial court err in denying Appellant’s Motion to Dismiss?”

argues that the exceptions to CJ § 4-301(a), set forth in CJ § 4-302(d), vest jurisdiction in the circuit court only if the State has proven the existence of his prior convictions at the “inception” of his case. The State responds that the plain language of CJ § 4-302(d) makes clear that the legislature did not intend to impose such a burden on the State as a condition of jurisdiction in the circuit court. We agree with the State.

Mr. Diaz Perez has appealed to our court under CJ § 12-302(e). Although appeals from final judgment following guilty pleas generally are not permitted, an appeal “from a final judgment entered following a conditional plea of guilty may be taken in accordance with the Maryland Rules.” CJ § 12-302(e)(3). A conditional plea of guilty is “a guilty plea with which the defendant preserves in writing any pretrial issues that the defendant intends to appeal.” CJ § 12-302(e)(1). Upon entering his guilty plea to Count 2, Mr. Diaz Perez preserved in writing his intent to appeal the circuit court’s denial of his motion to dismiss, and his appeal to this Court was preserved properly.

Maryland’s circuit courts are courts of original and general jurisdiction. *See Powell v. State*, 324 Md. 441, 446 (1991); *Parker v. State*, 337 Md. 271, 287 n.11 (1995). Indeed, circuit courts are:

the highest common-law and equity courts of record exercising original jurisdiction within the State. Each has full common-law and equity powers and jurisdiction in all civil and criminal cases within its county, and all the additional powers and jurisdiction conferred by the Constitution and by law, except where by law jurisdiction has been limited or conferred exclusively upon another tribunal.

CJ § 1-501.

The district court is a court of limited jurisdiction. CJ § 1-601. *See Oku v. State*, 433 Md. 582, 589 (2013). The district court’s jurisdiction includes “exclusive original jurisdiction in a criminal case in which a person at least 16 years old . . . is charged with violation of the vehicle laws.” CJ § 4-301(a).<sup>3</sup> Such jurisdiction, however, is expressly subject to the exceptions under CJ § 4-302. But when the charged party is subject to a heightened penalty, the district court’s jurisdiction over criminal cases charging the violation of the vehicle laws runs concurrent with the circuit court’s:

(d)(1) Except as provided in paragraph (2) of this subsection, the jurisdiction of the District Court is concurrent with that of the circuit court in a criminal case:

(i) In which the penalty *may be* confinement for 3 years or more or a fine of \$2,500 or more[.]

CJ § 4-302(d)(1) (emphasis added).

Were this his first charge for driving under the influence, Mr. Diaz Perez would have been exposed only to “imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.” TA § 21-902(a)(1)(iii)(1).<sup>4</sup> But individuals charged with driving under the influence are subject to heightened penalties if they are a subsequent offender.

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<sup>3</sup> CJ § 4-301(a) provides:

(a) Except as provided in §§ 3-803 and 3-8A-03 of this article and 4-302 of this subtitle, the District Court has exclusive original jurisdiction in a criminal case in which a person at least 16 years old or a corporation is charged with violation of the vehicle laws, or the State Boat Act, or regulations adopted pursuant to the vehicle laws or State Boat Act.

<sup>4</sup> At the time Mr. Diaz Perez was charged, Maryland’s penalty provisions for individuals convicted of driving under the influence were codified in TA § 27-101(k). Effective October 1, 2017, § 21-101(k) was revised and is now TA § 21-902.

*See generally* TA § 21-902(a).<sup>5</sup> Those convicted “[f]or a third or subsequent offense” may be sentenced to “imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.” TA § 21-902(a)(1)(iii)(3). As a result, then, individuals charged with driving under the influence who have at least two prior convictions face penalties sufficient to confer concurrent jurisdiction to the circuit court. *See* CJ § 4-302(d)(1)(i).

Although he acknowledges that the State sent him notice of his prior convictions and its intention to seek enhanced penalties, Mr. Diaz Perez insists that for CJ § 4-302(d) to vest concurrent jurisdiction in the circuit court, his prior convictions must have been sufficiently proven at the “inception” of his case. He interprets CJ § 4-302(d)(1)(i) to require “a series of obstacles that the prosecution had to first surmount before that penalty became a possibility.” We disagree. “[W]e begin with the normal, plain meaning of the statute.” *State v. Bey*, 452 Md. 255, 265 (2017). When the language of the statute is “unambiguous and clearly consistent with the statute’s apparent purpose, . . . we apply the statute as written and without resort to other rules of construction.” *Id.* “We neither add nor

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<sup>5</sup> In pertinent part, TA § 12-902(a) provides:

(1)(i) A person may not drive or attempt to drive any vehicle while under the influence of alcohol.

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(iii) A person convicted of a violation of this paragraph is subject to:

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3. For a third or subsequent offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute . . . .” *Id.*; *State v. Johnson*, 415 Md. 413, 421–22 (2010); *Lockshin v. Semsker*, 412 Md. 257, 274–77 (2010).

Nothing in CJ § 4-302(d) suggests that the State is required to prove a defendant’s prior convictions *before* concurrent jurisdiction vests in the circuit court. Subsection (d) of CJ § 4-302 provides simply that the circuit court has jurisdiction in a criminal case “[i]n which the penalty *may be* confinement for 3 years or more or a fine of \$2,500 or more[.]” (emphasis added). So if the charges at issue support a penalty of confinement for three years or a fine of \$2,500, the circuit court has jurisdiction concurrent with the district court. At the motion hearing, the State represented to the court that Mr. Diaz Perez was subject to “the penalty [of] confinement for three years or more, or a fine of \$2,500 or more” as reflected in “[t]he defendant’s driving record by the Maryland Motor Vehicle Administration.” And at no point did Mr. Diaz Perez deny his prior convictions for driving under the influence, all of which occurred prior to his present charges filed November 3, 2016. The State’s allegation that Mr. Diaz Perez’s driving record exposed him to three years imprisonment or a \$3,000 fine gave rise to concurrent jurisdiction in the circuit court.

Mr. Diaz Perez relies on *Testerman v. State*, 170 Md. App. 324 (2006), and a handful of out-of-state cases to support his contention that “proof [of his prior convictions] beyond a reasonable doubt” were a “necessary jurisdictional fact” that must have been “in existence at the inception of [his] action.” We disagree. Although in *Testerman* we required the State to “prov[e], beyond a reasonable doubt, the existence of appellant’s prior convictions,” that

requirement had no bearing on the establishment of the court’s jurisdiction. *Id.* at 333 (citations omitted). Quite appropriately, we required the State to prove the existence of the appellant’s past conviction because it was a “statutory condition[] *precedent for the imposition of enhanced punishment.*” *Id.* at 333 (quoting *Jones v. State*, 324 Md. 32, 37 (1991)) (emphasis added). But the State’s heightened showing was required as a condition of sentencing, not in establishing jurisdiction. Similarly, the non-Maryland cases Mr. Diaz Perez cites involve jurisdictional prerequisites that the prosecution failed to meet, but none of these alters the fact that, as a result of his prior convictions, *his* potential “penalty [was] confinement for 3 years or more or a fine of \$2,500 or more.” The State’s allegation and notice of its intention to seek enhanced penalties vested concurrent jurisdiction in the circuit court, and his motion to dismiss was properly denied.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**