

Circuit Court for Worcester County
Case No. C-23-CR-20-000024

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 901

September Term, 2023

DOUGLAS AH-LAN DRAX

v.

STATE OF MARYLAND

Ripken,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: August 6, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This direct appeal arises from the Circuit Court for Worcester County after Douglas Drax (Appellant) entered a not guilty plea on an agreed statement of facts to possession of a large amount of cocaine.¹ Possession of a large amount of cocaine requires a mandatory minimum sentence of five years’ imprisonment, with no opportunity for the court to suspend any part of the mandatory minimum.² However, the circuit court told Mr. Drax at the start of his plea hearing that commitment for drug treatment under Maryland Code, Health General (“HG”) §§ 8-505 to 8-507 could afford him an opportunity to serve less than five years. After accepting Mr. Drax’s jury trial waiver, bench trial waiver, and plea, the circuit court found Mr. Drax guilty and sentenced him to ten years’ imprisonment. Prior to the five-year mark of his sentence, Mr. Drax twice requested commitment for drug treatment under HG §§ 8-505 to 8-507.

¹ Originally, Mr. Drax did not note an appeal after his sentencing. About a year and a half later, Mr. Drax filed a petition for postconviction relief. In his petition, Mr. Drax alleged ineffective assistance of trial counsel, in part because his counsel had failed to note Mr. Drax’s appeal even though counsel had said that he would. The court granted the petition in part, granting Mr. Drax a right to a direct appeal, which is the appeal before us.

² Mr. Drax was convicted under Maryland Code, Criminal Law (“CL”) § 5-612(a)(2). That statute provides, under subsection (c)(2)-(3), that a court may not suspend any portion of the minimum sentence except as provided in Maryland Code, Correctional Services § 4-305. Section 4-305 only provides for transfer to the Patuxent Institution (within Maryland’s Department of Public Safety and Correctional Services) and does not reference or incorporate Maryland’s opportunity for commitment to the Maryland Department of Health for drug treatment under HG §§ 8-505 through 8-507. Further, our Supreme Court has previously ruled that people sentenced under a mandatory minimum sentence are not eligible for commitment for drug treatment under HG § 8-507. *State v. Green*, 367 Md. 61, 82 (2001).

After both requests were denied without explanation, Mr. Drax learned that he was not eligible for drug treatment commitment because he had not yet served the mandatory minimum five years, meaning the circuit court’s statement that HG §§ 8-505 to 8-507 could allow him to serve less than five years was incorrect.

Mr. Drax now contends that his jury trial waiver was not knowing and voluntary because the court did not correctly explain the consequences of his plea, specifically that commitment for drug treatment would not allow him to serve less than the mandatory minimum of five years. Conversely, the State (Appellee) argues that the jury trial waiver was knowing and voluntary. Mr. Drax presents the following question for our review:

Did appellant knowingly and intelligently waive his right to a jury trial where the court incorrectly advised him that he could be considered for drug treatment before the completion of the mandatory minimum portion of his sentence?

We conclude that the circuit court’s incorrect statement of sentencing law rendered Mr. Drax’s jury trial waiver not knowing and voluntary and thus unconstitutional. Therefore, we vacate Mr. Drax’s conviction and remand to the circuit court for further proceedings not inconsistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

I. Agreed Statement of Facts of the Crime and Arrest

Mr. Drax pled not guilty to an agreed statement of facts. We summarize the agreed statement below.³

³ For ease, we do not indicate with quotation marks which of the phrases below are exact quotations from the agreed-statement transcript. Suffice it to say that many are.

On December 5, 2019, Corporal Orndorff of the Maryland State Police pulled Mr. Drax over for having a broken taillight and illegally tinted windows, and driving seven miles per hour above the posted speed limit, all while going southbound on Route 113 in Worcester County. After discussion with Mr. Drax, observations about him, and while waiting for the results of the running of Mr. Drax's registration and license, Corporal Orndorff retrieved his K-9 partner. The dog alerted near Mr. Drax's front passenger-side wheel. A search of Mr. Drax's vehicle ensued. In the trunk, Master Trooper Seiders (who had arrived as backup) located what would later test as 1,489.79 grams of cocaine, net weight, among other items indicative of drug distribution.

Mr. Drax was indicted on four counts: possession of cocaine in the amount of 448 grams or more, importing 28 grams or more of cocaine into the state of Maryland, possession of cocaine with an intent to distribute, and possession of a controlled dangerous substance that was not marijuana.

Mr. Drax moved to suppress the evidence from the search of his vehicle as the product of an illegal search, a motion the circuit court heard and denied. After Mr. Drax's counsel⁴ stated he wanted to preserve Mr. Drax's right to appeal the denial of the

⁴ During the trial proceedings, Mr. Drax was represented by a New York attorney who was admitted *pro hac vice* and sponsored by a Maryland attorney, who was also present at the hearing. As explained above, Mr. Drax later alleged ineffective assistance of counsel; he prevailed in his claim because his counsel did not file an appeal or a motion for modification of sentence, despite stating that he would do both. In some of his pleadings, Mr. Drax also points out that the Maryland attorney barely spoke during the proceedings and that the New York attorney sometimes misstated the law.

suppression motion, the State offered Mr. Drax the opportunity to proceed by way of a not guilty plea to an agreed statement of facts. In exchange, the State would *nolle pros* all counts except possession of cocaine in the amount of 448 grams or more.

II. Plea Hearing and Mr. Drax’s Request for a “Downward Departure”

The court held a hearing on May 5, 2021 regarding Mr. Drax’s plea of not guilty to an agreed statement of facts and his request for a downward departure from the five-year mandatory minimum he faced. At the beginning of the hearing, Mr. Drax’s attorney informed the court that Mr. Drax would like to plead, but they were looking for a downward departure. The following exchange occurred:

[DEFENSE COUNSEL]: . . . application was made, Your Honor, for Your Honor to consider a downward departure from the mandatory minimum.

THE COURT: Okay.

[DEFENSE COUNSEL]: Based upon the—

[STATE]: Which is not possible.

THE COURT: I’m sorry?

[STATE]: It’s not possible.

THE COURT: I don’t know that Maryland has minimum mandatory options or downward departures.

[DEFENSE COUNSEL]: I understand that it was based—

THE COURT: **There’s an 8-507 option, someone could be sentenced under 8-507, and a minimum mandatory would not prevent that is my understanding.** I don’t know if that was case law or they amended—the legislature made some amendment. But regardless, here’s all I want to know. You’re going to have an ask,

you're obviously in a position to do something. Are we—am I taking a plea today?

(Emphasis added).

After some more discussion, the court stated the following:

THE COURT: And so Mr. Drax, so you understand that a minimum mandatory in the State of Maryland carries with it additional considerations. Ordinarily a sentence in the State of Maryland, if it's a crime—if it's not a crime of violence—so however it's categorized, if it's not a crime of violence, you would be eligible, you wouldn't be guaranteed, but you're eligible for parole after serving one quarter of your sentence. There are things called diminution credits that are separate and apart from parole considerations, they are simply time taken off your sentence based on things that you do while you are a part of a prison or a jail population, separate and distinct from parole considerations. Minimum mandatory—and then the other is if you're sentenced to a crime of violence, you must serve 50 percent of your sentence before you are eligible for parole consideration, okay? So parole is early release from incarceration based on a review by an independent body and they decide to let you out early from your sentence. Diminution is simply your sentence is X, and it's cut down based on things that you do while you are incarcerated.

Under a minimum mandatory drug sentence in the State of Maryland you are not eligible for parole normally. So you don't get that quarter of a sentence or half of a sentence. You get diminution credits, so you get time off for good behavior, is a better—maybe that's a better way of expressing it, but not parole. **However, so it's not complete, it's just limited options for parole eligibility. If you do qualify for an 8-505 or 8-507 commitment, which is a drug treatment commitment, that can be used to intervene or alleviate a minimum mandatory sentence. So it's not an absolute prohibition against parole eligibility, but a lot of people say you're not eligible for parole.** And so that's a—that's a—that's incorrect, but it's generally correct.

So do you understand all of that, sir?

THE DEFENDANT: It was a lot, but yes.

THE COURT: Okay. Do you have any questions about that? . . . So the maximum penalty is 20 years in prison, but there is a minimum mandatory, meaning the Court has no discretion. **If I find beyond a reasonable doubt that the elements of that offense are met, then it's out of my discretion as to what your minimum sentence must be. The minimum must be five years, and that five years comes with limited opportunities of parole.** Is that clear?

THE DEFENDANT: Yes.

THE COURT: The maximum still remains 20. So on any person's worst day under this offense, the sentence could be 20 years in prison, the first five without—**with limited opportunities of parole** because it's a minimum mandatory, and any fine up to and including \$100,000, that's the worst day for someone under that particular offense.

The State's plea is that your sentence be limited to just the five years, that be the extent of it, that you not get six or seven or 20, that you just get five years. It's five years pursuant to the minimum mandatory part of the statute. Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Alright. [Defense Counsel], do you need to go over that any further with Mr. Drax?

[DEFENSE COUNSEL]: No, I don't, thank you, Your Honor.

THE COURT: Alright. So that's the plea offer as I understand it. That may be something Mr. Drax wants to do, and it's by way of a not guilty agreed statement of facts.

(Emphasis added).

The court then explained that some defendants plead not guilty to an agreed statement of facts so that they may reserve their right to appeal. Mr. Drax's attorney confirmed that would be their reason for doing so, specifically to appeal the circuit

court's earlier denial of Mr. Drax's suppression motion. Mr. Drax then asked for some time to confer with his attorney before entering his plea, which the court granted.

Upon returning to the courtroom, the State restated the plea agreement, and Mr. Drax entered his plea of not guilty to the agreed statement of facts. The court then conducted a colloquy to determine whether Mr. Drax knowingly and voluntarily waived his right to a jury trial:

THE COURT: Okay. Alright. So Mr. Drax, I'm going to have some questions for you. I need you to answer out loud by saying yes or no, as your responses are going to be recorded not only electronically, but also we have a stenographer here. If there is anything I say or any question that I ask that causes you an issue or generates your own question, please don't tell me what I [*sic*] think I want to hear. Instead, stop me, let me know that you've got an issue, I'll give you time with your attorneys to make sure that everything is clear on your end before we proceed any further. Is that clear?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Alright. Mr. Drax, how old are you, sir?

THE DEFENDANT: I'm 46, Your Honor.

THE COURT: And how far did you go in school?

THE DEFENDANT: I have an Associate's Degree, Your Honor.

THE COURT: You can certainly read and write?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you currently under the influence of drugs or alcohol?

THE DEFENDANT: Not presently, Your Honor.

THE COURT: Do you currently—are you currently under the treatment of a psychologist or a psychiatrist?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you—do you suffer from any condition or are you taking any medications that interfere with your ability to understand the proceedings this morning?

THE DEFENDANT: No, Your Honor.

THE COURT: Mr. Drax, have you received a copy of the charging document in this case? It was a criminal indictment that alleged four offenses that occurred on or about December 5th of 2019.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Therefore, do you understand the charges that bring you here today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Between the State of Maryland and your attorneys, I understand that there has been an agreement reached on how to proceed this morning. My understanding is that you are pleading not guilty to Count Number One pursuant to a plea that's been extended, but you are agreeing regarding what the statement of facts would be in this particular case; is that correct? And is that your plea, not guilty but agreeing to a statement of facts as it relates to Count Number One?

THE DEFENDANT: Yes, Your Honor.

* * *

THE COURT: Therefore, do you understand what the State would have to prove in order for you to be found guilty of that offense?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that that particular offense carries a maximum penalty of 20 years of incarceration and/or a \$100,000 fine, it imposes a minimum mandatory sentence, meaning

the Court has no discretion, of five years, and **that five years of incarceration comes with it limited opportunities of parole** or as cited actually in the section, except as provided in Section 4-305 of the Correctional Services Article, **the person [is] not eligible for parole during the mandatory minimum sentence. So anything over and above five years, you are parole eligible, but the first five years very limited options of parole.**

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Alright. Do you have any questions about the offense or the maximum penalties available under that offense?

THE DEFENDANT: No, Your Honor.

THE COURT: Alright. Your attorney—the record should be clear, **your attorney mentioned earlier this morning a request for a downward departure by the Court, meaning that I would not impose a minimum mandatory sentence. I will tell you that unless someone provides either case law or something in the code that gives me that authority, I do not believe that I have that authority. And that the maximum penalty and the minimum mandatory penalties are as I previously stated.**

Is that clear?

THE DEFENDANT: Very.

THE COURT: Your attorneys will be free to argue for any sentence on your behalf understanding the limitations that are imposed pursuant to this particular count, but they're free to argue for any sentence on your behalf. Before imposing sentence, I'll hear from the State of Maryland, I'll hear from your attorneys, and you may address the Court regarding sentencing as well. The sentence you receive is ultimately for the Court to decide. I can impose any sentence, up to and including the maximum penalty if I thought that that was appropriate.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I'm not bound by any requests of the State or of you and your attorneys. The only thing that binds the Court at this point would be the minimum mandatory sentence; is that clear?

THE DEFENDANT: Yes, Your Honor.

THE COURT: If my sentence were to differ in any way from what you and your attorneys were requesting or even what the State was requesting, that would not be a basis for you to withdraw your guilty plea; do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Alright. So Mr. Drax, you have the right to be tried by a jury. A jury consists of 12 persons. You and your attorneys could participate in the selection of those 12 individuals, who would hear the case. And after hearing the evidence, they would have to be convinced beyond a reasonable doubt of your guilt before you could be found guilty. And the verdict of the jury would have to be unanimous, that is all 12 jurors would have to be satisfied beyond a reasonable doubt of your guilt before you could be found guilty.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You also have the right to be tried by the Court instead of a jury, so you could waive your right to a jury trial and elect a court trial. And in a court trial one person, the Judge, myself or some other member of the bench, would sit and listen to the evidence, and would determine whether the facts or whether the facts and the law meet all of the elements as required.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And I would still or another member would still have to be convinced beyond a reasonable doubt that those elements were met; do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that when you plead guilty or plead not guilty but agree to a statement of facts, you end up waiving or giving up your right to both a trial by jury and trial by the Court?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And is that your intent this morning, to waive or give up those rights?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Drax, has anyone threatened or coerced you in any way to get you to waive or give up those rights?

THE DEFENDANT: No, Your Honor.

THE COURT: Other than the plea bargain, has anyone made any promises to you in an effort to get you to waive your right to a jury trial or a court trial?

THE DEFENDANT: No, Your Honor.

THE COURT: Alright. Well, the Court finds that Mr. Drax's waiver of his right to a trial by jury and court, is—those waivers are both knowing and voluntary.

(Emphasis added).

The court then confirmed that Mr. Drax wanted to plead not guilty to the agreed statement of facts. Then, the State read the agreed statement of facts. After the recitation of the agreed statement of facts, the circuit court found Mr. Drax guilty of possession of a large amount of cocaine. It then postponed sentencing so that Mr. Drax could get his affairs in order.

When the court reconvened for sentencing two months later, it sentenced Mr. Drax to ten years of incarceration with no suspended portion or probation.⁵

Almost two years after sentencing, Mr. Drax applied for commitment to the Department of Health for drug treatment under the statutes suggested by the circuit court. *See* HG §§ 8-505 to 8-507. The court denied his request without explanation. About a year later, Mr. Drax again applied for commitment to the Department of Health for drug treatment, and the court again denied his request.

DISCUSSION

I. Parties' Contentions

⁵ The State and Mr. Drax both recommended five years of executed time, which was consistent with the sentencing guidelines. However, the court said it sentenced Mr. Drax to ten years because of the large quantity of cocaine that he was transporting, and because it believed as long as he behaved well in prison, he would get sufficient diminution credits so that he would be released after five years anyway.

At sentencing, the circuit court again reiterated that Mr. Drax could apply for and be committed for drug treatment before his mandatory minimum five-year sentence was finished:

[THE COURT]: The State's agreement was—the maximum penalty is 20 years and/or a \$100,000 fine. By statute there is a minimum mandatory sentence of five years. That five years is with limited opportunities of parole. So standard parole is not applicable. **However, there are certain conditions, I believe drug treatment is a mechanism or an avenue for a shortened sentence,** but the traditional parole path is not available to those sentenced pursuant to this provision.

(Emphasis added).

Mr. Drax argues that under Maryland law, a jury trial waiver is unconstitutional when the trial court erroneously advises the defendant, and that advice may have misled the defendant or influenced their decision to waive their right to a jury trial. He argues that the trial court's advice about the availability of commitment for drug treatment under HG §§ 8-505 to 8-507, particularly the potential for such a commitment to effectively lower a mandatory minimum sentence, was erroneous. He also asserts that the court's advice may have misled him to believe that he could serve less than five years in prison.

The State first argues that Mr. Drax cannot assert his claim of a constitutional violation because to successfully assert an appellate claim under Rule 4-246, he must have contemporaneously objected to his jury trial waiver at trial. *Hammond v. State*, 257 Md. App. 99, 119 (2023) (explaining the defendant must have contemporaneously objected in order to preserve their right to appeal an error under Maryland Rule 4-246) (citing *Nalls v. State*, 437 Md. 674, 693 (2014)). It next argues that Mr. Drax would have to prove the erroneous advice may have misled him *and* influenced his decision to waive his jury trial right. The State then contends that the court's erroneous advice did not influence Mr. Drax's decision to waive his jury trial right, so his waiver was knowing and voluntary.

II. Analysis

By agreeing to plead not guilty to an agreed statement of facts, Mr. Drax waived his right to a jury trial. A defendant's right to a jury trial is guaranteed by the Sixth Amendment to the U.S. Constitution, as applied to the states through the Fourteenth

Amendment, and Articles 5, 21, and 24 of the Maryland Declaration of Rights. *See Abeokuto v. State*, 391 Md. 289, 316 (2006). For a jury trial waiver to be considered constitutionally valid, the defendant must have knowingly and voluntarily waived the right on the record. *See Hammond v. State*, 257 Md. App. 99, 121 (2023). To determine whether a defendant’s jury trial waiver was knowing and voluntary, we look at the totality of the circumstances. *See Kang v. State*, 393 Md. 97, 105 (2006).

Maryland Rule 4-246 establishes the procedure for acceptance of a knowing and voluntary jury trial waiver. However, if a defendant does not contemporaneously object to the court’s acceptance of their jury trial waiver, any error under Maryland Rule 4-246 is unpreserved. *Hammond v. State*, 257 Md. App. 99, 119 (2023) (“[T]o challenge a failure to comply with Rule 4-246 on appeal, . . . there must be an objection raised in the trial court.” (citing *Nalls v. State*, 437 Md. 674, 693 (2014))). On the other hand, regardless of whether the defendant objected at trial, they may raise, on appeal, a claim of violation of their constitutional right to a jury trial because the waiver of a constitutional right must appear affirmatively in the record. *See Biddle v. State*, 40 Md. App. 399, 407 (1978) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Therefore, contrary to the State’s contentions, Mr. Drax was not required to contemporaneously object in order to preserve his appellate claim because, by arguing that his waiver was not knowing and voluntary, he alleges a violation of a constitutional right.

In the case of erroneous advice from the trial court, our Supreme Court has established that if the erroneous advice could have misled the defendant and influenced

their decision to waive their right to a jury trial, then the defendant’s jury trial waiver was not knowing and voluntary. *See Winters v. State*, 434 Md. 527 (2013). In *Winters*, once the court learned of the defendant’s desire to have a bench trial, it conducted a colloquy to examine whether his waiver of a jury trial was knowing and voluntary. *Id.* at 530-31. The court asked numerous questions, but in pertinent part, it asked,

And do you understand that for such a jury to convict you or to find you either criminally responsible or not criminally responsible, they must unanimously, all together, vote to convict you or find you criminally responsible or not criminally responsible upon which the evidence they feel proves same by a reason—beyond a reasonable doubt? Do you understand that?

Id. at 532.

The Supreme Court found this advice to be erroneous. *Id.* at 538. It then held that the defendant’s jury trial waiver could not be knowing and voluntary because the court’s erroneous advice “may have misled [the defendant] to believe that the task of proving that he was not criminally responsible in a jury trial would be a more difficult task than it actually is under Maryland law.” *Id.* It explained that this erroneous advice made “a jury trial appear less attractive and would reasonably influence Winters’s decision to waive his right.” *Id.* The court also noted that, according to the record of the hearing, no one corrected the court’s erroneous advice. *Id.* at 539-40. The court also explained that the erroneous advice made the waiver unknowing *even though* “without the erroneous statement, there would have been sufficient information for a knowing waiver[.]” *Id.* at 542.

Thus, the appropriate standard to determine whether a defendant's jury trial waiver was knowing and voluntary despite erroneous advice from the court is whether the erroneous advice may have misled the defendant and influenced their decision to waive their jury trial right, where no one corrected the misstatement before the defendant's waiver. *Id.* at 544. Accordingly, to show that his jury trial waiver was not knowing and voluntary, Mr. Drax must show that 1) the trial court's advice was erroneous, 2) the erroneous advice may have misled him, and 3) the erroneous advice may have influenced his decision to waive a jury trial.

First, Mr. Drax has demonstrated, and the State has here conceded, that the advice was erroneous. The statutes that allow incarcerated persons to apply for commitment for drug treatment do not apply to sentences with mandatory minimums. *See State v. Green*, 367 Md. 61, 80 (2001) (holding that the circuit court in that case had no authority to modify the defendant's sentence to commit him to the Department of Mental Health and Hygiene, pursuant to HG § 8-507, because it was a mandatory sentence); *see also* HG §§ 8-505 to 8-507. Mr. Drax could not have served less than five years by applying for, and receiving, commitment to the Department of Health for drug treatment.

Second, Mr. Drax has also demonstrated that the erroneous advice may have misled him. Although the court did explain that it could not sentence him to anything less than five years, it repeatedly and erroneously stated that there were limited parole opportunities, which included commitment to the Department of Health for drug treatment. The court made this statement multiple times before the jury trial waiver.

However, in truth, HG §§ 8-505 to 8-507 did not afford Mr. Drax an opportunity for parole.⁶ But the consistency of the court’s error gave Mr. Drax no reason to question what the court was saying, and no one corrected the court about the availability (or not) of relief under HG §§ 8-505 to 8-507. Therefore, with only the court’s repetition that commitment to drug treatment could lower his mandatory minimum sentence, Mr. Drax could have been misled into thinking that even though the court had to sentence him to a minimum of five years, he may have been able to get that sentence reduced by being committed to the Department of Health for drug treatment.

Finally, the erroneous advice may have influenced Mr. Drax to waive his right to a jury trial. Mr. Drax argues in his reply brief that “may have influenced” is the same as “may have misled,” and so he does not have to prove that the erroneous advice may have influenced his jury trial waiver decision in addition to proving it may have misled him. We disagree with Mr. Drax’s formulation of the law. However, in the alternative, Mr. Drax argues that the court’s erroneous advice may have influenced his decision to waive his right to a jury trial. He claims that “this record is rife with evidence that the ability to

⁶ The only opportunity for parole under CL § 5-612, under which Mr. Drax was sentenced, is through the Patuxent Institution. The Patuxent Institution “provide[s] remediation programs and services to youthful offenders, other eligible persons, and mentally ill incarcerated individuals.” Md. Code, Corr. Servs. § 4-202. Since transfer to the Patuxent Institution requires a person to have “an intellectual impairment or emotional imbalance” or to be a youthful offender under the age of 21, there is nothing in the record to suggest that Mr. Drax would have qualified for transfer. Thus, realistically, contrary to the court’s statement, Mr. Drax had no opportunities for parole from the mandatory minimum five-year sentence he faced.

somehow serve less than five years of incarceration was Mr. Drax’s primary concern.”

We agree.

To begin, “*may have influenced*” is a low standard and only requires that there be a possibility that Mr. Drax was influenced in his decision by the erroneous advice. The State argues that Mr. Drax was not influenced by the trial court’s erroneous advice in deciding to waive his right to a jury trial, but regardless of whether the State is correct in that contention, the appropriate standard is instead whether a defendant *may have been* influenced by the erroneous advice, not whether they were influenced. *See Savoy v. State*, 218 Md. App. 130, 155-56 (2014). In *Savoy v. State*, we explained that a defendant would not have to prove that they detrimentally relied on the court’s erroneous advice before waiving their right to a jury trial because the constitution requires that the trial court affirmatively ensure the defendant understands the right he is waiving. *Id.* Accordingly, Mr. Drax does not need to show he relied on the trial court’s erroneous advice in deciding to waive his right to a jury trial. Instead, all that must be shown is the possibility that the erroneous advice influenced his decision.

With this standard in mind, Mr. Drax has demonstrated that the court’s erroneous advice may have influenced his decision to waive his jury trial right. Due in particular to the court’s repeated statement that Mr. Drax could receive the maximum of twenty years, Mr. Drax likely would have wanted to plead not guilty to the agreed statement of facts and waive his jury trial right with the hope that the court would give him the State’s recommended five-year sentence. From there, he likely hoped he would be able to cut

down those five years by being committed to the Department of Health for drug treatment. A jury trial would have presented more uncertainty for Mr. Drax, who was looking to serve as little time as possible. Thus, believing, as the court told him, that he could serve less than five years, the court's erroneous advice may have influenced Mr. Drax's decision to waive his jury trial right.

Because the court's erroneous advice may have misled Mr. Drax and may have influenced him to waive his right to a jury trial, his jury trial waiver was not knowing and voluntary. It is true that the circuit court did not have an obligation to inform Mr. Drax about commitment for drug treatment under HG §§ 8-505 to 8-507 and the fact that such commitment would not reduce a mandatory minimum sentence; however, since the circuit court elected to inform Mr. Drax about such commitment, it "should have done so correctly." *Morales v. State*, 325 Md. 330, 338 (1992). Therefore, we vacate Mr. Drax's conviction and remand to the circuit court for further proceedings not inconsistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY VACATED;
CASE IS REMANDED TO THE CIRCUIT
COURT FOR WORCESTER COUNTY
FOR FURTHER PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**