

Circuit Court for Prince George's County
Case Nos. CT81-1066, CT81-352, CT81-1506

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 1272, 1273, & 1274

September Term, 2023

ANDRE ELMER MINOR

v.

STATE OF MARYLAND

Ripken,
Albright,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: April 14, 2025

*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).

Appellant Andre Elmer Minor appeals after the Circuit Court for Prince George’s County discharged him from its Re-Entry Court program and resentenced him to the Division of Correction. At some point prior to the discharge and resentencing, Mr. Minor had been committed to the Maryland Department of Health under Section 8-507 of Maryland’s Health General Article (“HG”) for substance abuse treatment. Mr. Minor claims that his due process rights were violated because, prior to being resentenced, he was not properly notified of the nature of the violation with which he was charged or apprised of the evidence the State would rely on to prove a violation.

Mr. Minor presents the following questions to us:

- I. Did the lower court err in re-incarcerating Mr. Minor without affording him the due process protections required in a probation proceeding?
- II. Did the lower court err in imposing a sanction exceeding the presumptive sanction for a third technical violation?

Answering the first question, we conclude that Mr. Minor’s due process rights were violated. As a result, we vacate the circuit court’s findings of violation and the sentences that followed and remand for further proceedings. We need not address the second question.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Minor was convicted in three criminal cases between 1981 and 1982. The convictions (and the resulting sentences) were:

1. **Case No. CT81-0352:**

Conviction 1: Robbery with a Deadly Weapon.

Sentence 1: Ten years.

Conviction 2: Use of a Handgun.

Sentence 2: Five years concurrent with Conviction 1.

2. **Case No. CT81-1066:**

Conviction: Escape.

Sentence: One-year concurrent with CT81-0352.

3. **Case No. CT81-1506:**

Conviction: Second-degree Murder & Use of a Handgun.

Sentence: Forty-five years consecutive to CT81-0352 & CT81-1066.¹

In total, Mr. Minor received a fully executed sentence of fifty-five years. A probationary term was not imposed.

In February 2021, while incarcerated at the Division of Correction, Mr. Minor moved for substance abuse evaluation and commitment pursuant to Sections 8-505 and 8-507 of the Health General Article.² In his motion, Mr. Minor consented to both evaluation and treatment. The circuit court ordered Mr. Minor’s evaluation under HG § 8-505 on May 11, 2021. After Mr. Minor was evaluated, a remote hearing was set for

¹ The record does not reflect a separate sentence for Use of a Handgun.

² In general, these statutes permit the court to order the Maryland Department of Health to “evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment[.]” HG § 8-505(a)(1)(i). If the court finds “that a defendant has an alcohol or drug dependency[.]” it may commit the defendant “as a condition of release after conviction, or at any other time the defendant voluntarily agrees” to participate in the recommended treatment. HG § 8-507(a)(1). Here, as noted, it was Mr. Minor who moved that he be evaluated and committed under these statutes. The State did not oppose Mr. Minor’s motion.

September 15, 2021, regarding Mr. Minor’s request for commitment under HG § 8-507. When Mr. Minor was unable to appear from the prison where he was incarcerated, the circuit court noted that it had “no choice but to continue [Mr. Minor’s] case to the next re-entry date” on October 6. Two days later on September 17, however, the circuit court issued a form order (the “Commitment Order”) granting Mr. Minor’s request and committing him to the Maryland Department of Health (“MDH”) for substance abuse treatment (“8-507 commitment”).

In the Commitment Order, Mr. Minor was committed to MDH for inpatient residential drug treatment at a “Facility Identified by MDH.” The circuit court found, among other things, that it had “obtained the written consent of [Mr. Minor] to obtain treatment[.]” The Commitment Order also directed the Division of Correction to transport Mr. Minor for treatment but left the line indicating where Mr. Minor was to be transported blank.

As for Mr. Minor’s supervision, the Commitment Order named three separate entities as supervisors:

IT IS FURTHER ORDERED, supervision of the Defendant shall be provided by:

- RE-ENTRY PROGRAM....., a pretrial release agency in that the Defendant is released pending trial.
- The Division of Parole and Probation in that the Defendant is released on probation.
- The Maryland Department of Health in that the Defendant remains in the custody of a local correctional facility.

On October 6, 2021, Mr. Minor’s remote hearing was again postponed, this time to October 20, 2021. In the meantime, on October 12, 2021, Mr. Minor was released from prison, placed in the Jude House substance abuse inpatient treatment facility, and placed

on GPS monitoring. Thereafter, the circuit court’s Re-Entry Court program held periodic status hearings on Mr. Minor’s case.³ The circuit court also received written reports about Mr. Minor’s progress from Jude House. On March 29, 2022, Mr. Minor “completed treatment with Jude House” and “transitioned from program.”

Within about two weeks, Mr. Minor tested positive for cocaine and was detained in the Prince George’s County Detention Center (“PGCDC”). During a hearing on April 21, 2022, the circuit court discussed continuing Mr. Minor’s detention as a consequence. As an alternative, the circuit court inquired about “a 8-507,” and what timeline Mr. Minor would be on if another 8-505 evaluation was ordered. On May 2, Mr. Minor was released from detention and sent to Avenues Recovery Center. Mr. Minor was discharged from Avenues Recovery Center on May 11, however, and he was sent back to PGCDC after a status hearing on May 18. Mr. Minor was released from PGCDC again on June 7 and taken to Hudson Behavioral Health in Salisbury. He was discharged successfully from Hudson Behavioral Health on July 7.

³ For acceptance into a problem-solving court program, Maryland Rule 16-207(e)(1) requires a written agreement that sets forth (A) the requirements of the program; (B) the protocols of the program; (C) the available sanctions that may be imposed on the participant; and (D) any rights waived by the participant. Although Mr. Minor clearly participated in such a problem-solving court program, we are unable to locate such a written agreement in the record. Additionally, our review of the record does not show that the Re-Entry Court examined Mr. Minor on the record to determine that Mr. Minor understood the agreement and knowingly and voluntarily entered into it as required by Maryland Rule 16-207(e)(2). Maryland Rule 16-207(e)(3) mandates that “[a] copy of the agreement shall be made part of the record.”

On July 14, 2022, after learning about Mr. Minor’s additional positive drug tests, the circuit court issued a bench warrant for Mr. Minor and he turned himself in to PGCDC. During a status hearing on August 3, the circuit court discussed the legal status of Mr. Minor’s sentence, and stated that his “sentence was never modified, [he was] never placed on probation, so he’s still under subject of the health department placement.” Further, the circuit court noted that a hearing needed to be set “to find out whether [Mr. Minor] is in compliance with his 8-507 placement as well as for the [c]ourt to weigh-in on the public safety element of it.”

On December 21, 2022, Mr. Minor appeared before the circuit court for “a violation hearing” (the “Violation Hearing”). The record does not document what kinds of violations the State alleged or what evidence it planned to rely on to prove those violations. At the hearing, however, Mr. Minor’s counsel identified the issues before the court as (1) whether Mr. Minor had fulfilled the requirements of his 8-507 commitment; and (2) whether the re-entry program could still offer Mr. Minor services and whether he should remain in the program.

The circuit court heard evidence on these issues and found that Mr. Minor was “not in compliance[] with the commitment and, because of that, he’s also a danger to himself and others[:]”

So last week there was evidence submitted from the defense. I heard arguments from both sides regarding whether Mr. Minor has complied with the conditions of the Health General commitment. Also took the recommendations of the Re-entry Court team, recessed the case to allow the -- to see if the, you know, based upon the testimony and argument, whether

the Re-entry Court, whether their recommendation remains, and my understanding is that the recommendation remains. Is that correct?

...

So after I read the reports, I listened to the witnesses, I don't have any disagreement with what the witness testified, that is, that people have addiction relapse as part of the program, like, yes, yes, 100 percent, you know, I said that repeatedly. I said that repeatedly. It's not one-size-fits-all. What you are doing with addiction, you take people, multiple different people, a period of sobriety and things like that, but there is the factual -- as well as the need for Mr. Minor to get trauma-based treatment as well -- but there is also the individual facts in this case. It's not just saying that Mr. Minor relapsed. And I'm not sure "relapse" is the right word, because relapse, as far as there was a period of sobriety in the first place, and that's one of the big concerns.

So, Mr. Minor was taken back the first time. And wasn't out of malice, it was out of concern of his own safety, the level of his usage, and, quite frankly, manner of his usage concerning about his own health -- his life, that the way he was using -- the way he was injecting his drug of choice was causing objective physical changes in his body that caused others to be concerned.

So he was -- I took him in for, number one, for his own safety. And he had only been out a short period of time, and because of that, we didn't get to this stage then, because the team got together and found another placement treatment for Mr. Minor. And as soon as he was discharged, he tested positive again. And then he went through the whole thing about he believed that he didn't use anything because he was using a book bag he was using at his old school that he took with him to treatment. And the only issue was he was taking only one form of treatment. He was taking some Suboxon[e] that way, and using a spoon.

There is also the other comments that were made as we led up to the point that I'm not sure the witness was made aware of two more. First time going back -- the first time he was taken back into custody, Mr. Minor, he was -- even he said, I don't have an addiction, I stop when I want to. And then we came, but after the time, a second is charged. He said he was in a good place, he was good, you know, and those things, spoke out to me, as well as the short time again -- I don't think there was any time, necessarily, for the second placement. But he's just not in a place for treatment for himself that -- and without being in the proper treatment, at least the part of the treatment that this program provided, endangering his safety, but also the safety of others, because without any type of minimal compliances, you know, then the community is also at risk.

So the Court finds that he is not in compliances [sic] with the commitment and, because of that, he’s also a danger to himself and to others.

A “disposition” hearing was scheduled for January 18, 2023. During the disposition hearing, the State requested that “Mr. Minor be discharged from the re-entry program.” Additionally, the State requested that “Mr. Minor be returned to Department of Corrections and serve the remainder of his sentence.” After hearing from counsel, and Mr. Minor, the circuit court resentenced Mr. Minor as follows:

1. Case No. CT81-0352:

Conviction 1: Robbery with a Deadly Weapon.

Sentence 1: Ten years concurrent with conviction 2, with a start date of July 18, 1981, and credit for time served.

Conviction 2: Use of a Handgun.

Sentence 2: Five years concurrent with conviction 1, with a start date of July 18, 1981, and credit for time served.

2. Case No. CT81-1066:

Conviction: Escape.

Sentence: One year concurrent with CT81-0352, with start date of July 18, 1981, and credit for time served.

3. Case No. CT81-1506:

Conviction: Second-degree Murder & Use of a Handgun.

Sentence: Thirty years with all but twenty suspended in favor of probation, and a consecutive fifteen years, with a start date of July 18, 1981, and credit for time served.

The circuit court thus imposed an aggregate split sentence of fifty-five years, with all but forty-five years suspended in addition to a five-year probation term. A “new” Probation/Supervision Contract was filed for Mr. Minor, too. Mr. Minor was credited for serving thirty-one years, five months, and three days of his sentence.

Mr. Minor sought leave to appeal the circuit court’s new sentences⁴ for the same reasons he raises before us now. We granted him leave to appeal and consolidated his cases for our consideration.

DISCUSSION

A. Problem-Solving Courts

In Maryland, a “problem-solving court program” is a “specialized court docket or program that addresses matters under a court’s jurisdiction through a multi-disciplinary and integrated approach incorporating collaboration by the court with other governmental entities, community organizations, and parties.” Md. Rule 16-207(a). Before a “prospective participant” is accepted into a problem-solving court program, several requirements must be met. Among these is the signing of a written agreement after the advice of counsel. Md. Rule 16-207(e)(1). The agreement must set forth (a) the program requirements; (b) the program protocols, including the protocols for ex parte communications by the court; (c) the range of sanctions that can be imposed; and (d) what rights are being waived by the participant. *Id.* Thereafter, on the record, the court must examine the participant to determine whether the individual understands the agreement and knowingly and voluntarily enters into it. Md. Rule 16-207(e)(2). If

⁴ When Mr. Minor appealed, the only sentence he was serving was for his conviction in case CT81-1506. Although he was resentenced by the circuit court in all three of his cases, the credit he received for time served meant that Mr. Minor completed his sentences in cases CT81-0352 and CT81-1066. Nonetheless, Mr. Minor has appealed the resentencing in all three cases.

satisfied, the court must announce its decision on the record. *Id.* Finally, a copy of the written agreement must be made part of the record. Md. Rule 16-207(e)(3).⁵

Under certain conditions, sanctions may be imposed “immediately.” Md. Rule 16-207(f). If the sanction involves a loss of liberty or removal from the program, however, the participant must be “afforded notice, an opportunity to be heard, and the right to be represented by an attorney *before the court makes its decision.*” Md. Rule 16-207(f) (emphasis added).

Prince George’s County’s Re-Entry Court program is a problem-solving court subject to Rule 16-207.⁶ As its name suggests, the mission of the Re-Entry Court program “is to facilitate the successful re-entry of offenders into their communities and to promote public safety therein.”⁷ The program is a voluntary “sanction and incentive based comprehensive court program” for “incarcerated individuals” who “request a commitment under Section 8-507 of the Maryland Health General Article” among others.⁸ After admission into the program, participants are committed for court-ordered

⁵ Here, it is not clear that Mr. Minor signed this agreement or that the circuit court made the findings required by Rule 16-207(e).

⁶ See Website of Maryland Administrative Office of the Courts, Problem-Solving Courts (listing operational problem-solving courts in Maryland), <https://www.courts.state.md.us/opsc> (last visited Apr. 10, 2025).

⁷ See Prince George’s County, Judicial Branch – Courts, <https://princegeorgescourts.org/351/Re-Entry-Court> (last visited Apr. 10, 2025).

⁸ *Id.*

treatment.⁹ Thereafter, they receive intensive supervision and case management in the community, including attendance at regular court hearings.¹⁰

B. Parties' Contentions

Mr. Minor first contends that the Violation Hearing constituted a probation revocation hearing. Accordingly, he claims his due process rights were violated because no violation of probation petition was filed, i.e., he never received written notice of violations or what evidence the State would rely on to support them. As a result, he argues he was not properly notified about the issues to be heard at the Violation Hearing—especially whether he should be reincarcerated.

Mr. Minor also argues that the sentence imposed on him was excessive. Even if “there was a valid finding that he had violated probation,” Mr. Minor asserts that the circuit court “erred in exceeding the statutorily presumptive sanction of forty-five days for a third technical violation of probation.”

The State disagrees with Mr. Minor that the Violation Hearing was a probation revocation hearing; in fact, the State contends that Mr. Minor was not on probation at all. The State does not, however, dispute that Mr. Minor was not provided written notice about what violations he was alleged to have committed or the evidence to support such allegations. Instead, the State focuses its arguments on a preliminary matter, asserting that the Commitment Order was a “nullity” in the first place.

⁹ *Id.*

¹⁰ *Id.*

C. Analysis

We first address the State’s “nullity” argument.¹¹ The State argues that the Commitment Order was without effect because it failed to suspend Mr. Minor’s prison sentence prior to committing him to the Maryland Department of Health and contained contradictions about which entity was supposed to supervise Mr. Minor upon his release from prison.¹²

We disagree that the Commitment Order was a “nullity.” A “nullity” results when a court acts without fundamental jurisdiction. *See Bereska v. State*, 194 Md. App. 664, 686 (2010) (“Any action taken by a court while it lacks fundamental jurisdiction is a nullity, for to act without such jurisdiction is to not act at all.”) (cleaned up); *Wilson v. Warden, Md. Penitentiary*, 198 Md. 663, 665 (1951) (“A judgment of a superior court of general jurisdiction, which has power to decide all questions involved in a case before it, including constitutional questions and questions as to its own jurisdiction, is not a

¹¹ The State did not raise this argument below, either immediately after the Commitment Order was issued or during any of the Re-Entry Court status hearings that followed. Thus, they are unpreserved for our review. *See* Md. Rule 8-131(a) (“Ordinarily, an appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”)

Nonetheless, we exercise our discretion and address this argument, as we “may decide [a non-preserved] issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” *Id.* Whether the Commitment Order is a nullity is such an issue.

¹² Specifically, the State alleges that the Commitment Order contains contradictory provisions because it marked all three options for Mr. Minor’s supervision, including a pretrial release agency “in that the Defendant is released pending trial,” as well as the MDH “in that the Defendant remains in the custody of a local correctional facility.”

nullity.”); *Taylor v. Welslager*, 90 Md. 414, 415 (1900) (“The principle that, unless the court rendering the judgment had jurisdiction both of the cause and of the parties, it will be treated as a nullity, is too well recognized to need the citation of authority to sustain it.”). *See also Brown v. Baer*, 291 Md. 377, 387 (1981) (“[M]erely because a trial court’s order violates a statute or rule does not render the order beyond the court’s jurisdiction and a nullity; instead, it is only subject to reversal on direct appeal.”).

Here, the State does not claim that the circuit court was without fundamental jurisdiction to enter the Commitment Order, nor could it. The plain language of HG § 8-507 expressly grants a circuit court the authority to commit an individual for treatment under the statute. *See* HG § 8-507(a) (“[A] court that finds in a criminal case or during a term of probation that a defendant has an alcohol or drug dependency may commit the defendant as a condition of release, after conviction, or at any other time [regardless of whether the defendant filed a motion for reconsideration under Maryland Rule 4-345].”). Accordingly, even if there are contradictions in the Commitment Order, those contradictions do not render the Commitment Order a “nullity.”

Turning next to Mr. Minor’s due process arguments, regardless of whether Mr. Minor was (or was not) faced with a probation violation in December 2022, he was entitled to due process because he faced (and suffered) a loss of liberty during his participation in Prince George’s County’s Re-Entry Court, also a problem-solving court. *See Conner v. State*, 472 Md. 722, 726 (2021) (“[A] drug court must afford a participant ‘certain minimum due process protections’ before imposing a sanction involving the loss

of liberty or termination from the program.”) (citing *State v. Brookman*, 460 Md. 291, 322 (2018) (applying same due process protections for probation violations)).

In *Brookman*, the Supreme Court of Maryland set out a set of “minimum requirements” that must be met to satisfy due process in probation and drug-court revocation hearings that involve a potential loss of liberty. *Brookman*, 460 Md. at 315. These are: “(1) written notice of the alleged violation; (2) disclosure of the evidence on which the alleged violation is based; (3) an opportunity to be heard and to present witnesses and documentary evidence; [and] (4) an opportunity to confront and cross-examine adverse witnesses.” *Id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)). *See also* Md. Rule 16-207(f) (imposing the same requirements for re-entry court programs).

Here, it is not clear what kind of violation Mr. Minor faced, what grounds existed for any violation, or whether he was told that a violation could result in his reincarceration with the Division of Correction. If what Mr. Minor faced was a probation violation, there appears to be no Probation/Supervision Contract in the record from September 17, 2021 (the day he was purportedly “released on probation” by the Commitment Order), let alone a document that identifies what probation conditions Mr. Minor allegedly violated or the evidence that supported that violation.¹³ If the violation that Mr. Minor faced was of his 8-507 commitment, Mr. Minor was entitled to have

¹³ By contrast, the circuit court’s order reincarcerating Mr. Minor in January 2023 describes the probation term to be imposed on Mr. Minor upon his release, as well as the applicable conditions of probation.

notice of that (and the supporting evidence) as well. According to the Commitment Order, Mr. Minor’s 8-507 commitment was to end “upon completion of or termination from treatment, including aftercare.” On March 29, 2022, the record indicates that Mr. Minor “completed treatment with Jude House,” the facility to which Mr. Minor was transferred when he left the Division of Correction. In April 2022, the circuit court discussed ordering another HG § 8-505 evaluation when discussing “a 8-507” as a consequence for Mr. Minor’s relapse. The record, however, shows no second 8-507 commitment having been ordered. If Mr. Minor satisfied his first 8-507 commitment by completing Jude House, and if he was never ordered to complete a second 8-507 commitment (assumptions on our part, we emphasize), it is not clear to us what 8-507 commitment Mr. Minor would have violated.

At the December 2022 Violation Hearing, the State asked for “the imposition of a sanction involving the loss of [Mr. Minor’s] liberty.” *See* Md. Rule 16-207(f). As a consequence, Mr. Minor was entitled to “notice, an opportunity to be heard, and the right to be represented by an attorney before the court [made] its decision.” *See* Md. Rule 16-207(f). Because Mr. Minor did not have notice, his right to due process was violated.

D. Conclusion

We vacate the circuit court’s December 21, 2022 findings that Mr. Minor was “in violation” and the sentences that were imposed on Mr. Minor on January 18, 2023. We remand to the circuit court for further proceedings not inconsistent with this opinion. *See*

Md. Rule 8-604(a). Accordingly, we do not reach Mr. Minor's argument that the sentences imposed on him were excessive.

On remand, the circuit court shall first determine whether Mr. Minor was placed on probation or was under supervision pursuant to an 8-507 commitment when he was released from the Division of Correction in 2021. Under either scenario, a subsequent proceeding, if warranted, requires due process as stated herein. We vacate the December 21, 2022 findings of violation and the January 18, 2023 sentences and direct the court to proceed in a manner not inconsistent with this opinion. We note that our holding is limited to the December 21, 2022 violations and the January 18, 2023 sentences. The underlying convictions remain intact.

THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY'S DECEMBER 21, 2022 FINDINGS OF VIOLATION AND JANUARY 18, 2023 SENTENCES ARE VACATED. THE CASES ARE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY STATE.