Circuit Court for Prince George's County
Case Nos. CT220468X and CT220666X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 1480 & 1481

September Term, 2023

DAMONTE DREW

v.

STATE OF MARYLAND

Reed,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.
Dissenting Opinion by Tang, J.

Filed: July 8, 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).

Damonte Drew, appellant, appeals from the denial of his motion in the Circuit Court for Prince George's County to withdraw his guilty pleas for armed carjacking in two separate cases. The court sentenced appellant in Case 1 to a term of incarceration of fifteen years, all but eight years suspended, three years supervised probation. In Case 2, the court sentenced appellant to a term of incarceration of fifteen years, all suspended, consecutive to the sentence in Case 1, and three years supervised probation. Appellant filed applications for leave to appeal from the denial of his motion to withdraw the guilty pleas. This Court granted his motion and consolidated the two cases.

Appellant presents one question for our review:

> "Did the circuit court err in denying the appellant's motion to withdraw his guilty pleas?"

We shall hold that the circuit court abused its discretion in denying appellant's motion to withdraw his guilty pleas.

I.

Appellant was charged as an adult in the Circuit Court for Prince George's County with armed carjacking of two victims on two different occasions. At the time of the offenses, appellant was seventeen years old. By the time he was charged, he was eighteen.

To proceed under a plea agreement, appellant waived a hearing to transfer the cases to juvenile court. At the plea hearing on February 2, 2023, appellant entered guilty pleas to carjacking in each case. In presenting the agreement to the circuit court, the prosecutor stated that in Case 1, he would "ask for fifteen years, suspend all but a cap of five years."

In Case 2, "[t]he State would ask for ten years, suspend all to run consecutive [to] the sentence in [Case 1]." The prosecutor stated that "the plea offer will be within the [Maryland Sentencing Guidelines]," which were "five to ten" years. The court would not agree to the prosecutor's recommended cap of five years, but agreed to bind itself to the guidelines range of five to ten years as calculated by the parties:

> "THE COURT: – I'm not going to cap myself today. I will cap myself at Guidelines. *I don't challenge that they're five to ten. You've said to me they're five and ten. The two of you believe that they're five to ten. I will accept that they're five to ten.* We can set this for a different hearing date so that I do have an opportunity to review this, and we can hear full argument."

(Emphasis added). The court confirmed that while it would not bind itself to "the bottom" of the guidelines of five years, it would bind itself to the guidelines range.

The court advised appellant of the plea agreement:

> "You've been made aware of the plea negotiations between the State's Attorney and your attorney in Case [1], the negotiations are that the State will recommend a sentence of 15 years, suspend all but five years, ... Your attorney . . . will be free to allocute . . . for any sentence that she feels is appropriate, and *the Court has agreed to bind itself to the sentencing guidelines in your case, which is my understanding are between five years and ten years.*
>
> In Case [2], the State's Attorney and your attorney agree that the sentence should be ten years, suspend all but any time that you have served, your credit for that time, and that that sentence would be consecutive to the sentence in [Case 1].
>
> Again, the Court has not bound itself to that, but *I have agreed to bind myself to the Sentencing Guidelines range, which is something between five years and ten years*. After the sentences, the parties, I believe your attorney and the State have agreed that the Court should sentence you – excuse me, should have you do three years of supervised probation. I have not agreed to that. I could give you up to five years of supervised probation, and that you be ordered to have no contact with either of the two victims."

(Emphasis added). The court then accepted the guilty pleas, finding that appellant understood the agreement and entered the pleas freely, voluntarily, and knowingly. Before scheduling the sentencing hearing, the court reiterated, "I do accept the calculations by both attorneys. *The Guidelines will be between five and ten" years.*

At the sentencing hearing on February 17, 2023, the court informed the parties that the guidelines range was not five to ten years but instead, it was ten to twenty years. The court explained as follows:

> "So again, what we have here are multiple criminal events, one offense in each event. I agree that for each it is a Sentencing Guidelines range of five to ten, but the Guidelines Manual instructs that the overall Guidelines then would be ten to twenty and the sentence, if it is within Guidelines would fall with that range."

Recognizing that the court's recitation of the applicable guidelines was different from that expressed at the earlier hearing, the court recessed to permit appellant to speak with his counsel. After the recess, defense counsel moved to withdraw the guilty pleas pursuant to Maryland Rule 4-242, The basis for the motion was that appellant understood that the guidelines range was five to ten years, which "is very much different than . . . the Court's intentions and how the Court would be able to act in [its] power today." Defense counsel told the court that appellant wished to withdraw his guilty pleas because he did not understand what he was agreeing to. The court asked defense counsel to explain what happened and how the confusion came about. Defense counsel explained as follows:

> "Well, some of that. Your Honor, and like I said, the numbers that we came up for these two cases, one, the State nor the Defense did actually submit any Guideline Worksheet, so I imagine the Court took that and either completed or did somehow a calculation of her own or its own. And so, the plea agreement that I did present to my client included what Guidelines were. And

> like, I indicated earlier, the way that it was presented to my client and his understanding is that the Guidelines were five to ten. And so, if the Court --- when the Court earlier started that with stacking the cases, his Guidelines were 10 to 20. That is obviously vastly different than the understanding my client had and the way that I had explained it."
>
> The court denied the motion, explaining as follows:
>
> "So despite the fact that there is more than one case number, the Court will follow the Guidelines Manual in calculating the Guidelines, and shaving had that conversation with the Defendant at the time of the plea and ensuring the Defendant understood that the Court was not binding itself to a sentence of five to ten, if that was --- well, if that was the Guidelines, whatever they will be. The court will deny the Defendant's Motion to Withdraw his plea. Are you prepared to go to sentencing?"

At the defense's request, the court continued sentencing to March 23, 2023.

Defense counsel then filed a written Motion to Withdraw Plea, explaining that the parties and the court's "recollection of what the Court bound to was not correct and that [the court] did adopt the parties' five to ten calculation [at the plea hearing]."

At the continued sentencing hearing on March 23, the defense presented the audio recording of the plea hearing and played the portion of the court's statement that it did not "challenge" that the guidelines range was five to ten years: "You've said to me they're five to ten. The two of you believe that they're five to ten. I will accept that they're five to ten." Defense counsel argued that appellant was entitled to withdraw the plea agreement because of a breakdown when the court stated that the guidelines range differed from what appellant understood at the time of the plea. Defense counsel maintained that the withdrawal of the plea would ensure that the court's sentence would not be influenced by the guidelines of ten to twenty years mentioned previously by the judge. Counsel stated as follows:

> "Because the ten to twenty was in the court's mind and the court stated very strongly at the hearing on the 17th, how much it believed that the true guidelines were ten to twenty. And so I think that that—there's nothing that this court can do at this point to assure Mr. Drew, unless the result was very favorable at five years, to assure procedural due process that that didn't influence your decision in any way shape or form[.]"

Counsel describes the situation as a "cloud hanging over us and it's influencing the court's decision. And if not, it's certainly influencing the procedural fairness that Mr. Drew is experiencing as far as outcome."

After listening to the audio recording of the plea hearing, the court acknowledged that it had accepted the parties' guidelines calculation of five to ten years at the time of the plea, stating as follows:

> "All right. So I've heard the audio recording. My recollection has been corrected clearly that I said that I would cap myself at Guidelines, though I would not agree to bind myself to the negotiations between the parties. I agreed or I accepted that the Guidelines, as calculated, were five to ten. So I agreed that the Guidelines as calculated are five to ten and would not sentence the [appellant] beyond what I said to him I would agree to . . . I am binding myself to that because I said I would."

The court stated that there was no "breakdown" of the plea because it was, in fact, "binding" itself "to the Guidelines as calculated [at] five to ten." It denied the motion, explaining as follows:

> "So one slight correction. It's not a belief of what the Guidelines are. The Guidelines Manual makes it very clear how they should be calculated. So it's not that I just chose to believe in the calculation. Again, it's very clear, and I believe that it was very clear at the hearing when we were here last that there was concession in the Guidelines that were prevented to me in light of the youth of the Defendant, so I'm just correcting the 'it's the Court's belief.' It's not the Court's belief. It's the Guidelines sentencing Manual and the application thereof.

> However, the Court as shown today, absolutely said that it accepted the Guidelines as calculated and will do that. I do not believe that this involves a breakdown of the negotiations because I'm binding to the negotiations. The Court believes, based on case law and the statute, that absolutely the Defendant has the right to withdraw the plea and it's nondiscretionary with the Court if the Defendant does not get what he bargained for. He bargained for five to ten years. The Court finds that if he is sentenced to something that he bargained for and is within the wide discretion of the Court to grant the motion, to withdraw the plea, deny the Motion to Withdraw the Plea, and from my understanding of the cases and the statute, that it would not be disturbed unless there is clear abuse of discretion. Again, the Court has said today that having been corrected in my memory, that I accepted that the Guidelines were five to ten as calculated, I still therefore do. Therefore, the Motion to Withdraw Plea is denied."

The court imposed the sentences stated above, and this timely appeal followed.

II.

Before this Court, appellant argues that the circuit court erred in denying his motion to withdraw his pleas because the withdrawal of the pleas "served the interest of justice." His motion to withdraw his plea is based upon Md. Rule 4-242(h), withdrawal of a plea *before sentencing, when the withdrawal serves the interest of justice.* In appellant's view, the court evaluated his motion to withdraw his plea under the provision of the rule related to withdrawal of plea after sentencing, *i.e.*, if there was a violation of the plea agreement. That is the wrong standard and a heavier burden which is placed upon a defendant who wishes to withdraw a plea after sentencing, he argues. He maintains that the court did not apply the "in the interest of justice" standard, and the court "abused its discretion by failing to exercise choice when the situation called for the exercise of discretion." The court applied the wrong standard when it denied his motion and limited its rationale to appellant

receiving a sentence he bargained for. He contends that the court violated the plea agreement by calculating the guidelines on its own and announcing a different guidelines range.

The State argues that the court did not abuse its discretion in denying appellant's motion to withdraw his pleas because the court imposed a sentence that comported with the terms of the plea agreement. The State maintains that because appellant received a sentence of "eight years of active incarceration" that was "squarely within the proffered guidelines and in conformance with the plea agreement,"[1] that the circuit court honored the agreement and therefore, withdrawal of the plea would not serve the interests of justice.

III.

Maryland Rule 4-242(h)[2] governs requests to withdraw guilty pleas and provides as follows:

> "At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo

[1] We do not address the State's argument that appellant received a lawful sentence that was within the guidelines because appellant does not raise any issue in this appeal that the sentence was not in conformity with the plea agreement or was an illegal sentence. We note, however, that the trial court imposed a split sentence, and that the total sentence, looking at the executed time and the suspended time, did exceed the guidelines. We will not comment on whether the parties contemplated a split sentence where the suspended time exceeded the agreed upon cap, or whether the court's colloquy with appellant advised him sufficiently that he could receive a sentence greater than the agreed upon sentencing guidelines cap.

[2] On July 1, 2024, the Supreme Court of Maryland adopted a new section in Rule 4-242(f), governing not guilty pleas under Md. Code, Crim. Proc. § 6-220(c). As a result, the Rule in effect at the time of the relevant proceedings in this case, Rule 4-242(h), was re-lettered without substantive changes as Rule 4-242(i). For consistency and clarity, we refer to the pre-July 1, 2024, rule lettering in this opinion.

> contendere when the withdrawal serves the interest of justice." After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c), (d), or (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere."

Rule 4-242(h) is derived from former Rule 731(f)(1), which provided: "When justice requires, the court may permit a defendant to withdraw a plea of guilty or nolo contendere and enter a plea of not guilty at any time before sentencing."

It is well recognized that there is no absolute right to withdraw a guilty plea, but courts that have considered the issue have recognized that a request made *before sentencing* should be liberally allowed. *United States v. Rhodes*, 913 F.2d 839, 845 (10th Cir. 1990); *United States v. Young*, 424 F.2d 1276, 1279 (3rd Cir. 1970); *Com. v. Carrusquillo*, 115 A.3d 1284, 1291-92 (Pa. 2015); *Com. v. Forbes*, 299 A.2d 268, 271 (Pa. 1973); *State v. Hunter*, 117 P.3d 254, 262 (N.M. Ct. App. 2005). Although not binding authority, but well-respected and often persuasive,[3] the American Bar Association Standard for Criminal Justice is in harmony with this view.

[3] Maryland cases often quote and cite with approval to the ABA Standard on Criminal Justice. *See e.g.*, *Green v. State*, 456 Md. 97, 143-46 (2017) (citing the ABA Standards for Criminal Justice: Discovery and Trial by Jury, 3d Ed. (1996) when assessing intent of Md. Rule 4-263); *Sharp v. State*, 446 Md. 669, 697-99 (2016) (citing ABA Standard on Criminal Justice 14-3.3 regarding judicial involvement in plea negotiations); *McCormick v. State*, 38 Md. App. 442, 455-56 (1978) (citing ABA Standard on Criminal Justice 3.3(b) relating to permitting withdrawal of a guilty plea when defendant does not get the benefit of the bargain).

The American Bar Association Standard Relating to Pleas of Guilty, Section 2.1(b) (Approved Draft 1968) states as follows:

> "(b)[I]n the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw his plea of guilty or nolo contendere as a matter of right once the plea has been accepted by the court. *Before sentence, the court in its discretion may allow the defendant to withdraw his plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.*"

Different jurisdictions use different terms to describe the standard for permitting the withdrawal of a guilty plea before sentence is imposed. The Maryland Rule incorporates the "in the interest of justice" standard, as does New York, North Dakota, and Michigan. *See, e.g.*, *People v. Saccone*, 180 N.Y.S.3d 425, 428-29 (N.Y. App. Div. 2022) (holding when a defendant moves to withdraw a guilty plea the court exercises its discretion in the interests of justice); *State v. Yost*, 914 N.W.2d 508, 515 (N.D. 2018) (holding that absent a "a showing the district court did not exercise its discretion in the interests of justice, the district court" does not abuse its discretion in denying a motion for withdrawal of a guilty plea); *People v. Spencer*, 480 N.W.2d 308, 310 (Mich. Ct. App. 1992) (MCR 6.310(B) provides that "in order to withdraw a guilty plea before sentencing, the defendant must first establish that withdrawal of the plea is supported by reasons based on the interests of justice").

In the federal system, under Rule 11(d)(2)(B) a court may permit a guilty-plea withdrawal before sentencing if it concludes it would be *fair and just* to do so. *Kercheval v. United States*, 274 U.S. 220, 224 (1927) ("The court in exercise of its discretion will permit one accused to substitute a plea of not guilty and have a trial if for any reason the

granting of the privilege seems fair and just."); *United States v. Lambey*, 974 F.2d 1389, 1394 (4th Cir. 1992) ("[A] 'fair and just' reason . . . is one that essentially challenges . . . the fairness of the Rule 11 proceeding . . ."); *United States v. Haley*, 784 F.2d 1218, 1219 (4th Cir. 1986) (holding that a defendant must show a "fair and just" reason for withdrawing a guilty plea). Minnesota, Washington, D.C., Connecticut, and North Carolina apply the same standard. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007) (Minn. R. Crim. P. 15.05, subd.2 provides that prior to sentencing, a guilty plea may be withdrawn "if it is fair and just to do so"); *Pierce v. United States*, 705 A.2d 1086, 1091 (D.C. 1997) ("Under the fair and just standard [for withdrawal from a guilty plea], the court is to consider a number of factors cumulatively; no single factor is controlling."); *State v. Giorgio*, 363 A.2d 1024, 1027 (Conn. 1975) ("Moreover, if for any other reason the granting of a motion to withdraw a guilty plea 'seems fair and just,' the court, in the exercise of its discretion, may permit a defendant to substitute a plea of not guilty and proceed to trial.") (internal quotation marks and citation omitted); *State v. Scott*, 902 S.E.2d 336, 339-40 (N.C. Ct. App. 2024) (finding that in North Carolina a defendant is "generally accorded [the] right" to withdraw his guilty plea "if he can show any fair and just reason," but there is "no absolute right to withdraw a guilty plea") (internal citations omitted).

The various iterations of the standard for withdrawal of a guilty plea before sentencing ordinarily are not defined in the rules. One court, *State v. Tate*, No. 24-0134, slip op. at *2 (Iowa Ct. App. 2025), looked to *Black's Law Dictionary*, (12th ed. 2024) *Interests of Justice*— "[t]he proper view of what is fair and right in a manner in which the decision-maker has been granted discretion."

The Maryland Rules use the standard "in the interest of justice" in many of the Maryland Rules. *See e.g.*, Md. Rule 4-331(a) (Motions for New Trial; Revisory Power); Md. Rule 4-215(b) (Express waiver of counsel); Md. Rule. 11-208(b) (Response to Petition); Md. Rule 2-327(a)(1) (Transfer of Action); Md. Rule 14-208(b) (Subsequent Proceedings if No Power of Sale). In the context of a postponement of a scheduled trial, the Appellate Court of Maryland, in interpreting the standard "in the interest of justice" "declined to place limiting factors on the exercise of broad discretion in the 'interest of justice[,]' and instead has stated that the meaning of 'the interest of justice' varies depending on each case's 'unique circumstances.'" *Howard v. State*, 440 Md. 427, 441-42 (2013) (citing *Jones v. State*, 403 Md. 267, 294 (2008)).

The federal courts commonly look to the case of *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984), for guidance and consideration of various factors in determining what is fair and right in exercising discretion. The court set out the following factors to consider:

> "The factors that should be considered when applying this standard are: (1) whether or not the defendant has asserted his innocence; (2) whether or not the government would suffer prejudice if the withdrawal motion were granted; (3) whether or not the defendant has delayed in filing his withdrawal motion; (4) whether or not the withdrawal would substantially inconvenience the court; (5) whether or not close assistance of counsel was available; (6) whether or not the original plea was knowing and voluntary; and (7) whether or not the withdrawal would waste judicial resources; and, as applicable, the reason why defenses advanced later were not proffered at the time of the original pleading, or the reasons why a defendant delayed in making his withdrawal motion."

Id.

In the exercise of the court's discretion, the court should consider the totality of the circumstances, *United States v. Morrow*, 537 F.2d 120, 146 (5th Cir. 1976), and in particular, the length of time in filing a withdrawal motion, the longer the delay, the more substantial reasons must be proffered in support of the motion, *United States v. Barker*, 514 F.2d 208, 222 (D.C. Cir. 1975), *cert. denied*, 421 U.S. 1013 (1975). "The movant's reasons must meet exceptionally high standards where the delay between the plea and the withdrawal motion has substantially prejudiced the Government's ability to prosecute the case." *Id.* (citing *United States v. Vasquez-Velasco*, 471 F.2d 294 (9th Cir. 1973), *cert. denied*, 411 U.S. 970 (1973)). The court noted also that "[c]onversely, a prompt withdrawal may indicate that a plea was unknowingly entered in haste." *Carr*, 740 F.2d at 344.

The defendant has the burden of proving that withdrawal of the plea is justified, and the right to do so lies within the sound discretion of the court. *Everett v. United States*, 336 F.2d 979, 984 n. 17 (D.C. Cir. 1964); *United States v. Rasmussen*, 642 F.2d 165, 167 (5th Cir. 1981).

In determining whether the court below abused its discretion in denying appellant the opportunity to withdraw his guilty plea, we look to the totality of the circumstances, the ABA Guidelines, and although not mandatory factors, the *Carr* factors as useful tools in the analysis.[4] "Fair and right," and "in the interest of justice" are analogous in meaning. *See State v. Scullark*, No. 23-1218, 2024 WL 3886203, at *3 (Iowa Ct. App. 2024).

[4] Contrary to the dissent's assertion that we are adopting the *Carr* factors, we merely consider them as instructive. The dissent repeatedly asserts that appellant received the benefit of his bargain. Although he did not argue that issue in this appeal, he did not receive

The "interest of justice" standard, or what is "fair and reasonable" contemplate a weighing of factors. The *Carr* factors lean in favor of appellant. Factor number (1), assertion of innocence goes against appellant. He did not assert his innocence, although he did assert his youthful age. Factor (2) weighs in favor of appellant. The State showed no prejudice if appellant had been permitted to withdraw his plea and proceed to trial. In fact, the prosecutor did not object to the motion to withdraw the plea. Factor (3) weighs in favor of appellant. He requested to withdraw his plea immediately upon hearing the judge state different terms of the plea agreement. Factor (4), inconvenience to the court, weighs in favor of appellant. The record reflects little or no court inconvenience. Factor 5, assistance of counsel, weighs, arguably, in favor of appellant, as defense counsel told the court that he and his client interpreted the plea agreement vastly differently than the court's interpretation. Factor (6) the plea was knowing and voluntary, weighs in favor of appellant. Appellant's guilty plea was predicated upon a plea agreement, and the terms of that agreement were recited by the court to be different from appellant and defense counsel's understanding of the agreement. Withdrawal of a plea not made knowingly should be permitted. Factor (7), waste of judicial resources, or the reasons why the defendant delayed in moving to withdraw the plea weighs in favor of appellant. Appellant did not delay in making his withdrawal motion.

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the sentence he bargained for in the plea agreement. He received a split sentence, with more than ten years' incarceration, subjecting him to a greater sentence than was discussed or contemplated by the guilty plea if he violates probation.

We agree with appellant that the circuit court should have allowed withdrawal of appellant's guilty plea. From our review of the record, the trial court considered *only* whether appellant received what he bargained for. That standard is the appropriate standard after sentence has been imposed and a defendant moves to withdraw a plea.

Here, the "interest of justice" standard is much broader and a consideration of the totality of the circumstances and the *Carr* factors lead us to conclude that appellant's motion should have been permitted. The court was correct in its view that the "right to withdraw the plea [was] nondiscretionary with the Court if the Defendant does not get what he bargained for." But that standard is not the applicable one before sentence has been imposed and the court does not appear to have considered any other factor other than the benefit of the bargain test.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. GUILTY PLEAS VACATED. CASES REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

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I respectfully dissent. The majority opinion holds that the circuit court abused its discretion by denying the appellant's motion to withdraw the plea, explaining that it applied the incorrect standard in evaluating the motion. The majority discusses various iterations of the phrase "in the interest of justice" under Maryland Rule 4-242(h) in other contexts and by other courts. Ultimately, the majority relies on the factors established in *United States v. Carr*, 740 F.2d 339, 343–44 (5th Cir. 1984), to conclude that the court abused its discretion in denying the appellant's motion to withdraw the plea.

Certainly, examining cases out of jurisdiction can be helpful when the issue has not been addressed in Maryland. However, our appellate courts have provided sufficient guidance for evaluating a motion to withdraw a plea made before sentencing under the Rule. Therefore, we do not need to go beyond Maryland's jurisprudence to resolve the issue presented in this appeal.

A. Legislative History of Rule 4-242(h)

Maryland Rule 4-242(h) derives from Rule 722, which was adopted in 1961. Rule 722 provided:

> The court may strike out a plea of guilty at any time and enter a plea of not guilty, if it deems such action necessary *in the interest of justice*.

(emphasis added); *see also White v. State*, 227 Md. 615, 625 (1962) (recognizing that Rule 722 "affords recognition of a practice which has long existed in this State").

In 1977, Rule 722 was amended under Rules 731.f.1 and 731.f.2 which embellished the former rule. *Stevenson v. State*, 37 Md. App. 635, 636 n.2 (1977). The amended Rules under 731.f provided:

> 1. Before Sentencing.
>
> *When justice requires*, the court may permit a defendant to withdraw a plea of guilty . . . and enter a plea of not guilty at any time before sentencing.
>
> 2. After Sentencing.
>
> Upon motion of a defendant made within three days after the imposition of sentence the court may set aside the judgment and permit the defendant to withdraw his plea of guilty or nolo contendere if the defendant establishes that the provisions of section c [plea of guilty] . . . were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 733 (Plea Agreements).

(emphasis added); *see Fontana v. State*, 42 Md. App. 203, 205 (1979) (explaining that the amendment varies minimally and insignificantly from its predecessor only in that the court's authorization was predicated under former Rule 722, upon the court deeming the action "necessary in the interest of justice" whereas, the present prerequisite to that authority is "[w]hen justice requires" it).

In 1984, Rules 731.f.1 and 731.f.2 were amended and consolidated under Rule 4-242(f). Rule 4-242(f) stated:

> *At any time before sentencing*, the court may permit a defendant to withdraw a plea of guilty . . . when the withdrawal *serves the interest of justice*. *After the imposition of sentence*, on motion of a defendant within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty . . . if the defendant establishes that the provisions of section (c) [plea of guilty] . . . of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243 [plea agreements]. The court shall hold a hearing on any timely motion to withdraw a plea of guilty . . . .

(emphasis added); *see Dawson v. State*, 172 Md. App. 633, 639 n.4 (2007) (noting that Rule 4-242 is based on Federal Rules of Criminal Procedure, Rule 11(d), which provides that a "defendant may withdraw a plea of guilty . . . after the court accepts the plea, but

before it imposes sentence if . . . the defendant can show a fair and just reason for requesting the withdrawal").

Other than re-lettering the subsection of the Rule to (g) in 1999, to (h) in 2013, and ultimately to (i) in 2024 (after the underlying proceedings in this case), the Rule largely remained the same as its predecessor version.[5]

B. Overview of Maryland Law Pertaining to Withdrawal of Plea Prior to Sentencing

"We have held repeatedly that the right to withdraw a guilty plea is a discretionary matter which will not be overturned unless abused." *Fontana*, 42 Md. App. at 205; *see also Watson v. State*, 17 Md. App. 263, 268 (1973) ("it is crystal clear" that "unless there is a manifest abuse" of the sound discretion of the trial judge, the denial of the motion to withdraw a guilty plea will not be disturbed by the appellate courts). There is a presumption that the trial court exercised its discretion properly in permitting or denying withdrawal. *See Fontana*, 42 Md. App. at 205–06. We recognized that "there is no defined limitation of what will burst the presumptive bubble that the trial judge has properly exercised his discretion in permitting or denying withdrawal." *Id.*

"[T]here is no well-defined standard of whether a trial judge should accept or deny a motion for withdrawal[.]" *Blinken v. State*, 46 Md. App. 579, 582 (1980). We have previously rejected one attempt to establish a definitive standard. In *Blinken*, the defendant pleaded guilty to an offense and moved to withdraw the guilty plea when he appeared for

[5] The only substantive change between 1984 and 2024 was an amendment in 2012 that applies the rule not only to guilty pleas and pleas of nolo contendere, but also to conditional pleas of guilty. *See* Md. Rule 4-242 Historical Notes (Westlaw).

sentencing. *Id.* at 581–82. He argued that, under former Rule 731.f.1, justice required the court to permit withdrawal of his guilty plea because the State failed to show that it would be prejudiced by this withdrawal. *Id.* at 582. Mr. Blinken cited *Fontana v. State*, 42 Md. App. 203 (1979), asserting that this Court had established a standard for permitting withdrawal in this regard.

In *Fontana*, Mr. Fontana pleaded guilty to an offense and moved to withdraw his guilty plea on the day of sentencing. *Id.* at 204. The prosecutor opposed, explaining that the State would suffer prejudice by having his guilty plea withdrawn, resulting in an already delayed trial date. *Id.* at 206–07. The trial court denied the motion, and Mr. Fontana appealed. This Court affirmed the denial of the motion. *Id.* at 209.

On appeal, Mr. Fontana asked this Court to follow the federal examples of freely allowing the withdrawal of guilty pleas before sentencing where there is a fair and just reason for doing so, while acknowledging that such liberality is limited where the government has been prejudiced by reliance on the defendant's guilty plea. *Id.* at 206. While we were "not averse" to the "suggestion of liberality tempered by balancing the inconvenience to the court and prosecution against protecting the right of an accused to trial," "there [wa]s little, if any justification shown on the side of the accused in counterbalance to substantial prejudice to the State and inconvenience of the court." *Id*.

We concluded that the circumstances in *Fontana* provided strong reasons for upholding the presumption that the trial court exercised its discretion properly in denying Mr. Fontana's motion. *Id.* at 208. This was because the trial had been delayed, and the court's time was consumed with suppression and other preliminary hearings and motions

in preparation for the trial that was then waived. *Id.* There had been three continuances over a fifteen-month period. *Id.* at 209. In addition, Mr. Fontana waited until the day of trial to change his plea to guilty when there was presumably a jury standing by, witnesses were brought in from out of state in federal custody, and officers had to leave their assigned duties to participate in the anticipated trial. *Id.* We concluded that Mr. Fontana did not present any compelling reasons to outweigh the evident prejudice to the State and the inconvenience to the court. Therefore, we determined that the court did not abuse its discretion by denying his motion to withdraw his guilty plea under former Rule 731.f.1. *Id.*

We disagreed with Mr. Blinken's interpretation of our ruling in *Fontana*, which he suggested established a standard for a trial court to determine whether to accept or deny a motion for withdrawal based on whether the State would be prejudiced by the withdrawal of the plea. *Blinken*, 46 Md. App. at 582. We clarified, "We did not hold in *Fontana*, and we will not hold in the present case, that the presumption favoring a trial judge's ruling will be rebutted by the absence of prejudice to the State or delays in the case." *Id.* at 583. "The validity of a judge's discretionary ruling may be enhanced by evidence such as that in *Fontana*, but the absence of such evidence does not invalidate the ruling." *Id.*

Importantly, we explained what evidence would overcome the presumption that the trial court properly exercised its discretion when denying the withdrawal of a guilty plea:

> [S]uch a rebuttal requires evidence on the record indicating that the State or the court acted to prejudice the [defendant], or that the [defendant] was harmed by the failure of the court to follow guidelines of constitutional magnitude. *See Kisamore v. State*, 286 Md. 654, 664, 409 A.2d 719, 725 (1980), in which the [Supreme Court of Maryland] held that justice required that a defendant be permitted to withdraw his guilty plea after the State

> repudiated part of a plea agreement, and where the plea did not meet the constitutional test for voluntariness.

Id.

Applying this guideline, we concluded based on our examination of the record in *Blinken* that there were no such egregious circumstances that warranted an overturning of a judge's discretionary ruling in denying Mr. Blinken's motion to withdraw his guilty plea before sentencing. *Id.*

C. The Circuit Court Did Not Abuse its Discretion in Denying the Motion to Withdraw the Plea.

In applying the guidance from *Blinken*, I would conclude that there is no evidence in the record indicating that the State or the circuit court acted to prejudice the appellant. Nor was the appellant harmed by the failure of the circuit court to follow guidelines of constitutional magnitude. The appellant does not claim that the State engaged in any wrongdoing, nor does he assert that the plea was not entered voluntarily. Rather, he essentially contends that the court's conduct was prejudicial to him. Specifically, he argues that the court violated the plea agreement by recalculating the guidelines and stating at the first scheduled sentencing hearing on February 17, 2023, that the actual guidelines ranged from ten to twenty years. On this premise, he claims that the "vastly different" guidelines range of ten to twenty years created a "cloud over the proceedings," undermining the fundamental fairness and procedural rights to which he was entitled.

The court did not violate the plea agreement. Whether a trial court has violated the terms of a plea agreement is a question of law that our appellate courts review *de novo*. *Solorzano v. State*, 397 Md. 661, 668 (2007). "[I]f the trial judge 'approves' a plea

agreement, the trial court is required to fulfill the terms of that agreement if the defendant pled guilty in reliance on the court's acceptance." *Id.* at 669–70 (citing *Santobello v. New York*, 404 U.S. 257, 262 (1971)).

In this case, the terms of the plea agreement were clear. The court advised the appellant of the terms of the plea agreement on the record:

> THE COURT: You've been made aware of the plea negotiations between the State's Attorney and your attorney in Case [1], the negotiations are that the State will recommend a sentence of 15 years, suspend all but five years, ... Your attorney . . . will be free to allocute . . . for any sentence that she feels is appropriate, and *the [c]ourt has agreed to bind itself to the sentencing guidelines in your case, which is my understand [sic] are between five years and ten years*.
>
> In Case [2], the State Attorney and your attorney agree that the sentence should be ten years, suspend all but any time that you have served, your credit for that time, and that that sentenced would be consecutive to the sentence in [Case 1].
>
> Again, the [c]ourt has not bound itself to that, but *I have agreed to bind myself to the Sentencing Guidelines range, which is something between five years and ten years*. After the sentences, the parties, I believe your attorney and the State have agreed that the [c]ourt should sentence you -- excuse me, should have you do three years of supervised probation. I have not agreed to that. I could give you up to five years of supervised probation, and that you be ordered to have no contact with either of the two victims. *Do you understand all of those negotiations?*
>
> [APPELLANT]: *Yes*.

(Emphasis added).

The court's decision not to independently calculate the guidelines was not included in these terms. In fact, when the court asked the appellant if any other promises were made to induce him to plead guilty, he replied that there were none:

> THE COURT: And do you understand what I have said about what I have and what I have not agreed to do yet?

[APPELLANT]: Yes.

THE COURT: All right. *Did anyone promise you anything other than those negotiations to get you to plead guilty today?*

[APPELLANT]: *No*.

THE COURT: Are there any questions about the negotiations that you'd like to talk to your attorney about?

[APPELLANT]: No.

(Emphasis added).

The appellant reasonably expected that the above terms of the plea agreement regarding the guidelines meant that he would receive a sentence of executed incarceration within the range of five to ten years. Accordingly, the appellant was entitled to the benefit of that bargain. *See Solorzano*, 397 Md. at 671 (where the court made a commitment to impose a sentence within the range of twelve to twenty years, the court was bound to impose a sentence within that range).

Even if refraining from independently running guidelines was a term of the agreement, the court did not breach the plea agreement. During the first scheduled sentencing hearing, the court mistakenly believed that it was obligated to adhere to the recalculated guidelines of ten to twenty years. However, the court later corrected this error after reviewing the audio from the plea hearing. Ultimately, it confirmed its intention to follow the five-to-ten-year guidelines range before sentencing the appellant on March 23.

"*[S]ome* breaches may be curable upon timely objection[.]" *Puckett v. United States*, 556 U.S. 129, 140 (2009) (providing an example, "where the prosecution simply forgot its commitment and [was] willing to adhere to the agreement."). Here, the court's initial mistake and subsequent correction after the appellant brought the error to the court's

attention do not constitute a breach of the plea agreement. *See e.g.*, *State v. Knox*, 570 N.W.2d 599, 600–01 (Wis. Ct. App. 1997) (an inadvertent misstatement made by the prosecutor in stating the agreed-upon sentence recommendation, which was quickly acknowledged and corrected, did not constitute a breach of the plea agreement or a violation of the defendant's due process rights; the defendant still retained the full benefit of the plea bargain on which he relied); *State v. Timbana*, 186 P.3d 635, 639 (Idaho 2008) (prosecutor misstated position contrary to agreement to resolve probation violation made by another prosecutor, but when error was called to his attention, he immediately corrected it, resulting in no breach of the agreement).

To be sure, during the sentencing hearing on March 23, defense counsel acknowledged that the court had "fixed" its "error." Nevertheless, counsel claimed there was a "breakdown" of the agreement when the court "discover[ed] that [the guidelines] are actually ten to twenty" years. Counsel claimed that the ten-to-twenty-year guideline range was "in the [c]ourt's mind" and would influence the sentence. Counsel alleged that this amounted to a "broken down plea agreement" that warranted withdrawing his pleas. On appeal, the appellant similarly argues that the significantly different guidelines range of ten to twenty years cast a "cloud over the proceedings."

Based on all this, the concern regarding the court's conduct that allegedly prejudiced the appellant is related not so much to whether the court violated the agreement (which his counsel conceded was cured), but rather to whether the court improperly considered the ten-to-twenty-year guidelines range when imposing the sentence. Therefore, the question for review on appeal is whether there is evidence in the record that the court acted to

prejudice him in this regard and "burst[s] the presumptive bubble." *See Fontana*, 42 Md. App. at 205–06.

The record shows that the court explicitly stated its intention to honor the plea agreement, meaning that the appellant would receive the contemplated benefit of the bargain of executed time within the guidelines of five to ten years. The court confirmed that it accepted the guidelines as calculated by the parties and stated that it did not "believe that this involves a breakdown of the negotiations because [it was] binding [itself] to the negotiations." The court explained:

> The [c]ourt believes, based on case law and the statute that absolutely the [appellant] has the right to withdraw the plea and it's nondiscretionary with the [c]ourt if the [appellant] does not get what he bargained for. *He bargained for five to ten years*. The [c]ourt finds that if he is sentenced to something that he bargained for and is within the wide discretion of the [c]ourt to grant the motion, to withdraw the plea, deny the Motion to Withdraw the Plea, and from my understanding of the cases and the statute, that it would not be disturbed unless there is clear abuse of discretion. *Again, the [c]ourt has said today that having been corrected in my memory, that I accepted that the Guidelines were five to ten as calculated, I still therefore do*. Therefore, the Motion to Withdraw Plea is denied.

(emphasis added).

The court sentenced the appellant to eight years of incarceration, a term within the five-to-ten-year range as agreed. The record indicates that this sentence was determined based on factors unrelated to the ten-to-twenty-year guidelines range. In delivering the sentence, the court referenced the appellant's history of "incidents and records of violence" and acknowledged the various opportunities for probation and other community resources that had been offered to the appellant. The court also highlighted the violent behavior associated with the offenses that were the subject of the pleas. Therefore, the record does

not support the claim that the court acted to prejudice the appellant in a way that overcomes the presumption that the circuit court properly exercised its discretion when denying the withdrawal of a guilty plea.

The appellant contends that the court applied the incorrect standard when it denied the motion to withdraw the pleas during the March 23 hearing for two reasons. First, he suggests that the court should have considered certain factors, including that the State did not claim that allowing the withdrawal of the pleas would cause any prejudice to it. However, as this Court has explained, the trial court "may, in its discretion," consider the detriment to the State and the victim, if withdrawal of the guilty plea is permitted, *Dawson*, 172 Md. App. at 645, but the absence of such evidence "does not invalidate" the denial of the withdrawal. *Blinken*, 46 Md. App. at 583.

Second, he contends that the court incorrectly applied the standard for when a defendant seeks to withdraw their plea *after* a sentence has been imposed under Rule 4-242(h) ("*After* the imposition of sentence . . . the court may set aside the judgment and permit the defendant to withdraw a plea of guilty . . . if the defendant establishes that . . . there was a violation of a plea agreement . . . ."") (emphasis added). The appellant cites to the court's remark: "the [appellant] has the right to withdraw the plea and it's nondiscretionary with the [c]ourt *if the [appellant] does not get what he bargained for*." (emphasis added). However, the argument is not preserved.

In response to the court's comments, defense counsel presented additional arguments. However, counsel did not assert that the court was incorrectly applying a standard intended for post-sentencing withdrawals. Instead, counsel clarified that the

appellant was "not receiving the benefit of the bargain that [the court] made which was, '[The court] will accept the party's calculations.' So by not accepting that [and independently recalculating the guidelines] and knowing in [the court's] mind that they're ten to twenty, it's no longer a fair process for [the appellant.]"

Notably, the appellant was the one who urged the court to examine the alleged breach of the plea agreement according to the post-sentencing standard. In the motion to withdraw his guilty pleas filed before the March 23 hearing, his counsel wrote:

> [W]ithdrawal is warranted when . . . there was a violation of a plea agreement entered into pursuant to Rule 4-243 [citing to the post-sentencing standard under Rule 4-242(h)]. . . . [T]he [c]ourt modified the previously established plea agreement by changing the calculation of the guidelines, therefore the plea violates Maryland Rules §§ 2-242 and 2-243, and may be withdrawn.

Accordingly, the claim that the court incorrectly applied the post-sentencing standard under Rule 4-243 is not preserved. *See Nalls v. State*, 437 Md. 674, 691 (2014) ("Generally, in order to 'preserve' an issue for appellate review, the complaining party must have raised the issue in the trial court or the issue was decided by the trial court." (citing Md. Rule 8-131(a)).

Even if preserved, I would conclude that the court understood and applied the proper standard under Rule 4-242(h). Considering whether a defendant receives the contemplated benefit of the bargain is not only relevant for determining if the defendant can withdraw the plea after sentencing, but it is also relevant when a request to withdraw the plea is made before sentencing. In this regard, *McCormick v. State*, 38 Md. App. 442 (1978) is instructive.

In *McCormick*, we addressed the withdrawal of a plea made before sentencing, based on a claim that the trial court did not provide the defendant with the contemplated benefit which induced the plea. McCormick pleaded guilty to a charge of statutory rape in exchange for an agreement of no incarceration and to ensure a sentence of probation with psychiatric care. *Id.* at 447. The prosecutor agreed with McCormick's participation in a community-based psychiatric program and opposed incarceration. *Id.* at 447–48. The court accepted the plea and deferred sentencing for the medical office to conduct a psychiatric evaluation and make recommendations. *Id.* at 445.

The medical office recommended that McCormick be referred to Patuxent Institute. *Id.* at 445–46. At the sentencing hearing, he moved to withdraw his plea explaining that had he known that there was "any possible way he was going to be sent to Patuxent which represents a possible life imprisonment," he would not have accepted the plea. *Id.* at 447. The court denied the motion and ultimately sentenced him to a term of five years and referred him to Patuxent Institute. *Id.* at 448. McCormick appealed.

Applying former Rule 722, this Court held that the "[c]onsiderations of fairness required the trial court to permit the requested withdrawal." *Id*. at 458–59. We looked to the ABA Standards for guidance for the principle that "fairness requires that an accused be permitted to withdraw his plea if he does not receive the contemplated benefit of his plea bargain." *Id.* at 454. We cited Standard 4.1 of the ABA Standards titled, "Role of the judge in plea discussions and plea agreements," which provided in pertinent part:

> (c) If the plea agreement contemplates the granting of charges or sentence concessions by the trial judge, he should:

* * *

(iii) permit withdrawal of the plea (or, if it has not yet been accepted, withdrawal of the tender of the plea) in any case *in which the judge determines not to grant the* charge or *sentence concessions contemplated by the agreement*.

Id. at 454 (emphasis added).

The Commentary to Standard 4.1 provided in pertinent part:

Subsection (c) deals with the obligation of the trial judge with respect to plea agreements which require his concurrence if a disposition contemplated by the agreement is to be effected. . . .

Subparagraph (iii). The second significant principle is expressed in subparagraph (iii). In effect it is that in any case in which a plea agreement contemplates concurrence by the trial judge *and he decides not to concur*, *the defendant should be so informed and given the option of going to trial* . . .

. . . (T)he requirement that the judge permit withdrawal of the plea if he decides not to concur in the contemplated disposition was incorporated in . . .3.3(b) of (ABA Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty (Approved Draft, 1968)). That standard permits the judge to give an indication in advance of tender of the plea that he will go along with the agreement if the relevant representations to him are confirmed by the presentence report . . . It was ultimately concluded that fair treatment of the defendant, as well as the correctional problems resulting from the defendant's belief otherwise that he had been treated unfairly, mandated giving him the opportunity to withdraw his plea *if the judge later changes his mind* . . .

Id. at 454–55 (emphasis added).

We also examined related Maryland rules and statutes:

Maryland has recognized that considerations of fairness require that an accused be permitted to withdraw his guilty plea if the trial judge fails to accord him the contemplated benefit of a plea bargain. Maryland Rule 733, effective 1 July 1977, subsequent to the sentencing of appellant . . . .

* * *

The adoption of Maryland Rule 733 necessarily indicates that the "interest of justice," referred to in former Maryland Rule 722, *required that the accused be afforded safeguards against the possibility that the contemplated*

> *benefit which induced the guilty plea would not be accorded*. Maryland Rule 733, the ABA Standards, and the preceding cases all support the conclusion that *a trial court abuses its discretion if it fails to permit withdrawal of a guilty plea when the contemplated benefit which induced the plea is not accorded*.

Id. at 456–57 (emphasis added). We explained that "because the guilty plea rested in significant degree on an agreement which contemplated that a particular sentence would be imposed, the accused was entitled to withdraw that plea if he did not receive the contemplated benefit." *Id.* at 458.

In this case, the circuit court acknowledged that it had previously made an error by using the ten-to-twenty-year guidelines range. However, it later confirmed that it would adhere to the guidelines range of five to ten years as agreed. Ultimately, the court did not change its mind about imposing a sentence within that range and accorded the appellant the contemplated benefit which induced his plea, specifically the five-to-ten-year guidelines range. Thus, the court's remark about the appellant "get[ting] what he bargained for" was consistent with the principles outlined in *McCormick* in relation to the motion to withdraw made before sentencing.

Finally, again citing the above remarks, the appellant argues that the court abused its discretion by not exercising it. However, the court acknowledged its discretion and did exercise it. It merely explained that if the plea agreement were violated, the appellant would be allowed to withdraw his pleas.[6] Otherwise, as the court stated, the decision to grant the

[6] This is consistent with the Supreme Court of Maryland's holdings in *Cuffley v. State*, 416 Md. 568, 580–81 (2010), and *Solorzano v. State*, 397 Md. at 673, two cases cited in the appellant's motion to withdraw his guilty pleas. The Supreme Court explained that

withdrawal of the guilty pleas was "within the wide discretion of the court." Since there was no violation of the plea agreement, and the court was providing the appellant with the contemplated benefit of the bargain—a sentence of executed incarceration within the guidelines of five to ten years—the court recognized it was exercising its discretion when ruling on the motion to withdraw the guilty pleas.

For the reasons stated, the claim that the court breached the plea agreement, resulting in a "cloud over the proceedings," does not overcome the "presumption of verity" which the court's decision possesses. *See Blinken*, 46 Md. App. at 585. Therefore, I would hold that the court did not abuse its discretion in denying the appellant's motion to withdraw his guilty pleas.

D. The *Carr* Factors

The majority proposes the adoption of the *Carr* factors as a useful, but not mandatory, tool for assessing whether to permit or deny withdrawal of pleas before sentencing. As stated, "there is no well-defined standard of whether a trial judge should accept or deny a motion for withdrawal" under Maryland law. *Blinken*, 46 Md. App. at 582. Certainly, Maryland precedent suggests that the trial court "may, in its discretion" consider appropriate factors in assessing such a motion, *Dawson*, 172 Md. App. at 645, but the absence of evidence for or against them "does not invalidate" the denial of the withdrawal of a plea. *Blinken*, 46 Md. App. at 583.

where a defendant's guilty plea rests in part on a promise concerning disposition, and the State or the court violates that promise, the accused may elect to have his guilty plea vacated or to leave it standing and have the agreement enforced at resentencing.

As we established, the right to withdraw a guilty plea is a discretionary matter which will not be overturned unless abused. *Fontana*, 42 Md. App. at 205. Further, there exists a presumption that the court acted within its discretion in resolving the motion, and rebuttal of the presumption "requires evidence on the record indicating that the State or the court acted to prejudice the [defendant], or that the [defendant] was harmed by the failure of the court to follow guidelines of constitutional magnitude." *Blinken*, 46 Md. App. at 583. Although *Fontana*, *Blinken*, and other related cases discussed above predate the amendment under Rule 4-242(h) and *Carr*, they remain good law.

Even if the *Carr* factors are adopted, I would conclude that the appellant failed to meet his burden of demonstrating that the "interests of justice" warranted withdrawal of the pleas, or that there was a "fair and just reason" for the withdrawal under the federal rule. *Carr*, 740 F.2d at 344 (explaining that the burden of demonstrating a fair and just reason for withdrawal is on the defendant); Fed. R. Crim. P. 11(d)(2)(B) ("A defendant may withdraw a plea of guilty . . . after the court accepts the plea, but before it imposes a sentence if . . . the defendant *can show* a fair and just reason for requesting the withdrawal.") (emphasis added).

Under federal caselaw, "[f]air and just reasons for withdrawal include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening circumstances, or any other reason for withdrawing the plea that did not exist when the defendant entered his plea." *United States v. Garcia*, 401 F.3d 1008, 1011 (9th Cir. 2005) (citation omitted). "The burden of demonstrating a 'fair and just' reason falls on the defendant, and that burden is substantial. 'A shift in defense tactics, a change of mind, or the fear of punishment are not

adequate reasons to impose on the government the expense, difficulty, and risk of trying a defendant who has already acknowledged his guilt by pleading guilty." *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003) (citations omitted). "If the defendant is unable to establish fair and just reasons, it is not necessary for the Court to consider prejudice to the Government." *United States v. Hockenberry*, 730 F.3d 645, 662 (6th Cir. 2013); *Jones*, 336 F.3d at 255 ("[T]he Government need not show [that it would be prejudiced by the withdrawal of a guilty plea] when a defendant has failed to demonstrate that the other factors support a withdrawal of the plea.").

As explained, the appellant's claim is primarily based on the assertion that the court's recalculation of the guidelines created a "cloud over the proceedings," rather than on a violation of the plea agreement. If we were to accept the idea of a "cloud over the proceedings" as a valid reason for withdrawal, then any defendant could vaguely posit a reason to withdraw their plea. This would effectively make the withdrawal of a plea a matter of right. *See Abrams v. Warden, Md. Penitentiary*, 333 F. Supp. 612, 616 (D. Md. 1971) (explaining there is no absolute right to withdraw a guilty plea before the imposition of sentence).

Furthermore, the majority conducts fact-finding and the weighing of the *Carr* factors, which the circuit court never had the opportunity to do. Based on the majority's findings regarding the factors, they conclude that the factors weigh in favor of permitting the withdrawal of the plea. Even if the *Carr* factors were adopted, I would vacate the decision and remand the case to the circuit court for a further hearing to take evidence as necessary to evaluate the factors. This would allow the court to review the record, make

the necessary findings, and properly weigh the *Carr* factors in deciding whether to grant or deny the motion to withdraw the guilty pleas. *See e.g.*, *Dawson*, 172 Md. App. at 644–45 (where this Court concluded that the trial court did not utilize the applicable standard, we remanded the case for a new hearing to apply the correct standard under former Rule 4-242(g)).

The correction notice(s) for this opinion(s) can be found here:

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