Circuit Court for Worcester County
Case No. 23-K-15-000459

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1981

September Term, 2016

CHRISTOPHER ALEXANDER CRAWFORD

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: March 15, 2018

On November 9, 2016, appellant, Christopher Alexander Crawford, pleaded not guilty to possession with intent to distribute marijuana, and possession of marijuana. He was tried upon an agreed statement of facts in the Circuit Court for Worcester County. The court found appellant guilty of both offenses, and sentenced him to five years' imprisonment. Appellant filed a timely notice of appeal, and presents one question:

> Did the trial court err in failing to comply with the requirements of Md. Rule 4-242(c)?

Md. Rule 4-242(c) sets out the advisements that the trial court must make to a defendant who is entering a guilty plea. Appellant did not enter a guilty plea, but he asserts that we should treat his not guilty plea as the functional equivalent of a guilty plea, thereby triggering the requirement that the trial court issue the advisements required for guilty pleas. "Not so fast!" says the State. It points out there is no right to appeal from a conviction secured by a guilty plea. Instead, a defendant must file an application for leave to appeal. The State suggests that we must dismiss this appeal because appellant filed a notice of appeal, as opposed to an application for leave to appeal. When we take this contention into account, appellant's single issue becomes two:

(1) Was appellant's plea of not guilty the functional equivalent of a guilty plea under the totality of circumstances?

(2) If so, should this Court treat appellant's notice of appeal as an application for leave to appeal from the entry of a guilty plea?

Because we answer "yes" to each question, we will vacate the convictions.

Analysis

The Court of Appeals has characterized a plea of not guilty coupled with submission on an agreed statement of facts in lieu of trial as a "hybrid plea." *Bishop v. State*, 417 Md. 1, 22 (2010). The Court further explained that "[b]y entering a hybrid plea, the accused maintains the ability to argue legal issues, as well as sufficiency [of the evidence]."*Id.*

As a general rule, a reviewing court will treat a hybrid plea as what it purports to be—that is, a plea of not guilty—but, under some circumstances, an appellate court will consider such a plea as the effective equivalent of a guilty plea.

In deciding whether to take this step, courts assess the totality of the circumstances. *Jones v. State*, 77 Md. App. 193, 195–96 (1988). The relevant factors include the existence, or non-existence, of a plea agreement between the defendant and the State; whether the defendant was required to confess guilt during the proceedings; whether the trial court mandated appellant's entry of such a plea; and whether the defendant made any motions that would be inconsistent with entry of a guilty plea. *Ingersoll v. State*, 65 Md. App. 753, 762–63 (1986). Courts will treat a hybrid plea as the functional equivalent of a guilty plea when the relevant factors point to the conclusion that "'the proceeding was not in any sense a trial and offered no reasonable chance that there would be an acquittal.'" *State v. Sanmartin Prado*, 448 Md. 664, 707–09 (2016), *cert. denied sub nom. Prado v. Maryland*, 137 S. Ct. 1590 (2017) (quoting *Sutton v. State*, 289 Md. 359, 366 (1981)).

The transcript of the plea proceeding in the present case presents a mixed picture. On the one hand, although appellant agreed to forfeit $21 that was confiscated when he was

arrested, there was otherwise no agreement as to appellant's plea or sentence. Additionally, neither the trial court nor the prosecutor required appellant to admit his guilt, nor did the trial court hint, imply, or suggest that he do so.

However, prior to the court's taking appellant's plea, defense counsel informed the court that appellant was withdrawing all pretrial motions,[1] and the following exchange occurred:

> [Prosecutor]: Just so I understand the playing field, while this is a not guilty agreed statement of facts, is this —
>
> [Defense Counsel]: Tantamount to a guilty plea.
>
> [Prosecutor]: Okay. So you're not arguing guilt or innocence?
>
> [Defense Counsel]: Except to make a motion [of acquittal] without argument.

The agreed statement of facts consisted of the prosecutor's summary of the testimonial and other evidence that would have constituted the State's case if there had been a trial. In response to a question from the court, defense counsel indicated that he had no corrections or additions to the prosecutor's narrative, and then stated "We move for judgment of acquittal, and I do not wish to be heard in argument on the motion." The court then found appellant guilty on both counts.

A defense motion for acquittal without argument does not give a trial court a basis to grant the motion, preserves nothing for appellate review, and is the functional equivalent

[1] There was no pending motion to suppress evidence. The defendant had filed a demand for discovery, but it is unclear from the record whether the State had complied with that demand.

of not making a motion at all. *See* Md. Rule 4-324(a); *Jones v. State*, 213 Md. App. 208, 215 (2013) ("[P]ursuant to Md. Rule 4–324(a), when moving for judgment of acquittal, the defendant 'shall state with particularity all reasons why the motion should be granted.' Grounds that are not raised in support of a motion for judgment of acquittal at trial may not be raised on appeal."). The court proceeding that resulted in appellant's convictions "offered no reasonable chance that there would be an acquittal."

The trial court thought so, because it told appellant that:

> I've been advised that the case is going to proceed by the State's Attorney . . . giving a statement of fact, that you'll plead not guilty in a technical sense [but] you will agree that the . . .statement of facts will be the evidence in the case. That's sometimes called and referred to as being tantamount to a guilty plea. So I'm going to give you the same advice that I would give if you were pleading guilty.

We conclude that appellant's plea of not guilty was the functional equivalent of a plea of guilty when considered in the context of what occurred at the trial court level. If it was functionally a plea of guilty, then the court was required to assure itself that appellant understood "the consequences of the plea[.]" Md. Rule 4-242(c). Among those consequences is the maximum sentence for any charge to which the defendant pleads guilty. *Bryant v. State*, 47 Md. App. 551, 555 (1981). This information was not given to appellant in the plea proceeding. If we conclude that appellant's contention is properly before us, then we must vacate the convictions, and the State does not assert otherwise. This bring us to the second issue.

The State correctly points out that appellant filed a notice of appeal, and not an application for leave to file an appeal pursuant to Courts and Judicial Proceedings Article

§ 12-302(e) and Md. Rule 8-204. Appellant acknowledges that the latter procedure is the appropriate path for direct review of a conviction based upon a guilty plea, but asks us to treat his notice of appeal as an application for leave to file an appeal. We may do this in the exercise of our discretion. *Grandison v. State*, 425 Md. 34, 52 (2012). We will do so this instance. The trial court advised appellant that he could challenge his convictions by filing a notice of appeal and we will not penalize appellant for heeding the court's advice.[2]

We vacate the convictions and remand the case to the circuit court for further proceedings, which should include an opportunity for appellant to withdraw his plea.

THE JUDGMENTS OF THE CIRCUIT COURT FOR WORCESTER COUNTY ARE VACATED AND THIS CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY.

[2] Both this Court and the Court of Appeals have more than once addressed problems inherent in trying cases on a not guilty plea combined with an agreed statement of facts. *See, e.g.*, *Bishop v. State*, 417 Md. 1, 20–21 (2010), *Bruno v. State*, 332 Md. 673, 690–91, (1993); *Polk v. State*, 183 Md. App. 299, 301–02, (2008), and *Barnes v State*, 31 Md. App. 25, 35–36 (1976).

In *Bishop*, the Court observed that "the highest and best use of a not guilty agreed statement of facts plea is to preserve appellate review of the admissibility of tangible evidence that was litigated at a motion for suppression hearing." 417 Md. at 21 n.8. This function is now performed by a conditional plea of guilty, which can be entered under certain circumstances pursuant to Md. Rule 4-242(d).