UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1698

September Term, 2014

QUINCY SALLIEY

v.

STATE OF MARYLAND

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 25, 2016

This appeal arises from four petitions for writ of error *coram nobis* filed by appellant, Quincy Salliey, in the Circuit Court for Baltimore City on June 9, 2014. The circuit court denied the petitions with prejudice by orders dated August 26, 2014, and October 3, 2014. On August 26, 2014, the Honorable Emanuel Brown denied the petitions in case numbers 102283042 and 102296048 without a hearing. Likewise, on October 3, 2014, Judge Brown denied the petitions in case numbers 197234010 and 197247045 without a hearing. A timely notice of appeal was filed in case numbers 102283042 and 102296048 on September 8, 2014. According to the docket entries, a notice of appeal in case numbers 197234010 and 197247045 was filed on September 29, 2014.[1]

[1] Salliey filed his two notices of appeal in September 2014. Because one of the circuit court's orders was issued on August 26, 2014, the notice of appeal associated with that order was based on a final judgment and filed in a timely fashion. The circuit court's second order was not filed until October 3, 2014, twelve days after Salliey filed his notice of appeal for that judgment, rendering his appeal premature.

Pursuant to Md. Rule 8-602(a), the Court may move for dismissal on its own initiative in the event a notice of appeal is improperly filed. In Maryland, the final judgment rule is absolute, thus "[p]remature notices of appeal are generally of no force and effect." *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 662 (2014) (quoting *Jenkins v. Jenkins*, 112 Md. App. 390, 408 (1996)).

An appeal may be saved if it is filed after a final judgment but before it is entered on the docket. The notice of appeal "shall be treated as filed on the same day as, but after, the entry on the docket." Md. Rule 8-602(d). There was no final judgment in Case Numbers 102283048 and 102296042 until October 3, 2014.

Regardless, even if Salliey had properly filed appeals in the second of the two cases against the October 3, 2014 order, the issues presented were exactly the same so there would have been no impact on the analysis and outcome of our opinion.

The *coram nobis* petitions alleged that the guilty pleas Salliey had entered in the circuit court for several state crimes were not entered into knowingly and voluntarily because the nature of the charges and the maximum penalties were not explained to him. Salliey further contended that his pleas caused collateral consequences because his previous state convictions increased his sentencing for a subsequent federal charge as an armed career criminal under the United States Sentencing Guidelines.

Salliey pled guilty to a string of state felony charges from 1997 to 2003. On January 14, 2011, Salliey entered into a federal plea agreement with the United States Government, in which he pled guilty to one count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1),[2] and which imposed on him a 17-year sentence. The federal plea agreement contained a waiver provision in which Salliey forfeited his rights to any appeal on the terms of the agreement. Just over three years later, Salliey filed his *coram nobis* petitions. The circuit court denied each petition with prejudice, citing the express waiver of his right to challenge prior convictions written into Salliey's federal plea agreement.

[2] 18 U.S.C. § 922(g)(1) states:

> It shall be unlawful for any person . . . who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

On appeal, Salliey asks this Court to determine whether the circuit court erred in finding that a federal plea agreement is enforceable in state court, and, if so, whether the circuit court erred in finding that Salliey had waived his right to file a petition for writ of error *coram nobis* in a state court. For the reasons explained below, we affirm the circuit court's orders dismissing Salliey's petition with prejudice.

FACTS

As stated previously, the state convictions giving rise to the *coram nobis* petitions stem from crimes that occurred from 1997 to 2003. In the summer of 1997,[3] Salliey was charged with possession of a controlled dangerous substance ("CDS"), cocaine, with intent to distribute. Later that same year, Salliey was charged with possessing a firearm as a convicted felon. On October 15, 1998, Salliey pled guilty to both charges and subsequently was sentenced to concurrent terms of five years' imprisonment.

On September 18, 2002, Baltimore City police officers observed Salliey place a can behind a large pegboard. The police officers arrested Salliey and recovered heroin from behind the pegboard. That same day, Salliey was charged with possession with intent to distribute CDS. About a month later, on October 3, 2002, a police officer observed Salliey hide a bag, of what was later determined to be CDS, and then observed another person remove the drugs. As a result, Salliey was arrested and charged with

[3] The specific date is unclear from the record. Salliey cites June 27, 1997, as the date he was charged but it does not reconcile with the circuit court documents.

possession with intent to distribute CDS. On November 14, 2003, Salliey pled guilty to both charges in the circuit court, resulting in 18-month concurrent sentences.

The following facts were the basis for Salliey's federal conviction. On May 27, 2010, during a narcotics investigation in Baltimore City, police officers observed an individual exit from a house carrying a clear plastic bag, which the officers identified as containing illegal narcotics. The individual approached a vehicle parked in front of the house and handed the bag to Salliey, who was seated in the front passenger seat. The officers then approached and removed Salliey from the vehicle. Upon his removal, the officers observed a handgun on the floor of the vehicle by the front passenger seat. Salliey was arrested and searched, resulting in the recovery of a clear plastic bag containing heroin and cash.

After his arrest, Salliey was transported to the Baltimore City Eastern District headquarters where he was read his *Miranda*[4] rights and signed a written waiver of his rights. Thereafter, Salliey gave a statement admitting to ownership of the gun and drugs in the vehicle. Because of Salliey's previous convictions in Maryland for a crime punishable for more than one year imprisonment,[5] he was charged and pled guilty to

[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[5] It was upon the stipulated facts that Salliey was designated as an "armed career criminal" pursuant to provisions of 18 U.S.C. § 924(e). "In the case of a person who violates section 922(g) of this title and has *three previous convictions by any court* referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both*, committed on occasions different from one another*, such person shall be fined under this title and *imprisoned not less than fifteen years*, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a (continued…)

possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). As a condition to Salliey's sentence of 17 years' imprisonment, his federal plea agreement included an express waiver. This waiver provision stated that Salliey would refrain from "collaterally challeng[ing] his prior convictions in the courts in which they arose," including in the form of a petition for *coram nobis*. In this agreement, Salliey "expressly acknowledge[d] that he knowingly and voluntarily waives any right he may have to challenge a prior conviction, and agrees that this [federal] plea agreement may be offered as evidence of such a voluntary waiver."

On June 9, 2014, Salliey filed his petitions for writ of error *coram nobis*[6] in the circuit court, asking the court to vacate his four prior state convictions. He based his *coram nobis* petition on the allegation that he was not warned of the grave collateral consequences, including his subsequent federal conviction, of pleading guilty to felony

probationary sentence to, such person with respect to the conviction under section 922(g)." 18 U.S.C. § 924(e)(1) (emphasis added). Salliey could have received a sentence in excess of 17 years and, in fact, was facing a mandatory minimum of 20 years.

[6] "[T]he traditional 'purpose of the [*coram nobis*] writ . . . is to bring before the court facts which were not brought into issue at the trial of the case, and which were material to the validity and regularity of the proceedings, and which, if known by the court, would have prevented the judgment.'" *Skok v. State*, 361 Md. 52, 78 (2000) (quoting *Madison v. State*, 205 Md. 425, 432 (1954)). In other words, a petition of writ of error *coram nobis* is used by those convicted, who are requesting the court to review the process in which their previous convictions were obtained, and, if the court determines an error had occurred, then they should vacate those previous convictions. This vacation of conviction(s) would mitigate the occurrence of collateral consequences, either at the state or federal levels.

charges. Because he was not aware of these consequences, he could not have "knowingly and voluntarily" entered into the agreements.

The circuit court denied each of Salliey's petitions with prejudice, citing the express waiver of his right to challenge these convictions in his federal plea agreement. Salliey now challenges the circuit court's ability to enforce the waiver in his federal plea agreement as it pertains to his state convictions.

DISCUSSION

I. Standard of Review and principles of writ of error *coram nobis*.

In Maryland's seminal case regarding a petition for a writ of error *coram nobis*, *Skok v. State*, 361 Md. 52, 78 (2000), the Court of Appeals emphasized the criteria for accepting this type of petition, stating that its purpose is to serve as "a remedy for a convicted person who is not incarcerated and not on parole or probation, who is suddenly faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds." The "presumption of regularity attaches to [a] criminal case, and the burden of proof is on the *coram nobis* petitioner." *Id*. (citations omitted); *see also United States v. Morgan*, 346 U.S. 502, 512 (1954) ("It is presumed the proceedings were correct and the burden rests on the accused to show otherwise." (Citations omitted)). Consequently, this Court will only disturb the factual findings of the post-conviction court if there was clear error. *Arrington v. State*, 411 Md. 524, 551 (2009). While reviewing for clear error, we will

make an "independent determination of relevant law and its application to the facts." *Id.* (quoting *State v. Adams*, 406 Md. 240, 255 (2008)).

"Basic principles of waiver are applicable to issues raised in *coram nobis* proceedings." *Skok*, 361 Md. at 79 (citation omitted). "[A] writ of error *coram nobis* remains a civil action in Maryland, independent of the underlying action from which it arose." *Id*. at 65 (quoting *Ruby v. State*, 353 Md. 100, 107 (1999)). In *Skok*, 361 Md. at 71-78, the Court of Appeals, citing the United States Supreme Court's decision in *United States v. Morgan*, 346 U.S. 502 (1954), recognized a broader scope of *coram nobis* relief for a convicted person who is not incarcerated and not on parole or probation, who is faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds. The Court of Appeals recognized that "[v]ery often in a criminal case, because of a relatively light sanction imposed or for some other reason, a defendant is willing to forego an appeal even if errors of a constitutional or fundamental nature may have occurred," and the Court stated that such a person should be able to file a motion for *coram nobis* relief "regardless of whether the alleged infirmity in the conviction is considered an error of fact or an error of law." *Id*. at 77-78 (footnote omitted). *Id*.

The *Skok* Court explained that the grounds raised in a *coram nobis* petition "must be of a constitutional, jurisdictional or fundamental character." *Id*. at 79 (citation omitted). Further, the *coram nobis* petitioner "must be suffering or facing significant collateral consequences from the conviction." *Id*. at 79 (citation omitted). The Court

expressly stated that "[b]asic principles of waiver are applicable to issues raised in *coram nobis* proceedings," and that "the same body of law concerning waiver and final litigation of an issue, which is applicable under the Maryland Post Conviction Procedure Act . . . shall be applicable" in *coram nobis* proceedings challenging a criminal conviction. *Id*. However, "one is not entitled to challenge a criminal conviction by a *coram nobis* proceeding if another statutory or common law remedy is then available." *Id*. at 80; *see also Pitt v. State*, 144 Md. App. 49, 61-62 (2002); *State v. Hicks,* 139 Md. App. 1, 10 (2001). The Court added that *coram nobis* relief constitutes "an 'extraordinary remedy' and should be employed only under 'compelling' circumstances." *Skok*, 361 Md. at 72 (quoting *Morgan*, 346 U.S. at 511-12). Accordingly, the issuances of a writ of *coram nobis* is within the discretion of the court to serve "what is most compatible with the interests of justice." *Coleman v. State*, 219 Md. App. 339, 355 (2014) (citation omitted).

II. Salliey's federal plea agreement included a valid and enforceable waiver.

A. *The basic principles of waiver are applicable when the waiver was made knowingly and voluntarily and in accordance with a Rule 11[7] colloquy.*

We find support in one federal case and one case from a sister jurisdiction demonstrating how the concepts of knowing and voluntary waivers should apply in this case. By virtue of a written waiver, defendants who bargain for a favorable sentence in return for a guilty plea "give up a plethora of substantive claims and procedural rights." *Creech v. State*, 887 N.E.2d 73, 74 (Ind. 2008) (quoting *Games v. State*, 743 N.E.2d

[7] Rule 11 is a reference to Rule 11 of the Federal Rules of Criminal Procedure.

1132, 1135 (Ind. 2001)). "[A] promise by the defendant not to appeal is an acceptable condition of a plea bargain, so long as the waiver of the right to appeal is knowing and voluntary." 1 Rudstein, et al., *Criminal Constitutional Law* § 12.06 (2015). In addition, "[t]he Seventh Circuit has declared . . . that defendants 'may waive their right to appeal as part of a written plea agreement . . . as long as the record clearly demonstrates that it was made knowingly and voluntarily.'" *Creech*, 887 N.E.2d at 75 (quoting *United States v. Williams*, 184 F.3d 666, 668 (7th Cir. 1999)). Furthermore, "if the agreement is voluntary, and taken in compliance with Rule 11 [of the Federal Rules of Criminal Procedure], then the waiver of appeal must be honored." *Williams*, 184 F.3d at 668 (quoting *United States v. Wenger*, 58 F.3d 280, 282 (7th Cir. 1995)).

In *United States v. Williams*, the defendant, Wayne Williams, pled guilty, pursuant to a written plea agreement, to federal charges of bankruptcy fraud and false statements. *Id*. at 667. In the plea agreement, Williams expressly acknowledged that he "knowingly waive[d] the right to appeal any sentence within the maximum provided in the statutes . . . or [on] any ground[s] [whatsoever]." *Id*. at 668. Williams later argued to the Court that he did not knowingly or voluntarily waive his right to appeal and that "waivers in plea agreements are unconstitutional [and] against public policy[.]" *Id*. The Seventh Circuit forcefully rebuked these assertions, emphasizing that it is well-settled law that a waiver within a plea agreement is enforceable as long as the record indicates that the waiver was made knowingly and voluntarily. *Id*. The Court further pointed out that "most waivers are effective when set out in writing and signed." *Id*. (quoting *Wenger*, 58

F.3d at 282). Accordingly, the Seventh Circuit found that, because the record demonstrated that Williams entered into the agreement knowingly and voluntary and his assent to the guilty plea was reduced to writing, the waiver was valid. *Id.* at 672.

In *Creech*, 887 N.E.2d at 73, the Supreme Court of Indiana found many of the principles set forth in *Williams* to be applicable to their analysis of whether express waivers are enforceable. In May 2006, Creech was charged with felony child molestation. *Id*. Shortly thereafter, the State and Creech submitted a plea agreement to the court, which gave the trial judge discretion on Creech's sentencing but capped the executed portion at six years. *Id*. The plea agreement contained a waiver, which read: "I hereby waive my right to appeal my sentence so long as the Judge sentences me within the terms of my plea agreement." *Id*. The trial judge did not seek Creech's understanding of this waiver, at either the guilty plea hearing or sentencing hearing, and sentenced Creech to a six-year term. *Id*. On appeal, Creech contended that his waiver in the plea agreement was not knowing or voluntary, because the trial judge misadvised him on his rights and made no express or implied finding on an intention to waive his appellate right. *Id*. at 76. The Supreme Court of Indiana disagreed, finding Creech's written waiver to be valid even in the presence of the trial court's minor procedural missteps. *Id*. Like in *Williams*, the main thrust of Creech's appeal was that procedural defects rendered the waiver in the plea agreement invalid. While both Courts emphasized

the importance of a clear and unambiguous colloquy,[8] they found that upholding the basic principles of waiver deserved more prominence in their respective analyses.

The analysis in these cases is persuasive, and we hold that Salliey's federal plea agreement contains an enforceable waiver of *coram nobis* relief. Salliey's federal plea agreement contains clear and unequivocal language under the heading "Waiver of Right to Challenge Prior Convictions Used to Enhance Sentence." Paragraphs eight and nine of this section contain the pertinent language and read as follows:

> 8. *The Defendant understands and agrees that the offense to which he is pleading guilty carries enhanced criminal penalties because of his prior criminal record*. The Defendant further understands and agrees that his prior convictions need not be submitted to a grand jury, proved to a jury or established beyond a reasonable doubt, but that the Court, with the aid of the United States Probation Office, in accordance with the procedures specified by the United States Sentencing Guidelines, will determine the Defendant's prior record on the basis of a preponderance of reliable evidence, which may include hearsay.
>
> 9. The Defendant expressly agrees that *he will not collaterally challenge his prior convictions in the courts in which they arose*, as by filing a petition or motion in *habeas corpus*, *coram nobis* or any other means. The *[D]efendant expressly acknowledges that he knowingly and voluntarily waives any right he may have to challenge a prior conviction*, and agrees that this plea agreement may be offered as evidence of such a voluntary waiver.

[8] The *Williams* Court stated in its opinion that "[we] recognize that the district court's oral comments regarding the possibility for appeal could have been clearer and take this opportunity to emphasize the importance of avoiding potentially ambiguous or unnecessary remarks in a plea colloquy. However, that we are able to imagine potential changes in the procedures actually used is not a good reason to free [the defendant] from his bargain[.]" *Williams*, 184 F.3d at 669. Meanwhile, the Court in *Creech*, 887 N.E. 2d at 76, stated: "While we take this opportunity to emphasize the importance of avoiding confusing remarks in a plea colloquy, we think the statements at issue are not grounds for allowing Creech to circumvent the terms of his plea agreement."

(Emphasis added). Salliey acknowledged, in writing, his knowing and voluntary understanding within the body of the agreement, by signing his name at the end of the agreement. The pertinent language of the signature block, where Salliey signed, read:

> I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and *I voluntarily agree to it*. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

(Emphasis added).

In addition, the Federal District Court conducted a very thorough Rule 11 colloquy during Salliey's guilty plea hearing.[9] In fact, the Court adjourned the guilty plea hearing because, initially, the Court was not satisfied that Salliey was displaying a "voluntary and willing plea" as to the offense.[10] After a short recess, the Court reconvened to discuss Salliey's plea agreement, determining this time that Salliey was entering into the agreement on a knowing and voluntary basis. After initial comments regarding the Court's current position on the status of Salliey's plea, the Federal District Court continued its colloquy:

[9] The federal judge must conduct a plea agreement colloquy based on the rules set forth in Rule 11(b)-(c).

[10] Specifically, the U. S. District Court stated: "So, based upon the questions, this man is not showing me a voluntary and willing plea to this offense. This man does not believe he's guilty of this offense, or he has mitigating factors he wants to present, and I am not, as a Judge in this Court, going to accept a guilty plea under these circumstances."

THE COURT: Are you guilty of this offense?

THE DEFENDANT: Yes.

THE COURT: All right. And do you understand that the offense to which you're pleading guilty – specifically, possession of a firearm by a convicted felon in violation of 18 [U.S.C.] § 922(g)(1) – is a felony offense?

THE DEFENDANT: Yes.

* * *

THE COURT: [N]ow, Paragraph 6(b) of the plea agreement stipulates that you have these four previous serious drug convictions. Do you understand that, Mr. Salliey?

THE DEFENDANT: Yes.

THE COURT: [A]nd they go from 1995 through 2003, and, as a result of that stipulation and as result of what I anticipate will be in the presentence report, you will be classified as an armed career criminal under 18 [U.S.C.] § 924. Do you understand that?

THE DEFENDANT: Yes.

* * *

THE COURT: [A]nd *Paragraph 9 specifically of the plea agreement notes that you waive any right to attack the validity of these earlier convictions, meaning that you're acknowledging that you have prior convictions.* Do you understand that, sir?

THE DEFENDANT: *Yes, sir.*

THE COURT: *Are you satisfied, then, that you understand all the consequences of your plea of guilty here today?*

THE DEFENDANT: *Yes.*

(Emphasis added).

The Court then proceeded to explain to Salliey the Rule 11(c)(1)(c) process, the advisory guidelines that apply pursuant to the plea agreement, Salliey's waiver of any right to appeal, the elements of the charged offense, and the factual basis of the plea. Following the colloquy, the Court stated the following:

> THE COURT: It's the finding of this Court in the case of United States versus Quincy Lamont Salliey . . . that the Defendant is fully competent and capable of entering an informed plea, that the Defendant is aware of the nature of the charges and the relevant consequences of his plea, and that his plea of guilty, on advice of competent counsel with whose services he is satisfied, is knowing and voluntary plea supported by an independent basis in fact sustaining each of the essential element of the offense charged. The plea is to be accepted, and the Defendant is now adjudged guilty of the offense as set forth in Count 1 of the Indictment; specifically, being in possession of a firearm as a convicted felon in violation of 18 [U.S.C.] § 922(g)(1).

The Federal District Court's colloquy with Salliey was clear and unambiguous, and its subsequent finding on the record confirms his understanding of the waiver. This is dually evidenced by the plea agreement itself and through Salliey's unequivocal responses to the questions presented during his federal sentencing colloquy. *See Williams*, 184 F.3d at 669 ("[I]f there is express waiver of appeal language in the plea agreement and the agreement as a whole was accepted following a Rule 11 colloquy, we have held the waiver was knowing and voluntary.") (Citing *United States v. Agee*, 83 F.3d 882, 886 (7th Cir. 1996)). Because there were no procedural defects during the Rule 11 proceeding, Salliey's express waiver, assented to in writing, we agree with the State that Salliey knowingly and voluntarily entered into the plea agreement and waived his right to challenge his state convictions.

B. *Policy reasons allow for the use of waivers in plea agreements.*

"'[P]lea bargaining[]' is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities." *Santobello v. New York*, 404 U.S. 257, 260 (1971). There are many social and practical benefits to the acceptance of plea bargains in the criminal justice system. "The defendant avoids extended pretrial incarceration and the anxieties and uncertainties of a trial; he gains a speedy disposition of his case, the chance to acknowledge his guilt, and a prompt start in realizing whatever potential there may be for rehabilitation." *Blackledge v. Allison*, 431 U.S. 63, 71 (1977). Additionally, "[j]udges and prosecutors conserve vital and scarce resources[, and] [t]he public is protected from the risks posed by those charged with criminal offenses who are at large on bail while awaiting completion of criminal proceedings." *Id*. (footnote omitted).

Consequently, the use and enforcement of waivers within plea agreements is a ubiquitous practice in the judicial system, and remains so for legitimate reasons.[11] "[A]cceptance of the basic legitimacy of plea bargaining necessarily implies rejection of

[11] "It is this mutuality of advantage that perhaps explains the fact that at present *well over three-fourths of the criminal convictions in this country rest on pleas of guilty*, a great many of them no doubt motivated at least in part by the hope or assurance of a lesser penalty than might be imposed if there were a guilty verdict after a trial to judge or jury." *Brady v. United States*, 397 U.S. 742, 752 (1970) (emphasis added and footnote omitted).

any notion that a guilty plea is involuntary simply because it is the end result of the bargaining process." 1 Rudstein, et al., *supra,* § 12.06 (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978)). "The process [of making and accepting plea agreements] makes both society and defendant better off. To make a given right ineligible for waiver would stifle this process and imprison the defendant in his privileges." *Creech*, 887 N.E.2d at 75 (quoting *United States v. Hare*, 269 F.3d 859, 861 (7th Cir. 2001)).

The above policy discussion supports our holding in this case that the federal plea agreement is enforceable in state court. We not only determine that this holding is proper for the waiver purposes explained above, but this result furthers the public policy that underpins the use of plea agreements. Salliey's 17-year sentence, pursuant to his federal plea agreement, was the outcome of a bargaining process that effectuated the federal government's objective as well as Salliey's posture to achieve a reduced sentence. The federal plea agreement, along with the federal sentencing colloquy, illustrate the beneficial reductions achieved by Salliey in exchange for his acceptance to a plea agreement.

First, the January 14, 2011, federal plea agreement represents that Salliey's base offense level[12] was 34 due to his designation as an armed career criminal under 18 U.S.C.

[12] According to the Federal Sentencing Guidelines:

> Each type of crime is assigned a base offense level, which is the starting point for determining the seriousness of a particular offense. More serious types of crime have higher base offense levels (for example, a trespass has a base offense level of 4, while kidnapping has a base offense level of 32).

(continued…)

§ 924(e). Based on Salliey's cooperation during the plea bargaining process, the United States Attorney's Office granted a three-level reduction to Salliey's base offense level, resulting in an adjusted offense level of 31. Second, the federal sentencing colloquy references much longer sentences Salliey could have been subjected *but for* his plea agreement.

> THE COURT: The first matter we'll address here, the Defendant pled guilty before on January 14, 2011 after a very lengthy procedure under Rule 11 of the Federal Rules of Criminal Procedure pursuant to which the plea was entered under Rule 11(c)(1)(c) of the Federal Rules of Criminal Procedure with an agreed sentence of 17 years in light of the Defendant's clear classification . . . as an armed career criminal, as well as his *lengthy criminal record that would have exposed him to far more time than 17 years in prison.*
>
> * * *
>
> THE COURT: [B]ut if [Salliey] were convicted in this case . . . at a minimum [Salliey would] have a 15 year mandatory minimum on count one, [Salliey would] have a seven year mandatory consecutive sentence as to which other count?
>
> MR. BLOCK: I believe it would be a five year mandatory sentence as to count three.
>
> THE COURT: *So [Salliey] would have at least a 20 year mandatory minimum sentence and imprisonment facing up to life in prison*, correct, Mr. Block?
>
> MR. BLOCK: Correct.
>
> THE COURT: *Is that a correct calculation, Mr. Vitrano*?

United States Sentencing Commission, *Overview of the Federal Sentencing Guidelines*, at 1, http://www.ussc.gov/sites/default/files/pdf/about/overview/Overview_Federal_Sentencing_Guidelines.pdf (last visited April 14, 2016).

> MR. VITRANO: *Yes, Your Honor. In fact, on the other counts the government was agreeing to dismiss Mr. Salliey as a career criminal*.

(Emphasis added). Lastly, as referenced in the above colloquy, as well as the federal plea agreement, the government only charged and convicted Salliey under one count instead of multiple ones.

The concessions that the government made were reasonable consideration in exchange for a waiver to collaterally challenge prior convictions that were used as the basis for the federal plea agreement. By determining Salliey's express waiver was enforceable, we affirm that this waiver was achieved through the proper administration of justice. It allowed the government to use its resources in the most efficient manner and avoid a protracted proceeding, while also allowing Salliey to begin his sentence in earnest, which in turn will grant him the opportunity to have the benefit of his bargain, the good as well as the bad. Additionally, we reiterate our position that prior convictions shall serve as adequate warning to an individual that future consequence to subsequent illegalities is always a reality. *Pitt*, 144 Md. App. at 66.

III. Salliey's federal plea agreement is enforceable in state court because his unequivocal waiver binds Salliey himself from appealing, no matter the jurisdiction.

Salliey's waiver is part of his plea agreement. Because plea agreements are viewed as contracts, their terms are enforced as written. *See e.g., Carlini v. State*, 215 Md. App. 415, 446 (2013) ("A plea agreement is contractual in nature."); *United States v. McQueen*, 108 F.3d 64, 66 (4th Cir. 1997) (explaining that contract law guides the

interpretation of plea agreements); *United States v. Clark*, 55 F.3d 9, 12 (1st Cir. 1995) ("We are guided in our interpretation of plea agreements by general principles of contract law.").

As any contract, plea agreements generally bind the parties to the agreement. In general, federal plea agreements do not bind other jurisdictions, including state governments. Where the federal plea agreement explicitly states that other jurisdictions are not bound by the terms of the agreement, the agreement has no binding power. *See United States v. Johnson*, 199 F.3d 1015 (9th Cir. 1999) (holding that federal plea agreement entered into in the Eastern District of Michigan with explicit provision that it was not binding on other governmental entities did not bind United States District Court for District of Nevada from indicting defendant). However, a plea agreement binds other jurisdictions if it explicitly states so.

In this case, the waiver clause in Salliey's plea agreement explicitly binds Salliey from attempting to undercut his prior state court convictions. Specifically, the agreement states that Salliey will refrain from "collaterally challeng[ing] his prior convictions in the courts in which they arose." The only "prior convictions" Salliey has are his series of drug related Maryland convictions from 1997 to 2003. The federal agreement was, therefore, explicit and not silent or ambiguous[13] as to whether Salliey waived his right to challenge his previous convictions: it specifically spoke to them.

[13] If there is any ambiguity in a plea agreement, "the ambiguity would be construed in favor of appellant." *Duran v. State*, 180 Md. App. 65, 91 (continued…)

Salliey struck a bargain, and he cannot now free himself from that bargain by claiming only one government entity can hold him to his promise. Salliey benefited from his federal plea bargain, he is not now free to disavow it by going back to the Maryland state courts with this *coram nobis* petition.

Conclusion

For all the reasons stated above, we affirm the circuit court's dismissal of Salliey's petition and hold that the circuit court properly followed the waiver language of the federal plea agreement. On August 26, 2014, and on October 3, 2014, the circuit court denied Salliey's request for a hearing and dismissed his petitions with prejudice, citing the federal plea agreement's waiver provision as the basis for its order. Although, understandably, Salliey was frustrated with the circuit court's disposition without reference to authority for its finding, the circuit court was not compelled to issue authority because it gave proper weight to the clear and unambiguous language of the federal plea agreement, which barred any other disposition.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

(2008), *aff'd.* 407 Md. 532 (2009); *see also United States v. Clark*, 218 F.3d 1092, 1095 (9th Cir. 2000) (reasoning that ambiguities are resolved in favor of the defendant).