

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1635

September Term, 2016

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STATE OF MARYLAND

v.

JAMES REID

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Woodward, C.J.,  
Meredith,  
Thieme, Raymond G., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 26, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2005, James Reid was convicted by a jury, in the Circuit Court for Baltimore City, of attempted first degree murder, use of a handgun in a crime of violence, illegal possession of a regulated firearm, and related offenses. The court subsequently sentenced Reid to life imprisonment for the attempted murder, a concurrent 20 years for the use of a handgun, and a consecutive 5 years for the illegal possession of a regulated firearm. In 2012, Reid filed a petition for post-conviction relief. Reid initially requested a new trial, but subsequently withdrew that request and requested a new sentencing hearing. The post-conviction court granted that request. The State then filed an application for leave to appeal, claiming that the post-conviction court abused its discretion in so ruling. For the reasons that follow, we grant that application, vacate the judgment of the circuit court, and remand to that court with instructions to deny the petition for post-conviction relief.

On the first day of trial, the parties appeared, and the following colloquy occurred:

THE COURT: Let me ask you a question, what's the State's offer on this?

[PROSECUTOR]: Your Honor, for everything the State's offer is 40 years because he had three cases, first five without.

THE COURT: Three cases?

[PROSECUTOR]: Well what it is is, it's this shooting, he has another shooting with a co-[d]efendant that happened close in time and he has a witness intimidation case. The 40 years first five without was the State's offer.

THE COURT: All right. Is there any offer the Defendant – is there any offer the Defendant is interested in?

[DEFENSE COUNSEL]: Court's indulgence. Your Honor, Mr. Reid would consider something, suspend all but ten.

THE COURT: That’s not reasonable. Why don’t you approach for a second. Let me talk to you for a second.

(Counsel approached the bench and the following ensued:)

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THE COURT: Okay. Is there anything else you could live with? It’s hard to justify giving the case away.

[PROSECUTOR]: I mean I’ve got three shots at the guy.

THE COURT: Let me just ask you – I’m not to making an offer because I don’t think he would take it anyhow – this is never going to work. I could imagine going with 50, suspend all but 25, first five without, but he’s not taking that.

[PROSECUTOR]: (inaudible). That’s fine.

Following trial and sentencing, Reid, *pro se*, filed a petition for post-conviction relief. That petition included the contention that defense counsel provided ineffective assistance in failing to notify Reid of the trial court’s “plea offer.” The post-conviction court concluded that, although “there was not a formal offer made by the” prosecutor “during the bench conference, . . . the judge [did] state with particularity the terms of a potential offer,” and the “potential” offer “should have been relayed to” Reid. The post-conviction court further concluded that defense counsel’s waiver of Reid’s right to be present during the bench conference, combined with her failure to afford Reid the opportunity to consider the “potential” offer, “result[ed] in a cumulative prejudicial [e]ffect.” The post-conviction court concluded that “the appropriate relief . . . is vacation of [Reid’s] sentence[s] and a new sentencing hearing,” at which the parties are to “engage in a good faith resumption of plea negotiations.”

The State contends that the post-conviction court abused its discretion in so ruling. We agree for three reasons. First, the Court of Appeals has stated that “[i]t is the role of the State . . . to make a plea offer,” and “[t]he trial court’s role is to approve or reject a plea agreement that the parties submit to it, not to come up with its own plea offer – *i.e.*, a ‘court’s offer.’” *Sharp v. State*, 446 Md. 669, 700 (2016) (citations omitted). Here, the trial court was not authorized to make an offer of any kind, and hence, defense counsel was not required to notify Reid of the sentence contemplated by the trial court. Second, the State did not adopt the sentence contemplated by the trial court and communicate it as a plea offer. Indeed, the prosecutor’s statement “that’s fine” reflected not adoption of the sentence contemplated by the trial court, but acknowledgment of Reid’s rejection of any plea offer that would require him to serve an executed sentence of more than ten years. Third, even if a trial court was allowed to “come up with its own plea offer,” the trial court here expressly stated that it was “not . . . making an offer.” Thus, the post-conviction court abused its discretion in vacating Reid’s sentences and awarding him a new sentencing hearing. Accordingly, we grant the application for leave to appeal, vacate the judgment of the post-conviction court, and remand the case to that court with instructions to deny the petition for post-conviction relief.

**APPLICATION FOR LEAVE TO APPEAL  
GRANTED. JUDGMENT OF THE  
CIRCUIT COURT FOR BALTIMORE  
CITY VACATED. CASE REMANDED  
WITH INSTRUCTIONS TO DENY  
PETITION FOR POST-CONVICTION  
RELIEF. COSTS TO BE PAID BY  
RESPONDENT.**