

Circuit Court for Cecil County
Case No. 07-K-14-001735

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2212

September Term, 2023

HENRY ERIC HAMILTON

v.

STATE OF MARYLAND

Beachley,
Zic,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: October 24, 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 Maryland Rule 1-104(a)(2)(B).

On March 27, 2015, a jury sitting in the Circuit Court for Cecil County found Henry Eric Hamilton, appellant, guilty of conspiracy to commit first-degree assault. On June 5, 2015, the court sentenced appellant to twenty-five years’ imprisonment. Appellant noted an appeal to this Court, and we affirmed his conviction. *Hamilton v. State*, No. 736, Sept. Term, 2015 (filed unreported February 14, 2018) (*Hamilton I*).

On October 17, 2022, appellant, acting *pro se*, filed a motion to correct an illegal sentence, which the circuit court denied on November 1, 2022. Appellant noted an appeal to this Court from the denial of that motion. In that appeal, we determined that appellant’s sentence was, in fact, illegal. We reversed the decision of the circuit court and remanded the case for re-sentencing with instructions to impose a sentence not exceeding twenty years’ imprisonment. *Hamilton v. State*, No. 1653, Sept. Term, 2022 (filed unreported August 16, 2023) (*Hamilton II*).

On December 12, 2023, the circuit court sentenced appellant to twenty years’ imprisonment. Appellant noted an appeal and presents us with the following issues for our review, which we have modified for clarity¹:

¹ Appellant stated his issues as follows:

1. Whether [the c]ircuit [c]ourt erred by failing to properly address either the discharge of counsel or the waiver of counsel[.]
2. Whether the [c]ircuit [c]ourt erred by failing to consider (i) the sentencing guidelines for ordinary sentences in deciding on the proper sentence; and (ii) the sentencing guidelines for corrections options in deciding whether to sentence a defendant to a corrections options program or to impose an ordinary sentence[.]
3. Whether the [c]ircuit [c]ourt erred by failing to state on the record its reasons for the sentence imposed[.]

- I. Whether the trial court erred by failing to follow Maryland Rule 4-215 when appellant appeared without counsel for his re-sentencing hearing.
- II. Whether the trial court erred by failing to consider the sentencing guidelines.
- III. Whether the trial court erred by failing to state on the record its reasons for the sentence imposed.
- IV. Whether the three-judge panel, which denied appellant’s application for review of sentence, erred by considering sentencing guidelines that misstated the maximum allowable penalty.²

BACKGROUND

Because the background facts related to appellant’s conviction for conspiracy to commit first-degree assault are irrelevant to his contentions in this appeal, we shall adopt, for the purposes of this appeal, the truncated account of them from our prior appellate decision in *Hamilton v. State*, No. 379, Sept. Term, 2022 (filed unreported October 6, 2022) (*Hamilton III*).³

The evidence adduced at appellant’s trial showed that appellant’s son had shot and killed a person in a car parked in front of appellant’s home just after appellant had been seen speaking with one of the occupants of that car. The State’s theory of the case was that appellant had directed his son to open fire on the vehicle by providing a signal to his son to do so.

Hamilton III, Slip Op. at 1.

4. Whether the Rule 4-344 panel erred by considering misstated sentencing guidelines[.]

² The State has moved to dismiss this contention on the basis that appellant failed to note an appeal from the decision of the three-judge panel.

³ In that appeal, appellant had taken an appeal from the circuit court’s denial of a motion to preserve/perpetuate evidence that he had filed in 2022. We dismissed the appeal. The facts of the offense are much more fully set forth in *Hamilton I*, Slip Op. at 1-16.

We shall provide additional facts as necessary to the resolution of the issues presented in this appeal.

DISCUSSION

I. Whether the trial court erred by failing to follow Maryland Rule 4-215 when appellant appeared without counsel for his re-sentencing hearing.

As noted earlier, on December 12, 2023, the circuit court held a re-sentencing hearing with instructions from this Court that the maximum lawful sentence for appellant's offense was twenty years' imprisonment. When appellant appeared without counsel for that re-sentencing hearing, the court conducted the following inquiry:

THE COURT: You do understand what an attorney could do for you at this sentencing?

[APPELLANT]: And I don't want none of them from this county touching me, Your Honor. None of them.

THE COURT: Okay. You have an absolute right to hire an attorney. You have an absolute right --

[APPELLANT]: Yeah, yep.

THE COURT: -- to make application for an attorney from the Office of the Public Defender.

[APPELLANT]: No.

THE COURT: Do you understand what an attorney would do?

[APPELLANT]: Yes, nothing. Yes.

THE COURT: Okay.

[APPELLANT]: Yeah, I know exactly what they'd do.

THE COURT: Okay. And so it is your decision to proceed here today-

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[APPELLANT]: Yeah.

THE COURT: --without an attorney?

[APPELLANT]: Yes, ma'am. Absolutely.

THE COURT: Okay.

Appellant argues that the trial court should have complied with Maryland Rule 4-215, which lays out the steps a court must take when a defendant waives his right to counsel. The Rule states, in relevant part, as follows:

(a) **First Appearance in Court Without Counsel.** At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

- (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.
- (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
- (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.
- (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.
- (5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.
- (6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) **Express Waiver of Counsel.** If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State’s Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant’s express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

* * *

(e) **Discharge of Counsel--Waiver.** If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant’s request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant’s request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Md. Rule 4-215.

Appellant argues that the trial court should have complied with Rule 4-215(e) “Discharge of Counsel-Waiver” because his counsel from his 2015 trial never withdrew and was never discharged. Therefore, according to appellant, at his re-sentencing hearing,

the trial court should have followed Rule 4-215(e) to address whether appellant was discharging his 2015 counsel, and if there was a meritorious reason for the discharge. Alternatively, appellant contends that, if he was not represented by counsel, then the trial court should have complied with Rule 4-215(b) “Express Waiver of Counsel.” In his reply brief, appellant argues, for what appears to be the first time on appeal, that the trial court should have complied with Rule 4-215(a) because his re-sentencing hearing was his first appearance in court without counsel.

The State, relying on *State v. Brown*, 342 Md. 404 (1996) and its progeny, contends that Rule 4-215 has no application to appellant’s re-sentencing hearing, which occurred several years after appellant’s original sentencing, because that Rule does not apply once meaningful trial proceedings have commenced. We agree with the State.⁴

In *Brown*, trial had begun, and the defendant attempted to discharge his counsel after the State had called its first witness. 342 Md. at 410. Our Supreme Court determined that, under those circumstances, Rule 4-215 was inapplicable. The Court said:

After meaningful trial proceedings have commenced, the decision to permit the defendant to exercise [the right to substitute counsel or the right to self-representation] must be committed to the sound discretion of the trial court. Once trial begins, therefore, Rule 4-215 no longer governs, although the court must still adhere to constitutional standards.

Id. at 426.

⁴ The State correctly observes that, even though Rule 4-215 is inapplicable to appellant’s re-sentencing, a re-sentencing is still a critical stage of a trial where a criminal defendant has a right to counsel and any waiver of that right must be knowing, intelligent, and voluntary and otherwise comport with constitutional standards. *Brown*, 342 Md. at 427-28. Appellant makes no claim in this appeal that the waiver of his right to counsel did not comport with constitutional standards. We, therefore, do not address that issue.

Relying on *Brown*, this Court, in *Catala v. State*, 168 Md. App. 438, 469 (2006), determined that Rule 4-215 had no application to a sentencing hearing held after trial and after the defendant’s counsel had withdrawn from the case.⁵

We are unaware of any reported decision of either this Court or our Supreme Court specifically addressing whether Rule 4-215 is applicable to a re-sentencing hearing held years after the original trial and sentencing. We do, however, find persuasive, this Court’s reasoning in *Wiggins v. State*, No. 1418, Sept. Term, 2022 (filed unreported January 22, 2024), concluding that Rule 4-215 does not apply to a re-sentencing hearing. (Slip Op. at 11-12).⁶

In the instant case, we are persuaded that Rule 4-215 does not apply to appellant’s re-sentencing. With the central premise of appellant’s contention removed, his argument collapses under its own weight.

II. Whether the trial court erred by failing to consider the sentencing guidelines.

During the December 12, 2023 re-sentencing hearing, the court made the following comments when re-sentencing appellant:

Well, I note in connection with this matter, we are here for a re[-]sentencing in accordance with an opinion issued by the Appellate Court of Maryland on August 16th, 2023. That Court directed this [c]ourt with regard

⁵ This Court awarded *Catala* a new sentencing hearing because the sentencing court did not comply with constitutional standards when it did not give him a “meaningful opportunity to explain why he had not retained counsel” before making the decision that he had waived counsel by inaction. *Catala*, 168 Md. App. at 469.

⁶ See Md. Rule 1-104(a)(2)(B) (“[A]n unreported opinion issued on or after July 1, 2023 may be cited for its persuasive value only if no reported authority adequately addresses an issue before the court. The citation shall clearly identify the opinion as unreported and include the case number, term, and date the opinion was filed.”).

to the fact that this matter should be rescheduled. The Court also directed that there is a cap for sentencing which is 20 years.

I have considered the facts of this case, as I, in fact, was the individual who was the trial judge. I have listened to the information presented by the victim’s family, the information presented by [the prosecutor], the information presented by [appellant]. I have considered the considerations for sentencing in this matter. The jury in connection with this matter found [appellant] guilty of conspiracy [to commit] assault in the first degree, that is Count X.

Again, the Appellate Court has instructed me with regard to this matter to the maximum possible sentence. I did take into consideration [appellant’s] criminal record.

The Court is going to impose a sentence of 20 years, which commences October 1, 2014.

Appellant argues that the trial court violated Criminal Procedure Article (“CP”) § 6-216(a)(1) of the Maryland Code because the court did not state on the record at the re-sentencing hearing that it had considered the sentencing guidelines. Section 6-216(a)(1) states that when imposing sentence:

A circuit court shall consider:

- (i) the sentencing guidelines for ordinary sentences in deciding on the proper sentence; and
- (ii) the sentencing guidelines for corrections options in deciding whether to sentence a defendant to a corrections options program or to impose an ordinary sentence.

Appellant contends the trial court’s statement that it had “‘considered the considerations for sentencing in this matter[,]” did not “clarify whether the [c]ircuit [c]ourt had considered” the sentencing guidelines as required by CP § 6-216(a)(1).

In the alternative, appellant contends that, if the trial court did consider the sentencing guidelines, then doing so violated a different provision of CP § 6-216 that

prohibits sentencing guidelines that “allow for a sentence exceeding the maximum sentence provided by law[.]” CP § 6-216(b)(1). According to appellant, the sentencing guidelines worksheets did not take into account the fact that the maximum lawful sentence for appellant’s offense in this case was twenty years, and the guideline worksheets indicated that the maximum sentence was twenty-five years.⁷

The State responds that appellant failed to preserve this claim of error when he did not raise it during the re-sentencing hearing, and that, in any event, the claim lacks merit. We agree with the State.

First, appellant’s claim is plainly unpreserved and therefore not properly before this Court. *See Bryant v. State*, 436 Md. 653, 670 (2014) (“If the sentence is not illegal under Rule 4-345(a) and the allegation was not preserved, the allegation is waived and not properly before the court.”).

But, even if the contention was properly before us, appellant would fare no better, because errors with respect to the sentencing guidelines do not amount to reversible errors. *See Robson v. State*, 257 Md. App. 421, 442 (2023) (“The Sentencing Guidelines are only guidelines.” “Nor is it an impermissible consideration, within the contemplation of our

⁷ This mistake is entirely understandable under the circumstances of this case. The statutory maximum penalty for conspiracy to commit first-degree assault is twenty-five years. Md. Code Ann., Crim. Law § 1-202 & § 3-202(c). Conspiracy to commit armed robbery has a statutory maximum penalty of twenty years. Md. Code Ann., Crim. Law § 1-202 & § 3-403(b). Because the sentence for conspiracy to commit first-degree assault merged, as a lesser included offense, into conspiracy to commit armed robbery, and appellant was acquitted of the latter, his sentence for conspiracy to commit first-degree assault was legally capped at the maximum penalty for the greater included offense *i.e.*, conspiracy to commit armed robbery, or twenty years’ imprisonment. *Hamilton II*, Slip Op. at 10-11.

cases, for a trial judge not to apply the Guidelines, or to apply them improperly.’” (quoting *Teasley v. State*, 298 Md. 364, 370-71 (1984)); *Lee v. State*, 69 Md. App. 302, 311 (1986) (“There is no requirement of law either that a sentencing judge follow the sentencing guidelines or that the sentencing judge give his reasons for not doing so.”).

Moreover, CP § 6-216(a)(1) states that the trial court “shall consider” the sentencing guidelines. It does not state that the court needs to declare on the record that it considered the sentencing guidelines. “[W]e presume judges know the law and apply it ‘even in the absence of a verbal indication of having considered it.’” *Marquis v. Marquis*, 175 Md. App. 734, 755 (2007) (quoting *Wagner v. Wagner*, 109 Md. App. 1, 50 (1996)). Therefore, although the court did not state on the record that it considered the sentencing guidelines, we presume that it understood CP § 6-216(a)(1) and considered the sentencing guidelines when it imposed the sentence.

III. Whether the trial court erred by failing to state on the record its reasons for the sentence imposed.

Maryland Rule 4-342(f) states that “[t]he court ordinarily shall state on the record its reasons for the sentence imposed.” Appellant argues that under Rule 4-342(f) the trial court erred by not stating its reasons on the record for imposing the maximum sentence. The State counters that appellant failed to preserve this contention for appeal, and also contends that it lacks merit. We agree with the State.

In *Wilkins v. State*, 253 Md. App. 528 (2022), we noted that a claim that the trial court violated Rule 4-342(f) does not amount to an illegal sentence, and therefore, such a claim must be preserved for appeal.

Rule 4-342(f) contains mandatory language. (“The court ordinarily shall state on the record its reasons for the sentence imposed.”) That language, however, is qualified by the word “ordinarily.” In other contexts, the term “ordinarily” has been recognized as creating an exception to the general rule otherwise stated. *See, e.g., Jones v. State*, 379 Md. 704, 712-13 (2004) (explaining that the term “ordinarily” in Rule 8-131(a) implies there are exceptions to the general rule that an appellate court will not consider unpreserved issues). Because the term “ordinarily” means that Rule 4-342(f) does not state an “absolute” requirement, *Jones*, 379 Md. at 712, it follows that a violation of Rule 4-342(f) does not result in an illegal sentence, and it is therefore subject to the contemporaneous objection rule.

Id. at 540 n.6.

But, even if this claim were properly before us, we would affirm the judgment of the sentencing court because the court did, in fact, state reasons for imposing the sentence. Among other things, after noting that it was aware that this Court had determined that the maximum possible sentence was twenty years’ instead of twenty-five years’ imprisonment, and before imposing its sentence, the court said:

I have considered the facts of this case, as I, in fact, was the individual who was the trial judge. I have listened to the information presented by the victim’s family, the information presented by [the prosecutor], the information presented by [appellant]. I have considered the considerations for sentencing in this matter. . . . I did take into consideration [appellant’s] criminal record.

We perceive neither error nor abuse of discretion on the part of the sentencing court.

MOTION TO DISMISS

After his re-sentencing, appellant filed an application for review of sentence by a three-judge panel pursuant to Md. Rule 4-344 and CP § 8-101 *et. seq.* On March 25, 2024, the three-judge panel denied his application, stating, *inter alia*, “[u]pon consideration of the Application, Defendant’s Memorandum, the Court file and Sentencing Guidelines, it is

the unanimous decision of the panel . . . that the sentence imposed was fair and just under the circumstances[.]”

Appellant’s final contention is that the three-judge panel erred by considering sentencing guidelines that, as noted earlier, misstated the maximum allowable sentence. The State filed a motion to dismiss this claim on the basis that appellant never noted an appeal from the denial of his application for review of sentence.

Maryland Rule 8-202(a) requires, with certain exceptions not relevant to this appeal, that a “notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Rule 8-602(b)(2) states that “[t]he court shall dismiss an appeal if . . . the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.”

The record in this case indicates that no notice of appeal was filed after the three-judge panel denied appellant’s application for review of sentence on March 25, 2024. On January 8, 2024, appellant noted an appeal from his re-sentencing. That was over two months *before* the three-judge panel denied his application for review of sentence. Because appellant did not note an appeal after the three-judge panel denied his application for review of sentence and within the timeframe required by Rule 8-202, we shall grant the State’s motion to dismiss this contention.

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY AFFIRMED.
APPEAL FROM THE DENIAL OF
APPELLANT’S APPLICATION FOR
REVIEW OF SENTENCE BY A THREE-**

**JUDGE PANEL DISMISSED. COSTS TO
BE PAID BY APPELLANT.**