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Recent Developments

Muir v. State: CLARIFYING PREDICATE CRIMES OF VIOLENCE UNDER MARYLAND'S ENHANCED PUNISHMENT STATUTE.

The Court of Appeals of Maryland recently decided in *Muir v. State*, 308 Md. 208, 517 A.2d 1105 (1986), that convictions of robbery and attempted robbery by a general court-martial tribunal of the United States Army may be considered as predicate crimes of violence under Md. Ann. Code art. 27 § 643B (1982 Repl. Vol., 1985 Cum. Supp.).

Gary Michael Muir pleaded guilty before a general court-martial in 1969 of two separate robberies and one attempted robbery of three different soldiers; each offense involved the use of a knife. He was sentenced to three years' imprisonment in a military prison. Muir was then seventeen years old and a soldier in the U.S. Army. Subsequently, he was convicted of second degree rape in the Circuit Court for Anne Arundel County for which he served a period of imprisonment.

Maryland's enhanced punishment statute for repeat offenders, Article 27, § 643B requires, in subsection (c), the imposition of a mandatory sentence of not less than twenty-five years upon any person who, under specified conditions, is convicted a third time of a "crime of violence."¹ Subsection (a) of the statute defines a "crime of violence."²

In the present case, Muir was convicted in the Circuit Court for Prince George's County of attempted first and second degree sexual offenses, burglary, and assault with intent to disable. At sentencing, evidence was adduced of his earlier court-martial and rape convictions for the purpose of enhancing the sentence under § 643B. Acting under the statute, the trial judge sentenced Muir to life imprisonment without the possibility of parole on the count charging attempted first degree sexual offense.

On certiorari review before the court of appeals, Muir argued that his court-martial convictions for crimes of violence could not be deemed qualifying predicate offenses under § 643B because of the existing procedural and substantive differences between the civil and military justice sys-

tems. Muir also contended that in view of his age in 1969, the court-martial convictions should be viewed under Maryland law only as juvenile offenses, not as crimes, and are therefore precluded from consideration in determining the applicability of § 643B(c).

In holding that court-martial convictions may be considered predicate crimes of violence under § 643B, the court stated that the purpose of § 643B "is to protect the public from assaults upon people and injury to property and to deter repeat offenders from perpetrating other criminal acts of violence under the threat of an extended period of confinement." 308 Md. at 214, 517 A.2d at 1108.

The *Muir* court also noted that the statute has been afforded broad application to persons convicted a third time of a crime of violence. For example, equivalent convictions in jurisdictions outside of Maryland of crimes of violence within the ambit of § 643(a) may be considered as predicate offenses for purposes of sentencing under the statute's provisions. See, *Temoney v. State*, 290 Md. 251, 429 A.2d 1018 (1981); *Dibartolomeo v. State*, 61 Md. App. 302, 486 A.2d 256 (1985).

The Court of Appeals of Maryland conceded that there are many differences between the systems of military and civilian justice. However, the court found persuasive the opinion of the Supreme Court in *Burns v. Richardson*, 346 U.S. 137 (1953), wherein it was noted that "military courts, like state courts, have the same responsibilities as do the federal courts to protect a person from a violation of his constitutional rights." 346 U.S. at 142. The *Burns* court further observed that through the then recently completed revision of the Articles of War, and the establishment of a Uniform Code of Military Justice, Congress "has taken great care to define the rights of those subject to military law, and to provide a complete system of review within the military system to secure those rights." 346 U.S. at 142.

Many of the rights afforded an accused under the military justice system were outlined in *Burns*. These include: (1) a trial as free as possible from command influence; (2) the right to prompt arraignment; (3) the right to counsel of the accused's own choosing; and (4) the right to secure witnesses

and prepare an adequate defense.

The court of appeals briefly addressed Muir's contention that because he would have been deemed a juvenile had he committed the offenses as a civilian in Maryland, these offenses should not be considered as predicated offenses under § 643B(a). The court stated that omitting these convictions as predicate crimes of violence would thwart the legislative purpose of protecting the public and deterring the commission of violent offenses. 308 Md. at 218, 517 A.2d at 1110.

Thus, the present case is significant because it clarifies, and perhaps broadens, the types of offenses which are applicable in Maryland as predicate crimes of violence under § 643B. Offenders are now on notice that previous general court-martial convictions, regardless of the age of the convicted, may be used to enhance punishment under the Maryland statute.

—Jennifer Crump

Notes

¹Subsection (c) provides, in part:

"Any person who (1) has been convicted on two separate occasions of a crime of violence where the convictions do not arise from a single incident, and (2) has served at least one term of confinement in a correctional institution as a result of a conviction of a crime of violence, shall be sentenced, on being convicted a third time of a crime of violence, to imprisonment for the term allowed by law, but, in any event, not less than 25 years."

²Subsection (a) defines "crimes of violence" to mean:

"abduction; arson; burglary; daytime house-breaking under § 30 (b) of this Article; kidnapping; manslaughter, except involuntary manslaughter; mayhem and maiming under §§ 384, 385 and 386 of this article; murder; rape; robbery; robbery with a deadly weapon; sexual offense in the first degree; sexual offense in the second degree; use of a handgun in the commission of a felony or other crime of violence; an attempt to commit any of the aforesaid offenses; assault with intent to murder; and assault with intent to rape."

