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# Recent Developments: Jackson v. State: Judge's Expansion beyond the Outer Limits of His or Her Broad Discretionary Rights Equates to Impermissible Error

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***Jackson v. State:***  
**Judge's Expansion Beyond the Outer Limits of His or Her Broad Discretionary**  
**Rights Equates to Impermissible Error**

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By Julie Folkemer Zimmer

The Court of Appeals of Maryland held that a judge's comments about a defendant's place of origin during the sentencing process amounted to impermissible sentencing criteria. *Jackson v. State*, 354 Md. 192, 772 A.2d 273 (2001). In so holding, the court determined that the judge had erroneously considered the defendant's origin in formulating the sentence. The court noted that a judge may be granted broad discretion, however the origin of a defendant is clearly an inappropriate factor and creates an inference of a lack of impartiality. *Id.* at 208.

On July 12, 1998, at 1:00 a.m., the Defendant, Valentino Maurice Jackson ("Jackson"), went to the home of the victim, Mitchell Woods ("Woods"), to buy cocaine, but Woods refused to sell it to him. On July 12, 1998 at 3:30 a.m. Jackson returned to Woods' home and was observed by a patrol officer aiming a short-barreled shotgun at Woods' chest. Jackson was then arrested and convicted in the Circuit Court for Howard County of first-degree assault, second-degree assault, reckless endangerment, and unlawful possession of a short-barreled shotgun. During sentencing, the trial judge imposed an 18 year sentence, and made the following statements:

Now, unfortunately, a number of communities in the lovely city of Columbia

have attracted a large number of rotten apples. Unfortunately, most of them came from the city. And they live and act like they're living in a ghetto somewhere. And they weren't invited out here to behave like animals .... That is why people move out here to get away from people like Mr. Jackson. Not to associate with them and have them follow them out here and act like this was a jungle of some kind. So. It's not. And our only chances to preserve it is to protect it.

*Id.* at 198.

In an unreported opinion, the Court of Special Appeals of Maryland affirmed in part, reversed in part, and vacated the sentences for reckless endangerment and second-degree assault." *Id.* at 198. The Court of Appeals of Maryland granted certiorari to determine whether the judge's comments at sentencing exceeded the outer limit of the judge's broad discretion in sentencing and if so, did it amount to impermissible sentencing criteria. *Jackson*, 354 Md. at 199, 772 A.2d 273. The court noted that not only should a judge be impartial and

disinterested, but also that "the judge has the appearance of being impartial and disinterested". *Id.* at 207. The court concluded that the sentencing judge "at least in part, [acted] on the improper presumption that petitioner was from Baltimore City," in essence considering the defendant's origin in deciding the sentence. *Id.* at 208. Therefore, the court of appeals held the judge's comments at sentencing exceeded the outer limit of the judge's broad discretion and was impermissible sentencing criteria. *Id.* at 207.

The court of appeals began its analysis by referring to prior case law granting a judge very broad discretion in sentencing criminal defendants. *Id.* at 199. The court identified the applicable grounds for appellate review of a trial courts sentence. The court determined that one appealable issue is when the sentencing judge is "motivated by ill-will, prejudice, or other impermissible considerations." *Id.* at 200. The *Jackson* court concluded that the comments made by the trial court constituted review under this theory. *Id.* at 200.

Next, the court compared the facts in *Jackson* to those in *United States v. Diamond*, 561 F.2d 557 (4<sup>th</sup> Cir. 1977), in which the court identified impermissible considerations made by the judge during the sentencing hearing. In *Diamond*, two defendants from New York were convicted in Virginia

of theft of an interstate shipment of goods. During sentencing, the judge said, "I suppose that you have a constitutional right to commit a crime wherever you want to commit it. But the Court takes a dim view of people coming down from New York to commit their crimes in Virginia." *Id.* at 200 (quoting *United States v. Diamond*, 561 F.2d 557, 559 (4<sup>th</sup> Cir. 1977)). In *Diamond*, the court concluded there was no bias during the trial, but that the comments at sentencing reflected bias. The determination made by the court that the defendants had received a fair and just trial led them to affirm the conviction, while reversing the sentence due to the evidence of bias during the sentencing hearing. In comparison, in *Jackson*, during sentencing the judge "gave the impression that he based his sentence, at least in part, on something beyond the facts and circumstances of the crime and the background of petitioner." *Id.* at 201. Even though *Jackson* was not from Baltimore City, the judge may have factored in the defendant's origin as a criteria during the sentence. The court in *Diamond* concluded that a defendant's origin is irrelevant to and must not be considered in sentencing. In application of the holding in *Diamond*, and the statements made by the judge in *Jackson*, the court determined that while the judge has some degree of judicial discretion, a limitation imposed on a judge prevents the judge from using the defendant's origin as a sentencing criteria.

The court also explored the idea that the judge's comments may have been racially biased. The court believed that the comments made by the judge did

not reflect actual racial prejudice, however the court cautioned that they could lead a reasonable person to draw such an inference that the sentence was racially motivated. *Id.* at 202. The court of appeals in *Contee v. State*, 223 Md. 575, 165 A.2d 889 (1960), examined the theory of improper appeals to racial prejudice. In *Contee*, an African American man was tried for rape of a Caucasian woman. In *Contee*, the prosecutor continually emphasized the distinction in race between the victim and the defendant. *Id.* at 203. The court of appeals reasoned that while the racial comments in *Contee* were blatant, the racially biased result remained similar to that in *Jackson*, 364 Md. at 207. The court in *Jackson* relied on *Contee* to uphold that the "matters of race and the matters of a defendant's place of residence or origin are inappropriate sentencing considerations," even when here is an absence of racial prejudice. *Id.* at 202.

The court of appeals analyzed prior case law to clarify the distinction between permissible and impermissible judicial remarks. The court applied the ruling in *Poe v. State*, 341 Md. 523, 671 A.2d 501 (1996), in which a judge's comments concerning his religious and philosophical beliefs did not infer that the sentence was motivated by ill will. The judge in *Poe* stated, "what irritated [him] was this liberal philosophy .... I still believe in old fashion law .... Maybe one day they will say you should not sit here any more because you are too much of a dinosaur. You are too conservative in criminal law." *Id.* at 206. (quoting *Poe v. State*, 341 Md. 523, 671 A.2d 501 (1996)). The court in *Poe* determined a judge could make

remarks, such as those stated above, as long as the sentence and the sentencing factors were not motivated by ill will, prejudice, origin or other impermissible consideration. *Id.* at 206. The court distinguished the remarks in *Jackson* from those in *Poe* by illustrating that the statements in *Poe* concerned the judge's personal beliefs and were not directed at any particular person. *Id.* at 207. Conversely, the remarks in *Jackson* were directed at the defendant and reflected how the judge viewed him personally. The court concluded that judicial comment should only reflect how the law views the defendant's conduct, not how the judge views the defendant's conduct.

The holding by the Court of Appeals of Maryland in *Jackson v. State* redefines the discretionary powers granted to trial judges. The court in *Jackson*, while limiting the discretionary authority, also reaffirms the fundamental right of fairness and the extension of that right to the sentencing phase. *Id.* at 207. The holding affirms Maryland's distinction in limiting the discretionary powers of the trial judge, and reasserts the right to equal treatment regardless of race, origin, or religion. *Jackson* verifies the practitioner's ability to appeal a sentence when a trial judge has stepped beyond the discretionary powers conferred upon the office, and factored a defendant's race, religion or origin into the sentencing guidelines.