



2016

# Recent Developments: Sharp v. State: Despite Not Formally Objecting, Defense Counsel Properly Preserved the Issue of Whether the Circuit Court Inappropriately Weighed Defendant's Decision Not to Plead Guilty at Sentencing; The Circuit Court Did Not Impermissibly Consider Defendant's Rejection of the Plea Offer at Sentencing.

Colin Campbell

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>

 Part of the [Criminal Procedure Commons](#), and the [State and Local Government Law Commons](#)

## Recommended Citation

Campbell, Colin (2016) "Recent Developments: Sharp v. State: Despite Not Formally Objecting, Defense Counsel Properly Preserved the Issue of Whether the Circuit Court Inappropriately Weighed Defendant's Decision Not to Plead Guilty at Sentencing; The Circuit Court Did Not Impermissibly Consider Defendant's Rejection of the Plea Offer at Sentencing.," *University of Baltimore Law Forum*: Vol. 47 : No. 1 , Article 10.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol47/iss1/10>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

## RECENT DEVELOPMENT

---

***SHARP V. STATE*: DESPITE NOT FORMALLY OBJECTING, DEFENSE COUNSEL PROPERLY PRESERVED THE ISSUE OF WHETHER THE CIRCUIT COURT INAPPROPRIATELY WEIGHED DEFENDANT’S DECISION NOT TO PLEAD GUILTY AT SENTENCING; THE CIRCUIT COURT DID NOT IMPERMISSIBLY CONSIDER DEFENDANT’S REJECTION OF THE PLEA OFFER AT SENTENCING.**

**By: Colin Campbell**

The Court of Appeals of Maryland held that defense counsel’s statements conveyed an objection to the circuit court’s perceived consideration of the defendant’s decision not to plead guilty at sentencing. *Sharp v. State*, 446 Md. 669, 113 A.3d 1089 (2016). As a result, the court held that defense counsel sufficiently preserved the issue for appellate review. *Id.* at 684, 113 A.3d at 1098. Ultimately, though, the circuit court’s statements at sentencing did not give rise to the inference of an impermissible consideration. *Id.* at 701, 113 A.3d at 1108.

On March 17, 2003, Raymond Evianiak (“Evianiak”), Justin Sharp (“Sharp”), and others were drinking at a party. While intoxicated, Evianiak insulted Sharp, leading to an argument. A few hours later Sharp proceeded to punch Evianiak and beat him with a bottle, in response to the earlier insult. At no point did Evianiak defend himself or retaliate against Sharp. Sharp was charged with attempted first-degree premeditated murder, first-degree assault, and openly wearing and carrying a dangerous weapon with the intent to injure.

On April 30, 2014, Sharp appeared in court for trial where he was advised of the maximum penalties he faced if convicted. The State offered a plea of first-degree assault and recommended a twenty-five year sentence, with all but ten years suspended. The court counter-offered a twenty-year sentence, with all but eight years suspended. Sharp declined both offers, pled not guilty, and elected a jury trial, at which point the court withdrew its plea offer.

At trial, witnesses testified that Sharp severely beat a drunk and semi-conscious Evianiak with a bottle, splattering blood on the ceiling and walls. Following the trial, the jury found Sharp guilty of first-degree and second-degree assault, and openly wearing and carrying a dangerous weapon with the intent to injure.

At the sentencing hearing, the State requested a prison sentence exceeding the guidelines due to the extent of the injuries sustained by Evianiak and his lack of consciousness while Sharp continued to beat him. Sharp argued for incarceration not exceeding eight years, since that was the court’s offer prior to Sharp electing a jury trial. Sharp commented that the court would have

heard the same facts as they did at trial; therefore, post-trial sentencing should reflect the same punishment as previously offered. The court disagreed; stating that there is a difference due to the trauma placed on victims and witnesses at trial that would not result had the defendant accepted the plea. Consequently, the circuit court deviated from the sentencing guidelines, imposing a stricter punishment to reflect the brutality of beating an unconscious victim. Sharp was sentenced to twenty-five years for the first-degree assault, and a concurrent three years for wearing and carrying a dangerous weapon.

Sharp appealed to the Court of Special Appeals of Maryland, claiming that the circuit court impermissibly considered his decision not to plead guilty at sentencing. In an unreported opinion, the court of special appeals held that Sharp failed to preserve the issue for appellate review and affirmed his conviction. The court also held that the circuit court's statements at sentencing did not show that it was influenced by Sharp's decision not to accept the plea. Sharp petitioned for a *writ of certiorari*, which was granted.

The Court of Appeals of Maryland began its analysis by reviewing the colloquy at the sentencing hearing to determine if the issue was properly preserved for review. *Sharp*, 446 Md. at 682, 113 A.3d at 1096. Maryland Rule 8-131(a) requires a defendant object in order to preserve for appellate review an issue as to the trial court's impermissible considerations at sentencing. *Id.* at 683, 113 A.3d at 1097. At the sentencing hearing, Sharp never formally objected to the circuit court allegedly penalizing Sharp by impermissibly considering that both plea offers were rejected. *Id.* at 683-84, 113 A.3d at 1097. However, the court of appeals found that Sharp's statement, "I don't believe in punishing someone for wanting to go to trial," was sufficient to put the circuit court on notice to his objection. *Id.* at 683-84, 113 A.3d at 1097.

Furthermore, while Sharp acknowledged some of the circuit court's statements during sentencing, the court concluded that these acknowledgements did not amount to an acceptance that the court could punish him for exercising his constitutional right to go to trial. *Id.* at 684, 113 A.3d at 1098. In other words, the court concluded that Sharp's statements did not amount to a withdrawal of his objection. *Id.* As such, the court of appeals held that Sharp's counsel properly preserved the issue for review despite not formally objecting. *Id.*

Next, the court addressed Sharp's contention that the circuit court erred in impermissibly considering his decision not to plead guilty at sentencing. *Sharp*, 446 Md. at 685, 113 A.3d at 1098. Pursuant to Maryland's Declaration of Rights and the United States Constitution, a court may not consider an individual's decision to reject a plea offer at sentencing. *Id.* (citing *Johnson v. State*, 274 Md. 536, 537, 542-43, 543 n.5 (1975)). In order to properly determine if the circuit court impermissibly considered Sharp's decision, the court examined "the context of the entire sentencing proceeding." *Sharp*, 446 Md. at 689, 113 A.3d at 1101.

The court then assessed the circuit court's statements at sentencing as a whole to determine whether a reasonable person would conclude that the circuit court may "have been motivated by an impermissible consideration." *Sharp*, 446 Md. at 689, 113 A.3d at 1101 (quoting *Abdul-Maleek v. State*, 426 Md. 59, 73-74, 43 A.3d 383, 391 (2012)). The court observed that the circuit court's statements at sentencing were in response to Sharp's argument that nothing had changed between the plea offer and post-trial. *Sharp*, 446 Md. at 692, 113 A.3d at 1102-03. Since the circuit court was merely responding to this argument, the court found that there was no indication that Sharp's rejection of the plea was considered in sentencing. *Id.* at 691-92, 113 A.3d at 1102-03.

Next, the court noted the circuit court's rationale for the increased sentence included a number of permissible factors. *Sharp*, 446 Md. at 692, 113 A.3d at 1103. Some of the factors considered were the brutality of the beating and the lack of redeeming qualities during Sharp's allocution and mitigation. *Id.* at 693, 113 A.3d at 1104. Lastly, the court reiterated that the circuit court's plea offer was not taken into consideration to determine Sharp's sentence. *Id.* at 694, 113 A.3d at 1104.

Following this analysis, the court addressed the issue of the propriety of the circuit "court's offer." *Sharp*, 446 Md. at 694-95, 113 A.3d at 1104. The court emphasized that Maryland Rule 4-243 does not confer plea bargaining power to trial courts. *Id.* at 697, 113 A.3d at 1105. Furthermore, the American Bar Association Standard 14-3.3 states that judges should not participate in plea offer negotiations. *Id.* at 699-700, 113 A.3d at 1106-07. In light of these standards and prior precedent, the court concluded that a prosecutor, not a court, may make plea offers. *Sharp*, 446 Md. at 700, 113 A.3d at 1107. While the court offer was improper, its rejection was not considered at sentencing, and thus did not warrant reversal of the sentence. *Id.* at 701, 113 A.3d at 1108.

In *Sharp*, the court held that counsel can preserve an issue for appellate review without formally objecting so long as the statement made properly informs the court that counsel is taking issue with their action. Furthermore, a defendant presented with a plea offer cannot rely on the availability of that sentence during post-trial sentencing. *Sharp* also reiterates the criticisms of court plea offers. Despite the court's best intentions, prosecutors should be cognizant that court offers may result in the negation of a sentence, thereby creating additional work for trial courts and not effectuating judicial economy.