

APPELLATE COURT OF MARYLAND

Lee Boyd Malvo v. State of Maryland

Malvo · No. No. 1568, September Term, 2024 · Decided May 1, 2026

SUMMARY

The Appellate Court of Maryland dismissed Lee Boyd Malvo’s interlocutory appeal concerning the denial of his motion to vacate or withdraw his guilty plea and the delay in resentencing. The court held that the order was not final and did not qualify for review under the collateral order doctrine because no plea agreement existed, the plea-withdrawal issue was intertwined with the merits, and the alleged sentencing delay could be reviewed after final judgment. The court also concluded that due process concerns arising from the delay were reviewable following sentencing.

CASE DETAILS

COURT	Appellate Court of Maryland
WRITING FOR THE COURT	Ripken, J.; Zic, J.; Eyler, James R., Senior Judge, specially assigned
JURISDICTION	Maryland
DECIDED	May 1, 2026
DOCKET	No. 1568, September Term, 2024
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant sought review of an interlocutory order denying his motion to vacate or withdraw his previously accepted guilty plea and determining that resentencing could not occur until he completed his Virginia sentences. The court treated the notice of appeal and briefs as an application for leave to appeal, granted the application, and dismissed the appeal because the order was not a collateral order and was not otherwise appealable.
STANDARD OF REVIEW	The court applied the collateral order doctrine strictly and reviewed whether the challenged orders satisfied each of its four conjunctive requirements. Appealability and the existence of a final judgment were legal questions reviewed under the governing statutory and common-law rules.
PRECEDENTIAL VALUE	Published precedential opinion of the Appellate Court of Maryland
PARTIES	Lee Boyd Malvo v. State of Maryland

TOPICS

appellate jurisdiction interlocutory appeal appellate procedure criminal procedure due process

PRACTICE AREAS

appellate procedure criminal procedure post-conviction relief constitutional law

QUESTIONS PRESENTED

1. Whether the notice of appeal and briefs should be treated as an application for leave to appeal from the denial of a motion to vacate a guilty plea.
2. Whether an order denying a motion to vacate or withdraw an accepted guilty plea is immediately appealable under Maryland's collateral order doctrine.
3. Whether an order delaying resentencing until completion of sentences in another state is immediately appealable under the collateral order doctrine.
4. Whether the alleged inability to obtain an in-person resentencing constituted a breach of a plea agreement warranting withdrawal of the guilty plea.

HOLDINGS

1. Because Maryland law requires an application for leave to appeal from a final judgment following a guilty plea, the court exercised its discretion to treat Malvo's notice of appeal and briefs as an application for leave to appeal and granted the application.
2. An order denying a motion to vacate or withdraw a guilty plea that has already been accepted is not appealable under the collateral order doctrine because it is not completely separate from the merits of guilt or innocence and remains reviewable after final judgment and sentencing.
3. An order delaying sentencing is not appealable under the collateral order doctrine when the alleged due process violation from the delay can be reviewed after final judgment.
4. No enforceable plea agreement existed that required the State to secure Malvo's presence for resentencing or otherwise warranted withdrawal of his guilty plea.

KEY QUOTATIONS

"These four requirements are "conjunctive[.]" and each must be satisfied for the order to qualify as collateral." (at 20-21)

"Because Appellant's request to vacate his guilty plea is not separate from the merits, the third element of the collateral order doctrine is not met." (at 32)

"Consideration of whether a delay in sentencing is unreasonable or has violated a defendant's due process rights is reviewable on appeal after a final judgment is entered." (at 39-40)

FACTUAL BACKGROUND

In 2006, Lee Boyd Malvo pleaded guilty to six Maryland counts of first-degree murder after the State expressly made no sentencing concessions, and he was sentenced to six consecutive terms of life imprisonment without parole. The Supreme Court of Maryland later vacated those sentences and ordered resentencing under the Eighth Amendment because the original proceeding did not clearly comply with juvenile-sentencing requirements. Maryland could not secure Malvo's transfer from Virginia for an in-person resentencing, Virginia would not honor the Maryland writ or enter an executive transfer agreement, and Malvo would not consent to remote sentencing. The circuit court therefore denied his motion to vacate the plea and ordered that sentencing await completion of his Virginia sentences.

PROCEDURAL HISTORY

In 2006, Malvo pleaded guilty in the Circuit Court for Montgomery County to six counts of first-degree murder and received six consecutive life-without-parole sentences. After the Supreme Court of Maryland vacated the sentences and remanded for resentencing under developing juvenile-sentencing jurisprudence, Maryland was unable to obtain Malvo's physical presence from Virginia, and Malvo refused to consent to remote sentencing. The circuit court denied his motion to vacate the guilty plea, found no breach of any plea agreement, and issued a detainer requiring his return for in-person sentencing after completion of his Virginia sentences. The Appellate Court of Maryland dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Malvo v. State, 481 Md. 72, 78, 89, 94-98, 101-02 (2022)
- Montgomery v. Louisiana, 577 U.S. 190 (2016)
- Graham v. Florida, Graham v. Florida, 560 U.S. 48 (2010)
- Miller v. Alabama, Miller v. Alabama, 567 U.S. 460 (2012)
- Jones v. Mississippi, 593 U.S. 98 (2021)
- State v. Meadows, 261 Md. App. 464, 470, 475 (2024)
- Aleman v. State, 469 Md. 397, 408-09 (2020)
- Painter v. State, 157 Md. App. 1, 20 (2004)
- Stephens v. State, 420 Md. 495, 501-05 (2011)
- Schuele v. Case Handyman, LLC, 412 Md. 555, 565 (2010)
- Seward v. State, 446 Md. 171, 176 (2016)
- Douglas v. State, 423 Md. 156, 170 (2011)
- Cubbage v. State, 304 Md. 237, 241 (1985)
- Fuller v. State, 397 Md. 372, 382, 395 (2007)
- Grandison v. State, 425 Md. 34, 52 (2012)
- Miller v. State, 185 Md. App. 293, 295 (2009)
- Bagley v. Warden, 1 Md. App. 154, 158 (1967)

- In re M.P., 487 Md. 53, 68-70 (2024)
- In re Franklin P., 366 Md. 306, 327 (2001)
- Bunting v. State, 312 Md. 472, 477-82 (1988)
- Rios v. State, 186 Md. App. 354, 357-66 (2009)
- Courtney v. Harford County, 98 Md. App. 649, 651-60 (1994)
- Falero v. State, 212 Md. App. 572, 577-79 (2013)
- Y.Y. v. State, 205 Md. App. 724, 730-43 (2012)
- Buzbee v. State, 199 Md. App. 678, 687 (2011)
- Hughes v. State, 243 Md. App. 187, 199 (2019)
- Mainor v. State, 475 Md. 487, 501-02 (2021)
- Lee v. State, 36 Md. App. 249, 254-56 (1977)
- Harris v. State, 420 Md. 300, 312, 318 (2011)
- Abney v. United States, 431 U.S. 651, 661 (1977)
- Tamara A. v. Montgomery County Department of Health and Human Services, 407 Md. 180, 191 (2009)
- Blinken v. State, 291 Md. 297, 306 (1981)
- Dawson v. State, 172 Md. App. 633, 635, 638 (2007)
- Harding v. State, 235 Md. App. 287, 292, 298 (2017)
- White v. State, 250 Md. App. 604, 617, 647-49 (2021)
- Houston, 2026 WL 785704, at *8-*9, *12 (Md. 2026)
- Betterman v. Montana, 578 U.S. 437, 447-48 (2016)
- United States v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in U.S. Currency, 461 U.S. 555, 564 (1983)
- Morrissey v. Brewer, 408 U.S. 471, 481 (1972)
- Reese v. Department of Health and Mental Hygiene, 177 Md. App. 102, 150 (2007)
- Johnson v. Maryland Department of Health, 470 Md. 648, 686 (2020)
- Pollard v. United States, 352 U.S. 354, 361 (1957)
- State v. Lewis, 278 P.3d 51, 53, 55-62 (Or. Ct. App. 2012), review denied, 291 P.3d 737 (Or. 2012)
- United States v. Ray, 578 F.3d 184, 199-200 (2d Cir. 2009), cert. denied, 599 U.S. 1107 (2010)
- United States v. Lovasco, 431 U.S. 783, 789-90 (1977)
- State v. Maloney, 354 P.3d 611, 618-19 (Mont. 2015)
- United States v. Kidd, 127 F.4th 982, 984, 988 (5th Cir. 2025)
- State v. Lopez, 410 P.3d 226, 231-34 (N.M. Ct. App. 2017)
- Parker v. State, 193 Md. App. 469, 486 (2010)
- State v. Hancock, 748 So. 2d 549, 551-52 (La. Ct. App. 1999)
- Commonwealth v. Greer, 554 A.2d 980, 985-87 (Pa. Super. Ct. 1989)

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