Circuit Court for Baltimore City
Case Nos. 18623301-04

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1728

September Term, 2021

LEONARD P. CIRINCIONE

v.

STATE OF MARYLAND

Beachley,
Shaw,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 13, 2022

In 1987, Leonard P. Cirincione, appellant, was convicted in the Circuit Court for Baltimore City of first-degree murder, attempted first-degree murder, and assault. The Court sentenced Cirincione to a total term of life plus 20 years' imprisonment. In 2013, Cirincione filed a motion for reconsideration of his sentence, which the court denied. In 2021, Cirincione filed a second motion for reconsideration of sentence pursuant to Maryland Rule 4-345 and Md. Code (1982, 2019 Repl. Vol.), §§ 8-505 and 8-507 of the Health – General ("HG") Article.[1] Following a hearing, the court denied the motion.

In this appeal, Cirincione presents two questions, which we have rephrased for clarity.[2] They are:

1. Did the circuit court err in denying Cirincione's motion for modification of sentence, where the State supported the motion and expressly waived the time provisions set forth in Maryland Rule 4-345?

2. Did the circuit court err in refusing to grant Cirincione relief pursuant to HG §§ 8-505 and 8-507?

As to the first question, we hold that the circuit court did not err in denying

[1] Cirincione also requested relief pursuant to one of the Court of Appeals' administrative orders related to the COVID-19 pandemic. The trial court denied that relief, which Cirincione does not challenge on appeal.

[2] Cirincione phrased the questions as:

1. Whether the Trial Court's denial of the Appellant's Motion to Revise Sentence was proper, especially in light of the State's waiver of any argument opposing a reduction of the Appellant's sentence.

2. Whether the Trial Court's denial of the Appellant's Motion for Order for Disposition Pursuant to Md. Health Code Secs. 8-505 – 8-507 was proper in light of the Trial Court's refusal to entertain expert testimony as to the propriety and necessity of the proposed treatment.

Cirincione's motion for modification of sentence. As to the second question, we hold that the court's denial of Cirincione's request pursuant to HG §§ 8-505 and 8-507 is not appealable. We therefore dismiss that portion of Cirincione's appeal and affirm.

BACKGROUND

In June 1986, Cirincione was driving a vehicle on 33rd Street in Baltimore when he struck three police officers, killing one and injuring another. At the time of the accident, Cirincione was under the influence of phencyclidine, commonly known as "PCP". Cirincione was ultimately charged, tried, and convicted in the circuit court of first-degree murder, attempted first-degree murder, and assault. In April 1987, the court sentenced Cirincione to a total term of life plus 20 years' imprisonment, and this Court affirmed that judgment in *Cirincione v. State*, 75 Md. App. 166 (1988).

In 2012, Cirincione filed a request in the circuit court to file a belated motion for modification of sentence. The court granted the request, and Cirincione subsequently filed his motion. In 2013, the court considered and denied the motion.

In 2021, Cirincione filed a second motion for modification titled "Motion for Modification of Sentence and Order for Disposition Pursuant to Md. Health Gen. Code §§ 8-505-07 and Request for an Expedited Hearing," which is the subject of this appeal. Cirincione argued that his life sentence should be modified because his "institutional adjustment" since his incarceration indicated that he was "an excellent candidate for release upon probation," and because his "accomplishments and conduct while incarcerated" demonstrated that he was "likely to be successful if released." Cirincione also argued that

his sentence should be modified pursuant to HG §§ 8-505 and 8-507 so that he could obtain treatment for substance abuse.

The State filed a response in which it indicated that it was "supportive of a modification of sentence that could result in a lesser sentence and/or the ultimate release of [Cirincione] from incarceration." The State also agreed "to waive any time requirement" for the court's reconsideration of Cirincione's sentence. The State did, however, oppose Cirincione's request for release pursuant to HG §§ 8-505 and 8-507 because, according to the State, Cirincione did not suffer from a recent or current substance abuse problem.

At the hearing on his motion for modification, defense counsel explained that Cirincione's motion was founded upon two distinct concepts: Maryland Rule 4-345, which permits the circuit court to revise a sentence under certain circumstances, and HG §§ 8-505 and 8-507, which permits the court to order a substance abuse evaluation of a defendant and to modify a defendant's sentence to facilitate treatment for substance abuse. Regarding Rule 4-345, defense counsel recognized that the Rule included a provision stating that modifications of sentence must be filed within 90 days of the imposition of the sentence. Defense counsel argued, however, that recent case law, namely, *Rosales v. State*, 463 Md. 552 (2019) and *State v. Schlick*, 465 Md. 566 (2019), had established that rule-based deadlines like the one contained in Rule 4-345 were "claim based" rather than jurisdictional, and therefore were subject to waiver by the State. Defense counsel maintained that, because the State had agreed to waive the time provision set forth in the Rule, the court was permitted to consider the motion.

Regarding the circuit court's power pursuant to HG §§ 8-505 and 8-507, defense counsel admitted that Cirincione had "not for a number of years engaged in behavior which is indicative of addiction." On the other hand, defense counsel argued that there was little question that Cirincione had struggled with addiction in the past and that he had "not really dealt with the causes and effects of addiction." Defense counsel insisted that Cirincione would "for the rest of his life be an addict" and that he would thus benefit from substance abuse treatment.

In the end, the circuit court rejected both grounds and denied Cirincione's motion. Regarding its revisory power pursuant to Rule 4-345, the court noted that, in *Cardinell v. State*, 335 Md. 381 (1994), *overruled on other grounds by State v. Green*, 367 Md. 61 (2001), the Court of Appeals held that the granting of an untimely supplemental motion was erroneous because the Rule did not authorize such a modification outside of the 90-day time period. The circuit court found that Cirincione's motion for modification was similarly flawed and should be denied for that reason. The court also found that the case law cited by Cirincione was inapposite. The court found, therefore, that *Cardinell* was "the law of Maryland with respect to these matters" and that the court did not "have the authority to not obey the law." The court explained that "we have procedural rules for a reason and that's to have fair and consistent administration of justice in our state." The court added that "if the 90-day rule didn't mean anything, then we wouldn't have it" and that the parties could not "simply decide to waive that rule."

As to Cirincione's claim pursuant to HG §§ 8-505 and 8-507, the circuit court found that there were no grounds to grant the request:

> Mr. Cirincione has been incarcerated for quite some time. I am most certain that during that time he has . . . been able to avail himself of all services in our penal system with respect to drug and/or alcohol abuse. So it is discretionary on my part. 8-505(a)(1) says that the court may order the Department of Health to evaluate if it appears that a defendant has in the current, which is presently, an alcohol or drug abuse problem or the defendant alleges an alcohol or drug dependency.

Following those remarks, defense counsel asked the circuit court for permission to proffer the substance of the evidence he had planned on presenting in support of Cirincione's request. The court granted the request, and defense counsel provided a summary of the evidence. After that recitation, the court considered the proffer and found that, despite the proffer, the court did not "see this as a case in which, you know, the model fits."

The circuit court thereafter entered an order denying Cirincione's motion. This timely appeal followed.

DISCUSSION

I. THE CIRCUIT COURT CORRECTLY DENIED CIRINCIONE'S SECOND MOTION TO MODIFY SENTENCE

Cirincione first argues that the circuit court erred in denying his motion for modification of sentence because the court incorrectly assumed that it lacked jurisdiction to consider the motion due to the tardiness of his filing. According to Cirincione, *Rosales* makes clear that Rule 4-345 is simply a claim-processing rule, and that the failure to timely file a motion within 90 days as required by that Rule has no impact on the court's ability

to decide the motion. As we shall explain, the circuit court correctly denied Cirincione's motion because Cirincione had already filed a motion to modify sentence which was heard and denied in 2013, and the Rule does not grant the court authority to consider a second untimely motion for modification absent fraud, mistake, or irregularity—claims Cirincione did not make.

Generally, the denial of a motion for modification of sentence is not an appealable order. *Hoile v. State*, 404 Md. 591, 615-616 (2008). Where, however, a court denies such motion on the grounds that it lacked authority to consider the merits pursuant to Rule 4-345, that denial is appealable. *Fuller v. State*, 169 Md. App. 303, 309-10 (2006). We review a court's interpretation of Rule 4-345 *de novo*. *Schlick*, 465 Md. at 573.

Rule 4-345(e) states, in relevant part, that "[u]pon a motion filed within 90 days after imposition of a sentence . . . in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence[.]"[3] Md. Rule 4-345(e)(1). Thus, "Maryland Rule 4-345(e) generally allows the court to modify a sentence upon a timely motion by the defendant." *Brown v. State*, 470 Md. 503, 514 (2020). The Court of Appeals has described the 90-day time limit as "mandatory." *Greco v. State*, 347 Md. 423, 435 (1997); *see also Brown*, 470 Md. at 514 ("The defendant *must* file the motion within 90 days of sentencing." (emphasis added)).

[3] The Rule includes an additional provision that states that a court "may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence." Md. Rule 4-345(e)(1). That provision was not added until 2004 and thus is not applicable here. *Schlick*, 465 Md. at 575.

Faced with the language of the Rule itself as well as the Court of Appeals's interpretation that the 90-day time limit is "mandatory," Cirincione argues that, pursuant to *Rosales*, Rule 4-345 is a "claim-processing" rule rather than a "jurisdictional" rule. Cirincione posits that, as a claim-processing rule, the 90-day time limit in 4-345(e) can be waived, which the State did in this case. As we shall explain, *Rosales* provides Cirincione no assistance.

In *Rosales*, the Court of Appeals was tasked with deciding whether Maryland Rule 8-202 was jurisdictional or a claim-processing rule. 463 Md. at 557. Rule 8-202 governs the time limitations for a party to note an appeal. *Id*. at 563-64. The Rule provides in relevant part: "Except as otherwise provided in this Rule or by law, [a] notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a).

Prior to *Rosales*, a party's failure to file a notice of appeal within 30 days meant that the appellate court lacked "jurisdiction" to decide the case even if the opposing party waived or forfeited noncompliance with the time requirements. *Id*. at 567. The *Rosales* Court determined, however, that Maryland appellate courts had mischaracterized Rule 8-202's time requirement as jurisdictional. *Id*. at 568. The Court explained that, whereas *statutes* establishing time limits are jurisdictional, *rules* promulgated by courts are merely claim-processing provisions. *Id*. The Court described a claim-processing rule as a rule "serving 'to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.'" *Id*. at 567 (quoting *Hamer v.*

Neighborhood Hous. Servs. of Chi., ____ U.S. ____, 138 S. Ct. 13 (2017)). Thus, under *Rosales*, if a time limitation is only found in the Maryland Rules but not in the Code, such a limitation is ostensibly only a claim-processing rule and may be subjected to waiver or forfeiture.

Cirincione seizes on the notion that Rule 4-345 is a claim processing rule because it has no statutory counterpart, and argues that the court had jurisdiction to consider his untimely second motion to modify sentence. Assuming *arguendo* that Rule 4-345 is a claim-processing rule subject to waiver and forfeiture, we nevertheless conclude that the circuit court correctly denied his second motion for modification because, in light of the court's denial of Cirincione's first motion for modification, the court had no authority to grant Cirincione's second motion for modification.

Rule 4-345, which governs the filing of motions for modification of sentence, provides the following general time restrictions:

> Upon a motion filed within 90 days after imposition of a sentence . . . in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Rule 4-345(e). We note that no similar time restrictions apply where the sentence is illegal, or in cases of fraud, mistake, or irregularity. Rather, Rule 4-345(a) provides that "The court may correct an illegal sentence at any time[,]" and Rule 4-345(b) provides that "The Court has revisory power over a sentence in case of fraud, mistake, or irregularity."

Although Cirincione attempts to distinguish *Cardinell*, the Court of Appeals held in that case that a court does not have the power to modify a sentence based on a second, untimely motion to modify sentence. 335 Md. at 385-86. In *Cardinell*, the defendant received her sentence on October 4, 1990. *Id*. at 384. She timely filed her first motion for modification of sentence on December 27, 1990—well within the 90 days permitted by Rule 4-345. *Id*. On January 3, 1991, the circuit court denied Cardinell's motion for modification. *Id*. Next, on May 1, 1991, Cardinell filed a "supplemental" motion for modification of sentence which the sentencing court granted. *Id*.

In describing the significance of her first and second motion, the Court of Appeals explained:

> The defendant's first motion for modification was timely. That motion, however, was denied. At that point, and thereafter when the 90-day period following the imposition of sentence expired, no motion was pending. The so-called "supplemental" motion for modification was filed months later, and simply had no efficacy under the Rule.

Id. at 385. The Court continued,

> The trial judge in the case before us had no inherent or common law authority, nor any authority by virtue of statute or rule, to reduce this defendant's sentence at the time he did so. The absence of authority or power in this case means that the trial judge acted without jurisdiction, as that term has been used in cases dealing with the State's right to appeal. *See*, e.g., [*Rayner v. State*, 52 Md. 368, 376 (1879)] (absence of power equated to absence of jurisdiction); [*State v. Fisher*, 204 Md. 307, 312 (1954)] (where legislature stripped trial judge of power to suspend sentence, legality of the suspension is jurisdictional) . . . [*State ex rel. Sonner v. Shearin*, 272 Md. 502, 526 (1974)] (stating that the "issue of the trial court's jurisdiction is involved in the sense of whether it exceeded the powers vested in it").

Id. at 391. The *Cardinell* Court made clear that there was simply no authority in the Rule for the court to grant her relief in the context of a second, untimely motion. *Id*.

This Court reached a similar conclusion in *Tolson v. State*, 201 Md. App. 512 (2011). There, the defendant filed a timely motion for modification of sentence, which the trial court denied. *Id.* at 515. Nearly two years later, the defendant filed a motion requesting reconsideration of that denial. *Id.* The trial court granted the motion and subsequently increased the defendant's sentence. *Id.* at 515-16. On appeal before this Court, the defendant argued that the increased sentence was illegal. *Id.* at 517. The State conceded error but argued that the trial court erred for the additional reason that it did not have the authority to modify its prior denial of the defendant's motion for modification of sentence. *Id.* We agreed:

> The sole authority for modifying a sentence imposed is Maryland Rule 4-345(e), a product of the Court of Appeals' rule-making authority. That rule requires a person wishing to challenge his sentence to file a motion to modify it within ninety days of imposition. *If a court denies that motion, and more than ninety days have elapsed since the imposition of sentence, "the defendant is finished – he or she may not file another such motion for reconsideration*," *Greco v. State*, 347 Md. 423, 436, 701 A.2d 419 (1997), or, as we have referred to it, a "motion to modify," unless he can show fraud, mistake, or irregularity; none of which is alleged here. *Clark v. State*, 348 Md. 722, 732, 705 A.2d 1164 (1998). . . .
>
> Once a court has lost jurisdiction, under Rule 4-345, after denying a motion to modify because ninety days have elapsed since the imposition of sentence, it may not consider a second motion to modify sentence and impose a new sentence. *State v. Karmand*, 183 Md. App. 480, 492-95 (2008). And, because no logical distinction can be drawn between reconsideration of a previously denied motion to modify and consideration of a second motion to modify under Rule 4-345, we hold that, once a court has lost jurisdiction after denying a motion to modify, because ninety days have elapsed from

> imposition of sentence, it may not reconsider a previously denied motion to modify sentence and impose a new sentence.

Id. at 517-18 (emphasis added). As in *Cardinell*, the *Tolson* Court similarly concluded that there was no basis in the Rule for the court to consider the second motion. Tolson's second motion failed to allege fraud, mistake, or irregularity pursuant to 4-345(b), and in the *Tolson* Court's words, where a court denies a timely motion for modification of sentence, "and more than ninety days have elapsed since the imposition of sentence, 'the defendant is finished – he or she may not file another such motion for reconsideration' . . . unless he [or she] can show fraud, mistake, or irregularity[.]" *Id.* (first quoting *Greco*, 347 Md. at 436; then quoting *Clark v. State*, 348 Md. 722, 732 (1998)).

Applying *Cardinell* and *Tolson* to the instant case, we conclude that the court did not have the authority to consider Cirincione's second motion for modification. Cirincione filed his first motion for modification in 2013, which was deemed timely as a result of being granted the right to file a belated motion for modification. The court considered that motion and denied it. When Cirincione filed his untimely second motion for modification in 2021, the court had no authority to consider it under *Cardinell* and *Tolson*. Moreover, we note that Cirincione failed to allege any fraud, mistake, or irregularity in his second motion to modify, nor did he allege any illegality in his sentence. Accordingly, Rule 4-345 simply provides no basis for the circuit court to grant Cirincione's requested relief, and the court here did not err in denying Cirincione's motion. *See State v. Warfield*, 148 Md. App. 178, 186 n.2 (2002) ("Trial judges know that, absent a showing of fraud, mistake, or irregularity, they have no authority under Rule 4-345 to modify a lawful sentence except

upon a motion filed within ninety days following imposition of the sentence."), *superseded by statute on other grounds as recognized in State v. Bratt*, 241 Md. App. 183, 189 (2019).[4]

II. CIRINCIONE MAY NOT APPEAL THE DENIAL OF HIS REQUEST FOR RELIEF PURSUANT TO HG §§ 8-505 AND -507.

Cirincione next claims that the circuit court erred in denying his request for disposition pursuant to HG §§ 8-505 and 8-507. He asserts that the court's decision was "legally improper" because the court refused to permit or consider any testimony as to the propriety and necessity of the proposed treatment. He further asserts that the court did not properly articulate its reasons for refusing to permit testimony or in denying the requested relief.

The State responds that Cirincione's claim is not properly before this Court because the circuit court's discretionary denial of his request is not an appealable order. The State also claims that the court did explain its reasons for denying the motion.

Under HG § 8-505, a court

> may order the Department [of Health] to evaluate a defendant to determine whether . . . the defendant is in need of and may benefit from treatment if:
>
> > 1) It appears to the court that the defendant has an alcohol or drug abuse problem; or

[4] We need not decide whether Rule 4-345(e) is a claim-processing rule. Here, Cirincione's "claim"—his first motion for a modification of sentence—was timely filed and "processed" when the court denied his motion. After the court denied his timely motion, "the defendant is finished—[Cirincione] may not file another such motion for reconsideration." *Tolson*, 201 Md. App. at 517-18. We therefore reject Cirincione's suggestion that because Rule 4-345(e) is a claim processing rule, a defendant may file multiple motions for modification of sentence, which the court must decide if it determines there has been waiver or forfeiture of the time restriction for filing.

2) The defendant alleges an alcohol or drug dependency.

HG § 8-505(a)(1)(i). Such an evaluation may be ordered "before or during a criminal trial, before or after sentencing, or before or during a term of probation[.]" *Id.* If it is determined that a defendant has an alcohol or drug dependency, the court "may commit the defendant as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment, to the Department for treatment that the Department recommends[.]" HG § 8-507(a)(1).

Nevertheless, when a defendant requests relief pursuant to HG §§ 8-505 and 8-507 and the court makes the discretionary decision to deny that request, that decision is not an appealable order. *See Fuller*, 397 Md. at 380 (holding that "the denial of a petition for commitment for substance abuse treatment pursuant to [HG § 8-507] is not an appealable order"); *see also Hill v. State*, 247 Md. App. 377, 383-84 (2020). As the Court of Appeals explained in *Fuller*, the right to seek appellate review is granted by statute, and the denial of a petition pursuant to HG § 8-507 would not meet that standard because such a petition is a statutory cause of action and the relevant statute does not include a provision regarding appealability. *Fuller*, 397 Md. at 382-83, 389-93. The Court further explained that the right to appeal must ordinarily be taken from a final judgment or an appealable collateral order, and the denial of relief pursuant to HG § 8-507 does not constitute either because such a denial does not conclusively settle the defendant's rights, as a defendant can file repeated petitions even after a request is denied. *Id.* at 383, 394-95.

Here, the circuit court made the discretionary decision to deny Cirincione's request for relief pursuant to HG §§ 8-505 and 8-507, and there is nothing in the record to indicate that the court's decision precluded Cirincione from filing another request in the future. Thus, under *Fuller*, the court's decision is not an appealable order, and Cirincione's appeal of that decision must be dismissed.

Relying on *Hill*, Cirincione insists that the circuit court's decision is appealable. He notes that in *Hill*, this Court held that the denial of a request pursuant to HG § 8-507 was a final, appealable order where the court ruled that it was legally precluded from granting relief under the statute. He argues that the court in the instant case made a similar ruling.

We conclude that Cirincione's characterization of the circuit court's ruling is incorrect and that his reliance on *Hill* is misplaced. In *Hill*, we held that the court's denial of a request pursuant to HG § 8-507 was appealable where the court had ruled that it was precluded from authorizing treatment because the defendant had been convicted of a crime of violence and was not yet parole eligible. *Hill*, 247 Md. App. at 389. In that case, the defendant, Edward Hill, was convicted in 2011 of a crime of violence, and, in 2019, he asked the court for relief pursuant to HG § 8-507. *Id.* at 379-83. Although the court had previously indicated a willingness to authorize treatment pursuant to the statute, the court denied Hill's request, citing a 2018 amendment to the statute that disallowed substance abuse evaluation and treatment for prisoners convicted of crimes of violence until they became eligible for parole. *Id.* In so doing, the court rejected Hill's argument that application of the amendment violated the *Ex Post Facto* Clause of Article 1 of the United

States Constitution and Article 17 of the Maryland Declaration of Rights. *Id.* at 382.

On appeal before this Court, the State argued that, under *Fuller*, we lacked jurisdiction to consider the appeal. *Id.* at 383. We disagreed, explaining that "the court's express determination that application of the 2018 amendments to Hill do not violate the *Ex Post Facto* Clause is final in that it denies Hill any possibility of being granted an HG § 8-507 commitment until after he reaches parole eligibility." *Id.* at 389. We concluded that the ruling in Hill's case constituted a final judgment and that, consequently, we had jurisdiction to consider the appeal. *Id.*

Here, by contrast, the record shows that the court read and considered Cirincione's request on the merits, and there is nothing to indicate that the court believed that it was prohibited from granting relief. As the court explained, its decision to deny Cirincione's request was "discretionary" based on the circumstances of the case. Specifically, the court noted that Cirincione had been "incarcerated for quite some time" and that the court was "most certain that during that time he has . . . been able to avail himself of all services in our penal system with respect to drug and/or alcohol abuse." The court then heard a proffer from Cirincione's counsel regarding the substance of the evidence he had planned to present, after which the court stated that, although it understood and appreciated that evidence, it nevertheless did not believe that relief under the statute was appropriate.

From that, and despite Cirincione's claims to the contrary, it is clear that the court considered the evidence and made a decision on the merits. Moreover, the court's decision did not foreclose Cirincione's ability to obtain relief by way of a subsequent request under

the statute. Accordingly, the court's decision to deny Cirincione's request is not appealable under *Fuller*.

APPEAL DISMISSED AS TO CIRCUIT COURT'S DENIAL OF MOTION FILED PURSUANT TO HG §§ 8-505 AND 8-507. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANT.