Circuit Court for Carroll County
Case No. 06-K-91-016826

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 239

September Term, 2023

ABRAS MORRISON

v.

STATE OF MARYLAND

Reed,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: July 21, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On August 25, 1992, a jury sitting in the Circuit Court for Carroll County convicted Abras Morrison, the Appellant, of first-degree felony murder, kidnapping, robbery, and related conspiracy counts. The court subsequently sentenced the Appellant to life imprisonment without the possibility of parole for first-degree murder, and either merged or imposed concurrent sentences for the remaining counts. We affirmed the Appellant's convictions on direct appeal. *See Morrison v. State*, 98 Md. App. 444 (1993).

In 2022, the Appellant filed a petition for a substance abuse evaluation and commitment to a treatment facility pursuant to Maryland Code (1982, 2019 Repl. Vol.), §§ 8-505 and 8-507 of the Health–General Article ("HG").[1] Following a hearing, the circuit court denied that petition. The Appellant noted a timely *pro se* appeal from that denial and presents three issues for our review, which we have consolidated and rephrased as follows:

> Did the circuit court violate the prohibition against *ex post facto* laws by denying the Appellant's petition for a substance abuse evaluation and commitment for treatment based on the 2018 amendments to HG §§ 8-505 and 8-507?[2]

[1] The Appellant's petition was captioned as a "Motion for Evaluation Pursuant to Maryland Health General Article, Section 8-505." In the body of that petition, however, the Appellant not only sought a substance abuse evaluation under HG § 8-505; he also requested that the court "[o]rder treatment pursuant to [HG §] 8-507." Thus, the filing was, in substance, a request for both an evaluation under HG § 8-505 and commitment pursuant to HG § 8-507. *See Miller v. Mathias*, 428 Md. 419, 442 n.15 (2012) ("'[T]he nature of a motion is determined by the relief it seeks and not by its label or caption.'" (quoting *Hill v. Hill*, 118 Md. App. 36, 44 (1997), *cert. denied*, 349 Md. 103 (1998))).

[2] In his informal brief, the Appellant articulated the issues as follows:

(continued . . .)

The State has moved to dismiss this appeal as unauthorized by law. For the reasons discussed below, we will deny that motion, vacate the order denying the Appellant's petition, and remand for reconsideration of the petition on its merits.

FACTUAL AND PROCEDURAL BACKGROUND[3]

The Appellant, through counsel, filed his petition for a substance abuse evaluation and commitment on December 9, 2022. In that petition, the Appellant asserted that he had "been abusing drugs and/or alcohol since a very young age" and "was in need of, and may benefit from, [substance abuse] treatment." The Appellant also claimed that he had been "sentenced . . . for conduct that directly resulted from years of substance abuse[.]" On December 20, 2022, the State filed an opposition to the Appellant's petition.

1. Circuit court erred when she ruled that Appellant was not similarly situated as *Hill v. State*, 247 Md. App. 377 (2020).

2. Circuit court erred when she ruled that the court's authority to authorize treatment post-sentencing under HG § 8-505 did not exist prior to 2009.

3. Assistant State's Attorney['s] conflict of interest was not placed on record[.]

We decline to address the Appellant's third issue for two reasons. First, we need not do so because our decision to vacate the court's judgment renders the matter moot. Secondly, the issue was neither "raised in [n]or decided by the trial court[,]" and is therefore unpreserved. Md. Rule 8-131(a).

[3] We set forth the facts underlying the Appellant's convictions in *Morrison v. State*, 98 Md. App. 444, 447–49 (1993). As those facts are irrelevant to the resolution of this appeal, we decline to address them and will proceed directly to the procedural history on which our holding rests. *See Kennedy v. State*, 436 Md. 686, 688 (2014); *Teixeira v. State*, 213 Md. App. 664, 666-67 (2013).

The circuit court set a hearing on the petition for March 24, 2023. At that hearing, the Appellant, through his attorney, represented that he began using alcohol at the age of ten to cope with sexual abuse that he had purportedly suffered. According to counsel, the Appellant progressed from alcohol to cocaine at the age of fifteen and began stealing to support his "unmanageable addiction." Finally, the Appellant's attorney noted that the criminal episode in this case began "as a theft that evolved into a kidnapping and then a murder," suggesting that the underlying crimes were ultimately attributable to the Appellant's addictions. For its part, the State observed that the Appellant had not mentioned his alleged history of substance abuse during trial, at sentencing, or in post-conviction proceedings. The State then contended that the Appellant was ineligible for commitment under HG § 8-507, arguing that when the Appellant was convicted and sentenced, the statute authorized commitment for substance abuse treatment only before sentencing.

Turning to the current version of HG § 8-507, the State noted that 2018 amendments to the statute ("the 2018 amendments") prohibit courts from ordering substance abuse commitments for defendants serving sentences for violent crimes unless and until they are eligible for parole. In effect, the State argued that because the Appellant was serving a life sentence *without the possibility of parole* for first-degree murder—a violent crime—he was ineligible for HG § 8-507 commitment under the 2018 amendments. Accordingly, it concluded that the Appellant did not qualify for relief under either version of HG § 8-507.

In response to the State's assertions, the Appellant's attorney argued that, under our decision in *Hill v. State*, 247 Md. App. 377 (2020), defendants sentenced before the 2018 amendments took effect remain eligible for commitment pursuant to HG § 8-507. The State disagreed, interpreting *Hill* to hold that the 2018 amendments violate the prohibition against *ex post facto* laws only when applied to inmates who were initially "entitled to 8-507 drug treatment" but became ineligible as a result of that statutory change. In distinguishing *Hill* from this case, the State thus argued that while Hill was eligible for HG § 8-507 commitment under the version of the statute in effect when he was sentenced, the Appellant was not. The State acknowledged, however, that the *Hill* opinion was not entirely clear in this regard. After hearing from the parties, the court reserved ruling on the matter.

On March 27, 2023, the circuit court entered a written order denying the Appellant's petition. It began by noting that "[n]othing in the record reflect[ed] that this crime was motivated, or otherwise caused by, a substance use disorder." Ultimately, however, the court's denial appears to have rested on its determination that applying the 2018 amendments to the Appellant did not violate the prohibition against *ex post facto* laws. The court reasoned:

> *Hill* . . . does not apply to the case at hand. The Court in *Hill* was tasked with determining whether the 2018 legislative amendment of [HG] § 8-507 violated the *Ex Post Facto* Clause when it precluded a court from ordering a commitment for substance abuse treatment for a defendant serving a sentence for a crime of violence until the defendant was eligible for parole. In that case, Mr. Hill was eligible for a[n] [HG] § 8-507 commitment at the time he was convicted in 2011. The court held [that] the 2018 amendments, as applied to Hill, violated the [prohibition against] *ex post facto* laws because

> the amendments created a significant risk of increasing Hill's punishment by prolonging his term of incarceration.
>
> [The Appellant], however, was not similarly situated to Mr. Hill.
>
> Unlike Mr. Hill, [the Appellant] was sentenced on October 27, 1992. The [c]ourt's authority to authorize treatment post-sentencing under [HG] § 8-505 did not exist prior to 2009. Therefore, the [Appellant] did not have any expectation that he may one day be eligible for a[n] [HG] § 8-507 release when he was sentenced on October 27, 1992. The fact that the [HG] § 8-505 and § 8-507 statutes were amended to permit a [H]ealth [G]eneral release for crimes of violence, after his sentence of [l]ife without [p]arole was imposed, does not then bequeath on him an *ex post facto* argument when that right is then taken away by a subsequent change in the statute, such as was the case for Mr. Hill.

(Footnote omitted). This *pro se* appeal followed.

STANDARD OF REVIEW

When a trial court order involves interpretating and applying Maryland statutory and case law, this Court must determine "whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Cain v. Midland Funding, LLC*, 452 Md. 141, 156 A.3d 807 (2017) (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)).

DISCUSSION

I. State's Motion to Dismiss Appeal

As a preliminary matter, we address the State's motion to dismiss this appeal. The State correctly observes that "[t]he denial of a motion under § 8-505 or § 8-507 ordinarily is not an appealable order." (quotation marks and citation omitted). It acknowledges, however, that this general rule is subject to an exception where the court denies "such a motion on the basis that legal principles . . . prevent the court from exercising its

discretion." (quotation marks and citation omitted). The State also concedes that the court denied the Appellant's motion based in part on "its conclusion that he [wa]s legally ineligible to be evaluated for commitment under § 8-505 and § 8-507." It maintains, however, that the court nevertheless exercised its discretion by denying the Appellant's petition on the independent ground that "[n]othing in the record reflect[ed] that [the Appellant's] crime was . . . caused by[] a substance use disorder." (cleaned up). "Because that discretionary basis for denial of the motion is not reviewable," the State concludes, "the denial of [the Appellant's petition] does not come within the exception to non-appealability[.]"

In *Fuller v. State*, 397 Md. 372 (2007), the Supreme Court of Maryland established the general rule that "the denial of a petition for commitment for substance abuse treatment pursuant to [HG §] 8-507 . . . is not an appealable order[,]" reasoning that such a ruling does not ordinarily constitute a final judgment.[4] *Id.* at 380. The Court explained:

> [T]he denial of Fuller's petition did not settle Fuller's ability to seek commitment pursuant to [HG §] 8-507 for substance abuse treatment. Under [HG §] 8-507, a petition may be filed at any "time the defendant voluntarily agrees to participate in treatment." Thus, petitions may be filed repeatedly[,] and the denial of a single petition does not preclude Fuller from filing another.

Id. at 394.

[4] The Court also rejected Fuller's contention that the denial of his petition was appealable pursuant to the collateral order doctrine. *Fuller*, 397 Md. at 394–95.

In *Hill*, *supra*, we recognized a limited exception to the *Fuller* holding. Hill filed a petition for HG § 8-507 commitment in 2019. 247 Md. App. at 380–81. At that time, Hill was serving a twenty-five-year sentence for first-degree assault—a violent offense—and was not yet eligible for parole. *Id.* at 380. He was, therefore, ineligible for HG § 8-507 commitment under the 2018 amendments, which "preclude[d] a court from ordering a commitment for substance abuse treatment for a defendant convicted of a crime of violence 'until the defendant is eligible for parole.'"[5] *Id.* at 379 (quoting HG § 8-507(a)(2)(i)). At a hearing on his petition, however, Hill argued that "application of the amended HG § 8-507 violated the *ex post facto* prohibition[.]"[6] *Id*. at 382. The circuit court rejected that argument and denied the petition, "effectively ruling that Hill was not eligible for an HG § 8-507 commitment under the 2018 amendments." *Id.* at 400.

In a motion to dismiss Hill's ensuing appeal, the State claimed that "this Court lack[ed] jurisdiction to consider the appeal pursuant to *Fuller*[.]" *Id.* at 383. We disagreed, holding that "the court's express determination that application of the 2018 amendments to Hill d[id] not violate the *Ex Post Facto* Clause [wa]s final in that it denie[d] Hill any

[5] HG § 8-505 was contemporaneously amended to prohibit courts from ordering substance abuse evaluations for a defendant "serving a sentence for a crime of violence . . . until the defendant is eligible for parole." 2018 Md. Laws, ch. 143, § 1 (S.B. 101). *See also Hill*, 247 Md. App. at 399 n.4 ("The amendments to HG § 8-505 similarly provided that, as to violent offenders, 'a court may not order the Department to evaluate a defendant under this section until the defendant is eligible for parole.'" (quoting HG § 8-505(a)(2)(i))).

[6] We will address the merits of this argument in greater detail below.

possibility of being granted an HG § 8-507 commitment until after he reache[d] parole eligibility." *Id.* at 389. We reasoned that when the denial of an HG § 8-507 petition rests on a determination that "legal principles . . . prevent the court from exercising its discretion, the court's denial effectively constitutes a final judgment." *Id.* at 388–89. Because the court denied Hill's petition based on a determination that the 2018 amendments precluded it from committing Hill, we concluded that the denial constituted an appealable final judgment. *Id.* at 389.

Here, as in *Hill*, the record reflects that the circuit court denied the Appellant's petition based on a legal conclusion that he was ineligible for relief under HG § 8-505 or § 8-507. Specifically, the court reasoned that the Appellant would not have been eligible for commitment under the version of HG § 8-507 in effect when he was sentenced in 1992. It thus inferred that the Appellant had no "expectation that he may one day be eligible for an [HG] § 8-507 release when he was sentenced[.]" Based on that inference, the court concluded that applying the 2018 amendments—under which the Appellant is permanently ineligible for commitment—would not constitute an *ex post facto* violation. Implicit in the court's reasoning was the determination that it lacked the authority to grant the requested relief.

The State makes much of the court's finding that the record did not support the Appellant's claim that the crimes were motivated by or otherwise attributable to his addictions. We do not, however, construe this prefatory observation as providing an independent discretionary ground for the court's denial. Because the court's ruling rested

on a legal determination of statutory ineligibility—rather than an exercise of judicial discretion—the issue is properly before us. We therefore deny the State's motion to dismiss and proceed to the merits of this appeal.

II. Whether the *Ex Post Facto* Clause was Violated

In support of his contention that the circuit court violated the prohibition against *ex post facto* laws, the Appellant argues that application of the 2018 amendments rendered him "permanently ineligible for commitment to the Department [of Health] for drug and alcohol treatment[.]" He claims that the amendments thereby "create[d] a . . . significant risk of increasing the measure of [his] punishment." The Appellant also asserts that the court erred in concluding that its power "to authorize treatment post-sentencing under HG § 8-50[7] did not exist prior to 2009." Instead, the Appellant maintains that the version of HG § 8-507 in effect when the crimes were committed permitted the court to order his commitment "after conviction or at any other time [he] voluntarily agree[d] to treatment[.]"

The State responds that "application of the 2018 amendments . . . to [the Appellant] does not violate the *Ex Post Facto* Clause." (capitalization removed). The State proceeds from the premise that, to determine whether retroactive application of a statutory amendment violates the *Ex Post Facto* Clause, a reviewing court should simply compare the statute as currently codified to the version in effect at the time of the offense and assess whether any changes disadvantage the defendant. It then asserts that, in contrast to the appellant in *Hill*, *supra*, the Appellant is "equally ineligible for [HG] evaluation and commitment under either" the current versions of §§ 8-505 and 8-507 or those in effect

when the offenses were committed. "It follows[,]" the State concludes, "that application of the current statutes to [the Appellant] does not violate the *Ex Post Facto* Clause."

"Both the United States Constitution and the Maryland Declaration of Rights prohibit *ex post facto* laws."[7] *Wyatt v. State*, 149 Md. App. 554, 565 (2003). "[T]wo critical elements must be present for a criminal or penal law to be *ex post facto*: it must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it." *Sec'y, Dep't of Pub. Safety & Corr. Servs. v. Demby*, 390 Md. 580, 609 (2006) (quoting *Weaver v. Graham*, 450 U.S. 24, 29 (1981)). The constitutional prohibitions encompass "[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." *Stogner v. California*, 539 U.S. 607, 612 (2003) (quoting *Calder v. Bull*, 3 U.S. 386, 390 (1798)); *see also Khalifa v. State*, 382 Md. 400, 425 (2004) (quoting same). Thus, a statutory amendment violates the *ex post facto* prohibition if it "creates a significant risk of prolonging [an inmate's] incarceration." *Hill*, 247 Md. App. at 392 (quoting *Garner v. Jones*, 529 U.S. 244, 251 (2000)).

[7] Article I, Section 10 of the United States Constitution states: "No State shall . . . pass any . . . ex post facto Law[.]" U.S. Const. art. I, § 10. Article 17 of the Maryland Declaration of Rights, in turn, provides: "That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made; nor any retrospective oath or restriction be imposed, or required." Md. Decl. of Rts., art. 17. "The *Ex Post Facto* Clauses of the United States Constitution and Maryland Declaration of Rights have been viewed generally to have the 'same meaning' and are thus to be construed *in pari materia*." *Khalifa v. State*, 382 Md. 400, 425 (2004).

The Appellant relies on our decision in *Hill* to support his position that application of the 2018 amendments "created a . . . significant risk of increasing the measure of [his] punishment[.]" After denying the State's motion to dismiss the appeal in that case, we held that "the 2018 amendments . . . , as applied to Hill, violate[d] the *Ex Post Facto* Clause." *Hill*, 247 Md. App. at 399. At the outset, we observed that, when he was convicted in 2011, Hill enjoyed "an essentially unrestricted right to file petitions requesting commitment to the Department of Health for substance abuse treatment[.]" *Id.* at 379. As noted above, however, the 2018 amendments precluded courts from ordering substance abuse commitment for an inmate serving a sentence for a crime of violence "until the defendant is eligible for parole." *Id.* at 400 (quoting HG § 8-507(a)(2)(i)). Because Hill was serving a sentence for a violent crime and was not yet eligible for parole, "his eligibility for commitment ended with the passage of the 2018 amendments." *Id.* at 399.

We went on to explain that "absent the 2018 amendments, Hill would have been released from prison and committed to the Department of Health for residential treatment, subject to appropriate probationary conditions." *Id.* at 401 (footnotes omitted); *see also* HG § 8-507(e)(1); HG § 8-507(f). We also noted that "Hill would not have been returned to prison upon successful completion of inpatient treatment[.]" *Hill*, 247 Md. App at 401 n.5. Accordingly, we concluded that the 2018 "amendments create[d] a 'significant risk' of increasing Hill's punishment" in violation of the prohibition against *ex post facto* laws. *Id.* at 390.

The State distinguishes *Hill* from this case based upon "the difference in the statutes that were in effect when Hill and [the Appellant] committed their respective crimes[.]" It asserts that "although eligibility for [HG] §§ 8-505 and 8-507 relief was 'essentially unrestricted'" when Hill's crimes were committed, "that was not the case in 1991—the point in time against which any changes must be assessed for *ex post facto* purposes where [the Appellant] is concerned."[8] Instead, the State observes:

> Under the version of H.G. § 8-505 in effect in 1991, a court could only order an evaluation "[b]efore or during a criminal trial or prior to sentencing." HG § 8-505(a) (1990 Repl. Vol.). And under the version of H.G. § 8-507 in effect in 1991, a criminal defendant, once convicted, was ineligible to be committed for treatment for drug and alcohol dependency outside of the context of a motion for sentence modification under Maryland Rule 4-345 (which, then as now, had to be filed within 90 days after sentencing and could not be re-filed once denied).

The State concludes that because the Appellant was ineligible for a substance abuse evaluation or commitment for treatment "[u]nder either the 2023 statutes or the 1991 statutes," the court did not impose a more severe punishment by applying the former rather than the latter, and therefore complied with the *Ex Post Facto* Clause.

In *Pitts v. State*, No. 908, Sept. Term 2022, 2023 WL 5030673, at *1 (Md. App. Ct. August 8, 2023), we considered and ultimately rejected an argument nearly identical to the

[8] The controlling date for *ex post facto* purposes is the date on which the crimes at issue were committed. *See Young v. State*, 370 Md. 686, 698 n.7 (2002) ("Under the *Ex Post Facto* Clause, the government may not apply a law retroactively that 'inflicts a greater punishment, than *the law annexed to the crime, when committed*.'" (emphasis added) (quoting *Calder*, 3 U.S. at 390)). In this case, the Appellant committed the crimes of which he was convicted in August of 1991. *See Morrison*, 98 Md. App. at 447.

one the State advances here. In its appellate brief, the State acknowledges our unreported opinion in that case, which was initially filed while this appeal was pending. In a footnote, the State writes:

> Recently, in a pre-July 2023 unreported opinion that cannot be cited as precedent or persuasive authority, *see* Md. Rule 1-104 (eff. July 1, 2023), a panel of this Court held that the 2018 amendments could not be applied on *ex post facto* grounds to a defendant who [wa]s similarly situated to [the Appellant], having committed his crimes in 1995. However, the panel decision in that case failed to address *Lynce* [*v. Mathis*, 519 U.S. 433 (1997)], *Meola* [*v. Dep't of Corrections*, 732 So.2d 1029 (Fla. 1998)], or *Perez* [*v. Comm'r of Correction*, 163 A.3d 597 (Conn. 2017)], and a motion for reconsideration filed by the State is currently pending in that case.

(citation omitted). The State is correct that, because the *Pitts* opinion was originally filed before July 1, 2023, it could not initially be cited as persuasive authority under Maryland Rule 1-104(a)(2)(B). In response to a motion for reconsideration filed by the State, however, we withdrew the original opinion on June 14, 2023, and issued a revised version on August 8, 2023, in which we addressed *Lynce*, *Meola*, and *Perez*. Because that revised opinion was filed after July 1, 2023, and "no reported authority adequately addresses" the issue presented in this case, we may—and will—consider the analysis therein for its persuasive value. Md. Rule 1-104(a)(2)(B).

Pitts was convicted of, *inter alia*, first- and second-degree murder in connection with a double homicide committed in December 1995. *Pitts*, 2023 WL 5030673, at *1. The court sentenced him to life imprisonment without the possibility of parole for first-degree murder and a consecutive term of thirty years' imprisonment for second-degree murder. *Id.* On May 18, 2022, Pitts filed a *pro se* petition for a substance abuse evaluation and

commitment for treatment pursuant to HG §§ 8-505 and 8-507. *Id.* The court denied the petition, reasoning that it lacked the authority to grant Pitts's request because he was both serving a sentence for a violent crime and ineligible for parole. *Id.*

On appeal, Pitts contended that the circuit court violated the constitutional prohibition against *ex post facto* laws by denying his petition on the ground that the 2018 Amendments barred the court from considering it. *Id.* The State responded, as it does here, that "when [the appellant] committed his offenses, the law provided that 'a criminal defendant, once convicted, was ineligible to seek an H.G. § 8-507 commitment after the 90-day time post-sentencing to file a motion for sentence modification had passed.'" *Id.* at *5. "Because Pitts failed to file such a motion within 90 days [of sentencing]," the State continued, "he '[wa]s equally ineligible for [HG] § 8-507 commitment under either version of the statute.'" *Id.* Thus, the State concluded that "'application of the current statute to [Pitts] d[id] not violate the *Ex Post Facto* Clause.'" *Id.*

In examining the development of HG § 8-507, we explained that the 90-day deadline referenced by the State was first recognized in *Clark v. State*, 348 Md. 722 (1998). *Pitts*, 2023 WL 5030673, at *5–*6. There, the Supreme Court of Maryland held that a defendant's "request to be placed in a drug treatment program is limited by the time constraints for modification or reduction of sentence contained in Rule 4-345." *Clark*, 348 Md. at 731. That rule requires that a motion for modification be filed "within 90 days after imposition of a sentence[.]" Md. Rule 4-345(e)(1). The *Clark* Court thus concluded that if an HG § 8-507 petition is not filed within that 90-day window, "the trial court ha[s] no

authority to reduce [a defendant's] criminal sentence by committing him [or her] to a drug treatment program." *Clark*, 348 Md. at 732.

As we observed in *Pitts*, the *Clark* holding was superseded by statute in 2004, when the General Assembly repealed and reenacted HG § 8-507 with amendments. *Pitts*, 2023 WL 5030673, at *6. The amended statute then provided, in pertinent part:

> (b) Subject to the limitations in this section, *a court that finds in a criminal case that a defendant has an alcohol or drug dependency 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, *even if:*
>
> (1) *The defendant did not timely file a motion for reconsideration under Maryland Rule 4-345*; or
>
> (2) The defendant timely filed a motion for reconsideration under Maryland Rule 4-345 which was denied by the court.

Id. (quoting 2004 Md. Laws, chs. 237 & 238) (emphasis added). As amended, HG § 8-507 thus "allow[ed] the circuit court to order drug treatment even if the defendant did not file a motion for reconsideration within 90 days (the time limit set forth in Md. Rule 4-345)[.]" *Howsare v. State*, 185 Md. App. 369, 384 (2009); *see also Fuller v. State*, 169 Md. App. 303, 309 (2006) ("As a result of the 2004 amendments to [HG] § 8-507(b), the court in which the defendant/petitioner was sentenced retains jurisdiction to grant a post-sentence petition for commitment . . . even if Maryland Rule 4-345(e) no longer provides the sentencing judge with revisory power over the sentence[.]"), *aff'd*, 397 Md. 372 (2007).

In *Pitts*, the State acknowledged that "the 2004 . . . amendments to HG § 8-507 made [the appellant] 'potentially eligible to seek commitment[.]'" *Pitts*, 2023 WL

5030673, at *6. It urged us, however, to disregard those intervening ameliorative amendments and instead "simply compare the current codification of HG § 8-507 to the 1995 iteration[,]" and conclude that Pitts was ineligible for commitment under either. *Id.* We declined the State's invitation, holding that "the elimination of the 90-day filing deadline applied retroactively to Pitts's case, thereby making Pitts eligible to file 'essentially unrestricted' § 8-507 petitions after the effective date of the amendment." *Id*. at *7.

We explained that, although Maryland statutes—and amendments thereto—are presumed to apply prospectively, remedial or procedural changes are ordinarily given retroactive effect. *Id.*; *compare Estate of Zimmerman v. Blatter*, 458 Md. 698, 730 n.7 (2018) ("Ordinarily[,] a change affecting procedure only . . . applies to all actions . . . unless a contrary intention is expressed.") (citation omitted), *with Gregg v. State*, 409 Md. 698, 715 (2009) ("Legislative enactments that have remedial effect and do not impair vested rights also are given retrospective application.") (citation omitted). We reasoned that the 2004 amendments to HG § 8-507 were remedial in that they "improve[d] or facilitate[d]" an already existing remedy "for the enforcement of [a] right[.]" *Pitts*, 2023 WL 5030673, at *7 (quoting *Gregg*, 409 Md. at 715). Moreover, the 2004 amendments eliminating "the 90-day deadline for filing a post-sentence § 8-507 petition" were procedural in nature because the amendments "'control[led] only the method of obtaining redress or enforcement of rights and d[id] not involve the creation of duties, rights, and obligations.'" *Id.* (quoting *Nielsen v. Gaertner*, 96 F.3d 110, 113 (4th Cir. 1996)).

Accordingly, this Court held that "the 2004 amendment[s] . . . applie[d] retroactively to inmates serving sentences for crimes committed prior to [their] effective date[,]" thereby "plac[ing] Pitts, for *ex post facto* purposes, in a position as if [the 2004 amendments were] the applicable law when he committed the offenses[.]" *Id.* at *7–*8 (citing *State v. Ramseur*, 843 S.E.2d 106, 113 (N.C. 2020) ("[W]e note that the *Ex Post Facto* Clause does not prohibit the retroactive application of laws that—like the [Racial Justice Act]—are ameliorative in nature.")). We concluded:

> [T]he 2004 amendment eliminating the 90-day filing deadline effectively placed Pitts in the same position as Hill—prior to the 2018 amendments, Hill and Pitts were both entitled to file petitions for commitment pursuant to HG § 8-507. Accordingly, because Pitts became permanently ineligible for commitment to the Department for drug and alcohol treatment with the enactment of the 2018 amendments, the 2018 legislation created a sufficiently significant risk of increasing the measure of his punishment in violation of the prohibition against *ex post facto* laws. *See Hill*, 247 Md. App. at 400–02.

Id. at *8 (footnote omitted).

As this Court explained in *Hill* and reiterated in *Pitts*, retroactive application of the 2018 amendments to HG § 8-507 violates the *ex post facto* prohibition when it eliminates a previously available opportunity for a defendant to obtain substance abuse treatment *in lieu* of continued incarceration and thereby creates a significant risk of increasing the measure of punishment. The 2004 amendments applied retroactively and gave the Appellant the same "essentially unrestricted right" to petition for commitment as was available to the defendants in *Hill* and *Pitts*. *Hill*, 247 Md. App. at 379. The 2018 amendments then eliminated that eligibility. Because the Appellant is serving a life

sentence without the possibility of parole for a violent offense, retroactive application of the 2018 amendments to the Appellant would render him permanently ineligible for commitment pursuant to HG § 8-507. For the reasons we set forth in *Pitts*, that statutory change, as applied to the Appellant, created a significant risk of increasing the measure of his punishment. Accordingly, we hold that the circuit court erred in concluding that it lacked authority to consider the merits of the Appellant's petition, and in denying the petition on *ex post facto* grounds.

For the foregoing reasons, we vacate the judgment of the Circuit Court for Carroll County. We remand with instructions that the court rule on the merits of the Appellant's petition.

MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY CARROLL COUNTY.