Circuit Court for Harford County
Case No. 12-K-09-000864

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 255

September Term, 2022

STATE OF MARYLAND

v.

BRETT RUSSELL MOLTER

Reed,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: February 27, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal stems from a sentence modification in the Circuit Court for Harford County. After a jury trial, the appellee, Brett Russell Molter, was convicted of first-degree burglary and theft of goods valued at $500 or more. On July 6, 2010, the court sentenced Molter to 20 years' incarceration for the burglary, with 435 days' credit for time served. The court merged the theft conviction for sentencing. At a hearing on March 17, 2022, the court — with a different judge presiding — granted Molter's request for sentence modification and resentenced Molter to 20 years, suspending all but time served (3,207 days), with two years of supervised probation. The State appeals[1] and presents one question for our review:

> Did the circuit court lack authority to modify Molter's sentence (1) because the court had already denied Molter's modification request, (2) because more than five years had elapsed since the sentence was imposed, and (3) because the court did not properly grant a belated modification as postconviction relief?

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

As the State concedes: "The facts underlying Molter's convictions are not pertinent to the present appeal, but are summarized in the Court's earlier opinion. *Molter v. State*, 201 Md. App. 155, 160-61, 163-64 (2011)." On July 8, 2010, Molter's counsel filed a timely "Petition for Reduction and/or Modification of Sentence" under Md. Rule 4-345(e), requesting the following:

[1] The State's appeal is authorized under Md. Code, Cts. & Jud. Proc. § 12-302(c)(3)(ii), which permits the State to appeal from a final judgment if the State alleges that the trial judge "modified a sentence in violation of the Maryland Rules."

"(a) Hold this Motion *sub curia* for institutional adjustment.

(b) When requested, set a hearing date in this matter and;

(c) For such other relief that may be appropriate."

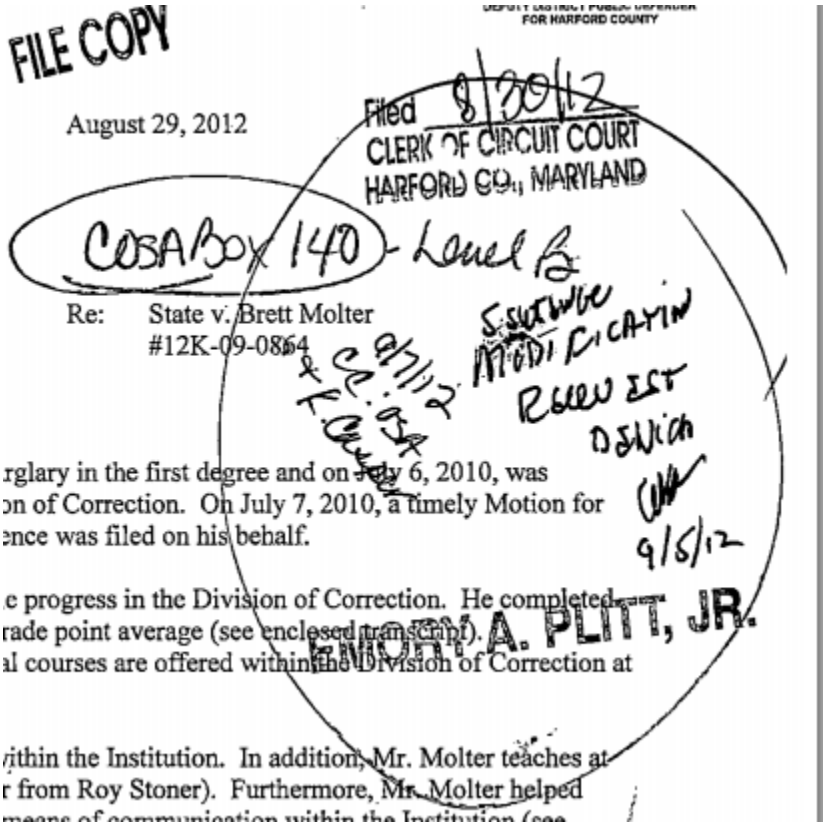
On November 1, 2011, Molter's counsel wrote a letter to the court, informing the court of Molter's progress and indicating that Molter hoped that the court would, in the future, consider signing an order for an evaluation for substance abuse treatment under Md. Code, Health Gen. ("HG") § 8-505:

> Mr. Molter understands that the length of his sentence may not warrant a modification hearing at this time. However, he wanted me to keep your Honor informed as to his progress. Mr. Molter has been infraction-free in the DOC. While incarcerated, he is attending Hagerstown Community College and has a 4.0 average. (See transcript attached). His [professor] describes him as "one of my most promising students.["] (See letter attached). In addition, Mr. Molter works as an electrical wiring aide in the Institution. He helps teach other students enrolled in the Program. (See letter attached).
>
> In the future, he would like you to consider signing an Order for Evaluation pursuant to Health General Article, Section 8-505. Please contact me should you have any questions or concerns.

On August 29, 2012, Molter's counsel wrote another letter to the sentencing judge:

> Mr. Molter is not eligible for the substance abuse classes that he so desperately needs. His only option for such treatment is to wait until he is four years from release or to request that the court sign a request for evaluation pursuant to Health General, § 8-505. He has exhausted all of the other options available in the Division of Correction.
>
> Mr. Molter has a supportive family who wants to see him grow and succeed. His goals are to get help for his drug addiction, complete college, and become a productive citizen. The Division of Correction offer limited options for his advancement.
>
> Accordingly, I am requesting that the Court consider setting a hearing in this case at its earliest convenience. Thank you for your consideration of this matter.

The sentencing judge denied counsel's August 2012 request in a marginal order dated September 5, 2012. That handwritten order appears as follows:


FILE COPY

FOR HARFORD COUNTY

August 29, 2012

Filed 8/30/12
CLERK OF CIRCUIT COURT
HARFORD CO., MARYLAND

COSA Box 140 - Lowell B

Re: State v. Brett Molter
#12K-09-0864

rglary in the first degree and on July 6, 2010, was
on of Correction. On July 7, 2010, a timely Motion for
ence was filed on his behalf.

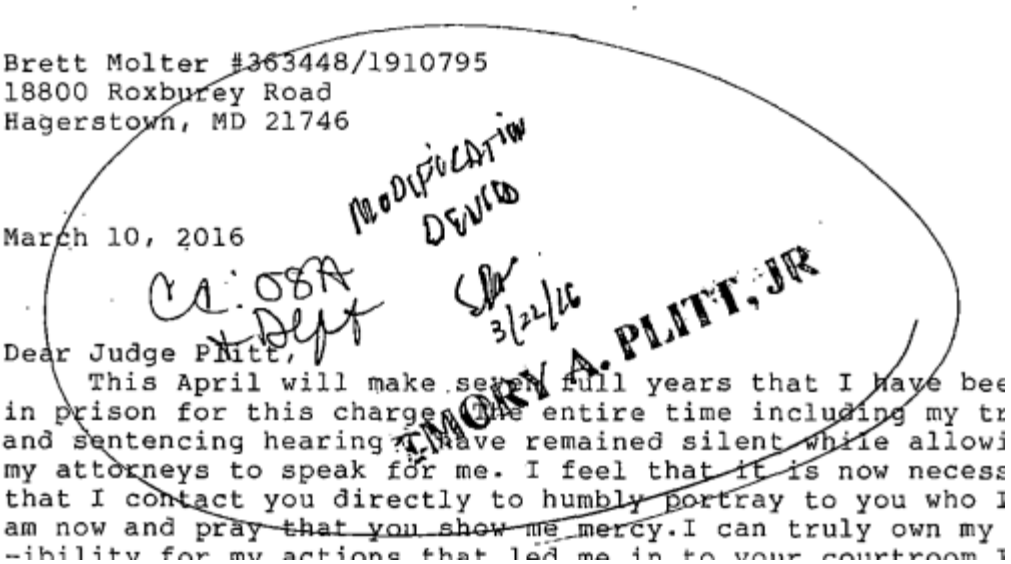
e progress in the Division of Correction. He completed
rade point average (see enclosed transcript).
al courses are offered within the Division of Correction at

within the Institution. In addition, Mr. Molter teaches at
r from Roy Stoner). Furthermore, Mr. Molter helped

9/5/12

EMORY A. PLITT, JR.

On March 10, 2016, Molter wrote a *pro se* letter to the sentencing judge. In that letter, Molter stated: "Please consider either suspending just 5 years of my 20 year sentence or even an 8-505/8-507 release so that I can get the assistance I need to return to society successfully." At the top of that March 2016 letter is another handwritten order (dated March 22, 2016), which states: "Modification Denied[.]" That order appears as follows:



Brett Molter #363448/1910795
18800 Roxbury Road
Hagerstown, MD 21746

March 10, 2016

Dear Judge Plitt,

This April will make seven full years that I have bee
in prison for this charge, the entire time including my tr
and sentencing hearing. I have remained silent while allowi
my attorneys to speak for me. I feel that it is now necess
that I contact you directly to humbly portray to you who I
am now and pray that you show me mercy. I can truly own my
-ibility for my actions that led me in to your courtroom

On September 30, 2021, defense counsel filed a "Request for Hearing on Motion for Reduction and/or Modification of Sentence." Counsel noted that Molter had been paroled in April 2019, he was "recently married and is a stepfather to four children[,]" and "[h]e works as an electrician and has started his own business." Counsel also stated in that motion: "[Molter] has applied to the Department of Labor and Licensing Regulation to obtain his Home Improvement License. This conviction is a barrier to [Molter] advancing his career." The State opposed because Molter's sentence "was imposed on July 6, 2010, more than five years ago" and, according to the State, "[Md.] Rule 4-345(e) prohibits a court from modifying a sentence more than five years after it was imposed." The court set a hearing.

The original sentencing judge did not preside over the hearing that followed on March 17, 2022. At that hearing, defense counsel, who was the same attorney who represented Molter at trial in 2010, argued that the five-year limit in Md. Rule 4-345(e) should not apply because of her ineffective assistance of counsel. Although defense

counsel had filed a timely request for sentence modification within 90 days after the imposition of the sentence, she stated: "in 2010 . . . it was not [counsel's] practice to advise about the five year deadline" for the court to revise the sentence. Defense counsel claimed that her failure to inform a client of the five-year consideration period in Md. Rule 4-345(e) constituted deficient performance under *Franklin v. State*, 470 Md. 154 (2020). Counsel requested the court to consider the modification request as "an ineffective assistance of counsel claim without an additional post-conviction hearing" under *Testerman v. State*, 170 Md. App. 324 (2006).

The State opposed because Molter had already successfully litigated a post-conviction petition involving counsel's "duty to consult with the Defendant about post-sentencing remedies[,]" as the court had granted Molter the opportunity to file a belated request for sentence review by a three-judge panel in March 2016.[2] According to the State, Molter was therefore "on notice that there were some remedies available to him for post-sentence relief[.]" The State again argued that five-year period in Md. Rule 4-345(e) restricted the court's ability to modify the sentence: "So, the State feels that, as well as Mr. Molter may be doing, the Court is unable to make any kind of changes at this point."

The court did not expressly adopt defense counsel's ineffective assistance argument. Although the hearing occurred after the five-year period in Md. Rule 4-345(e), the court determined that it had the authority to modify Molter's sentence under *Schlick v. State*, 238

[2] In August 2016, a circuit court panel directed that Molter's sentence remain unchanged.

Md. App. 681 (2018) ("*Schlick I*"), *aff'd on other grounds*, 465 Md. 566 (2019) ("*Schlick II*"). The court ruled as follows:

> I know that there are circumstances -- and the case that I am making this determination is *Schlick versus State*. That case is 238 Md. App. 681. It was affirmed on other grounds under 465 Md. 566. And then there is another case, *Tolson versus State,* 201 Md. App. 512 [(2011)]. There are certain circumstances where a court can, after a five year period, actually consider a modification. The question is I think in those cases whether there was a timely modification that was made and then nothing ever happened, there was a request and either the judge held it *sub curia* or there was some indication but no action ever really happened. There is language in that case that talks about that a Circuit Court judge does not necessarily lose their right to consider a modification simply because that five year period passed.
>
> So, I don't know if you have had an opportunity to look at that case and read it and whether or not this case is one of those that falls under this. Again, I was not the original judge. You know, I know typically that when I get a case that sometimes what I'll do is I'll think about it and I'll just say denied at this time. When I write that, it doesn't mean that I'm denying it outright. It means that I may consider it later on. There might be something that I may consider about it later on. Again, I was not the trial judge here. So, it is always difficult when you are not the trial judge to try to pick it up.
>
> But it seems to me that there was a lot that transpired in this case. It has a lot of procedural history. Having been the judge that dealt with post-conviction, I recognize that Mr. Molter's life back then was really dramatically different and his criminal history was dramatically negative and [the sentencing judge] hammered him for the entire time because the record called for it. Whether or not there was any inclination to change that is difficult because I was not the judge.
>
> So, I'm being asked to place myself in the position of the judge. And if I place myself in that position I can say that I would, in a case like that, not necessarily exclude the possibility of some rehabilitation later on. I believe that because of that I have that authority to do that now. I don't have the senior judge here anymore to do this. There was some activity back then.
>
> I do know that there was really nothing for Mr. Molter to lose by requesting that there be a hearing or actively engaging in some hearing. Again, it is tough to reconstruct this file.

> So, I do believe that I still do retain the right to exercise jurisdiction despite the five years that have passed, in particular when I have an individual who was sentenced to the maximum and there have been efforts that have taken place along the way to suggest that with a timely modification perhaps it could have been something that would have been held off later. That's the best that I can do here.
>
> I do believe it is appropriate for me to consider the modification. I do believe that I have still retain that discretion. I understand what the rule says, but I believe that because of those cases that if it is uncertain as to whether or not there was an outright denial of it, if it was not considered, I can't say that for sure. I believe that the five years does not preclude me from considering it.
>
> So, having said that, does the State have any opposition argument concerning the request for modification?
>
> [THE STATE]: No, Your Honor. No objection.

As noted, following the court's ruling, the State did not oppose Molter's substantive request for a sentence reduction. The court modified Molter's sentence to 20 years with all but time served suspended and two years of supervised probation.

We shall supply additional facts, as may be relevant, in our analysis.

DISCUSSION

At its core, this case involves the tension between the circuit court's fundamental jurisdiction to modify a sentence and the five-year limitation in Md. Rule 4-345(e). Maryland Rule 4-345(e) states that a court "may not revise the sentence after the expiration of five years from the date the sentence originally was imposed[.]" We are, however, bound by this Court's precedent in *Schlick I*, which held that a circuit court retains and has the authority to exercise its fundamental jurisdiction to rule on a motion for modification

even after the expiration of the five-year revisory period set forth in the Md. Rule. 238 Md. App. at 693.[3]

The State claims that the circuit court erred in modifying Molter's sentence for three reasons: (1) the original sentencing judge denied Molter's request for sentencing modification in 2012 and 2016, (2) the five-year period outlined in Md. Rule 4-345(e) had expired, and (3) "to the extent that the circuit court tacitly relied on defense counsel's assertion of ineffective assistance of counsel as support for its ruling, it erred in doing so."

A. The court properly determined that the record did not reflect that a sentencing modification had previously been denied outright.

The State contends that the circuit court "lacked authority to modify Molter's sentence principally because the court had already denied his motion for sentence modification years earlier." Molter responds that the State failed to preserve this argument, and even if this issue were preserved, it is unsupported by the record. Molter claims that

[3] To be sure, the Supreme Court of Maryland affirmed *Schlick I* on other grounds and narrowed its holding to the post-conviction posture of Schlick's case: "Given that we hold that the circuit court's revisory power was ongoing when it dismissed Mr. Schlick's motion, it is not necessary for us to decide whether, as the [Appellate Court of Maryland] concluded, the circuit court retains indefinite fundamental jurisdiction to modify a sentence outside of the five-year period set forth in Maryland Rule 4-345(e). *See* [*Schlick I*, 238 Md. App. at 693-94]." *Schlick II*, 465 Md. at 586 n.7. Even so, the Court acknowledged that Md. Rule 4-345(e) could be construed as a claims-processing rule rather than a jurisdictional rule. *Schlick II*, 465 Md. at 578 n.4 (citing *Rosales v. State*, 463 Md. 552 (2019)).

We also note, at the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

the court properly determined that the record lacked an outright denial of his motion for modification of sentence.

An error is preserved for review if it was "raised in *or decided by* the trial court[.]" Md. Rule 8-131(a) (emphasis added). Here, the circuit court raised this issue *sua sponte* when it expressly considered whether the motion for modification had already been denied. Indeed, the court stated as follows:

- "I was not the original judge. You know, I know typically that when I get a case that sometimes what I'll do is I'll think about it and I'll just say denied at this time. When I write that, it doesn't mean that I'm denying it outright. It means that I may consider it later on. There might be something that I may consider about it later on. Again, I was not the trial judge here. So, it is always difficult when you are not the trial judge to try to pick it up."

- "Whether or not there was any inclination to change [the original sentence] is difficult because I was not the [original sentencing] judge."

- "So, I'm being asked to place myself in the position of the [original sentencing] judge. And if I place myself in that position I can say that I would, in a case like that, not necessarily exclude the possibility of some rehabilitation later on."

- "I believe that . . . if it is uncertain as to whether or not there was an outright denial of it, if it was not considered, I can't say that for sure."

In sum, the court determined that the original sentencing judge's orders were ambiguous as to whether Molter's modification motion had already been denied outright (or even considered). The court examined the record and resolved that ambiguity in favor of Molter. The court thus "decided" this issue within the meaning of Md. Rule 8-131(a).

Turning to the merits of the State's argument, the State contends that the circuit court erred in modifying Molter's sentence because his requests in 2012 and 2016 had been denied outright by the original sentencing judge. To be sure, an outright denial of a motion

for modification of sentence means that the defendant "'may not file another such motion for reconsideration.'" *Tolson v. State*, 201 Md. App. 512, 517-18 (2011) (quoting *Greco v. State*, 347 Md. 423, 436 (1997)). However, the court's 2012 and 2016 orders did not amount to an outright denial of Molter's motion for modification. We shall explain.

To resolve this issue, we must construe the circuit court's 2012 and 2016 handwritten orders. The Supreme Court of Maryland has clarified that "court orders are construed in the same manner as other written documents and contracts, and if the language of the order is clear and unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used." *Taylor v. Mandel*, 402 Md. 109, 125 (2007) (citation omitted). "Whether [an order] is ambiguous is a threshold question of law, subject to *de novo* review by an appellate court." *Petitto v. Petitto*, 147 Md. App. 280, 300 (2002) (citing *Calomiris v. Woods*, 353 Md. 425, 434 (1999)). As the Court explained in *Taylor v. Mandel*:

> Ambiguity exists, however, if when read by a reasonably prudent person, it is susceptible of more than one meaning. We have stated that language can be regarded as ambiguous in two different respects: 1) it may be intrinsically unclear or 2) its intrinsic meaning may be fairly clear, but its application to a particular object or circumstance may be uncertain. Thus, a term which is unambiguous in one context may be ambiguous in another. If ambiguous, the court must discern its meaning by looking at the circumstances surrounding the order to shed light on the ambiguity, including the motion in response to which it was made.

402 Md. at 125-26 (cleaned up). "[O]n appeal, *de novo* review applies to the initial determination of whether contractual language is ambiguous, and the clearly erroneous standard comes into play only after the trial court's finding of ambiguity is upheld." *Calomiris*, 353 Md. at 435. "'A finding is clearly erroneous when although there is

evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."' *Kusi v. State*, 438 Md. 362, 383 (2014) (quoting *Goodwin v. Lumbermens Mut. Cas. Co.*, 199 Md. 121, 130 (1952)).

The 2012 Order

On appeal, Molter argues that his counsel's 2012 letter was a request for an HG § 8-505 evaluation, so the court's denial of that specific request was not an outright denial of Molter's motion for modification. The original sentencing judge's September 5, 2012, handwritten order stated: "Sentence modification request denied[.]" Under our *de novo* review, that order's "intrinsic meaning" is "fairly clear, but its application to" Molter's request is "uncertain." *Taylor*, 402 Md. at 125-26. As a result, we uphold the circuit court's finding of ambiguity, and we "must discern [the 2012 order's] meaning by looking at the circumstances surrounding the order to shed light on the ambiguity, including the motion in response to which it was made." *Id*. at 126.

Molter's counsel's 2012 letter to the court stated:

> Mr. Molter is not eligible for the substance abuse classes that he so desperately needs. His only option for such treatment is to wait until he is four years from release or to request that the court sign a request for evaluation pursuant to Health General, § 8-505.
>
> * * *
>
> Accordingly, I am requesting that the Court consider setting a hearing in this case at its earliest convenience.

Similarly, Molter's counsel's 2011 letter stated: "***In the future***, [Molter] would like you to consider signing an Order for Evaluation pursuant to Health General Article, Section 8-505." (Emphasis added.) HG § 8-505 is a remedy that is independent from Md. Rule 4-

345(e), and it allows the court to order an evaluation by the Department of Health "to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment[.]" HG § 8-505(a)(1)(i). Under HG § 8-507, a court can thereafter commit a defendant to the Department of Health for treatment. This remedy is available even if the defendant failed to file a Md. Rule 4-345 motion or if a timely Md. Rule 4-345 motion was denied. *See* HG § 8-507(a)(1).

In the 2012 letter to the court, Molter's counsel echoed the 2011 letter by indicating that Molter wanted the court to consider ordering an evaluation under HG § 8-505 and to set a hearing. The original sentencing court denied that request in its 2012 handwritten order. To be sure, that order amounted to a denial of Molter's request for a hearing to consider an evaluation under HG § 8-505. But the court properly determined that the order did not constitute an outright denial of Molter's request for a sentencing modification under Md. Rule 4-345(e).

The 2016 Order

The original sentencing judge's March 22, 2016, handwritten order states: "Modification Denied[.]" Again, that order's "intrinsic meaning" is "fairly clear, but its application to" Molter's request is "uncertain." *Taylor*, 402 Md. at 125-26. We thus uphold the circuit court's finding of ambiguity, and we "must discern [the 2016 order's] meaning by looking at the circumstances surrounding the order to shed light on the ambiguity, including the motion in response to which it was made." *Id*. at 126.

Molter's 2016 *pro se* letter, which spurred the court's order, stated as follows: "Please consider either suspending just 5 years of my 20 year sentence or even an 8-505/8-

507 release so that I can get the assistance I need to return to society successfully." Because of the blended nature of that request, it is unclear what relief the court denied. Moreover, it is unclear whether the court's denial was on the merits or because the court believed it lacked jurisdiction, as the order pre-dates *Schlick I*. Under these circumstances, the circuit court did not err in determining that the record lacked an outright denial of Molter's request for modification of sentence under Md. Rule 4-345(e).

B. The court properly determined that it had the authority to grant the petition for modification of sentence.

The State argues that the circuit court lacked the authority to modify Molter's sentence because more than five years had passed since his sentencing. According to the State: (1) the legislative history and plain text of Md. Rule 4-345(e) forbid reduction of a sentence after the five-year period, (2) *Schlick II* holds that a court cannot modify a sentence outside of the five-year period, and (3) even if the five-year period in the rule is a claim-processing limitation, the rule prohibits the circuit court from modifying a sentence outside the five-year period.

Fundamental jurisdiction "is the power to act with regard to a subject matter which 'is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.'" *Pulley v. State*, 287 Md. 406, 416 (1980) (quoting *Cooper v. Reynolds*, 77 U.S. (10 Wall.) 308, 316 (1870)). Stated differently, fundamental jurisdiction is "'the power residing in such court to determine judicially a given action, controversy, or question presented to it for decision.'" *Schlick I*, 238 Md. App. at 693 (quoting *Fooks' Ex'r v. Ghingher*, 172 Md.

612, 621 (1937)). Moreover, "'[t]o reduce a sentence by amendment alters the terms of the judgment itself and is a judicial act as much as the imposition of the sentence in the first instance.'" *Schlick II*, 465 Md. at 578 n.4 (quoting *United States v. Benz*, 282 U.S. 304, 311 (1931)). *See also* Md. Rule 1-201(b) (providing in relevant part that "[t]hese rules shall not be construed to extend or limit the jurisdiction of any court").

This Court is bound by our precedent in *Schlick I*, which held that a circuit court retains and has the authority to exercise its fundamental jurisdiction to rule on a timely filed motion for modification even after the expiration of the five-year revisory period set forth in Md. Rule 4-345(e). *Schlick I*, 238 Md. App. at 693-94. Md. Rule 4-345(e)(1) states as follows:

> Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) 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.

In *Schlick I*, this Court determined that the circuit court erred when it dismissed Schlick's motion for modification of sentence under Md. Rule 4-345. *Id*. at 683. In September 2005, the circuit court sentenced Schlick for cocaine distribution. *Id*. at 684. The court sentenced Schlick to sixteen years' imprisonment with all but eighteen months suspended and five years' probation. *Id*. At a violation of probation hearing on September 15, 2008, the court revoked Schlick's probation and ordered him to serve the suspended portion — fourteen years and six months — of his 2005 sentence. *Id*.

In 2012, Schlick sought post-conviction relief as to the 2008 sentencing for his violation of probation. *Id*. Schlick successfully established that his counsel was ineffective for failing to file a motion for modification of sentence after the 2008 violation of probation sentencing. *Id*. at 684-85.

On March 20, 2013, the circuit court granted Schlick the right to file a belated motion for modification of sentence within 90 days of its order. *Id*. at 685. On May 24, 2013, Schlick filed a *pro se* motion for modification of sentence. *Id*. Six days later, Schlick filed a motion for modification of sentence, requesting that the court hold the motion *sub curia*. *Id*. at 685-86. In January 2014, the court set a hearing date for the following month, but Schlick sought a postponement of that hearing date. *Id*. at 686. Later in January 2014, the court granted Schlick's postponement request, and the court ordered his motion for modification of sentence to be held *sub curia*. *Id*.

In July 2014, Schlick filed a line requesting a hearing on the motion for modification. *Id*. In December 2015, the circuit court issued a show cause order asking why it should not dismiss the motion for modification pursuant to Md. Rule 4-345(e) because five years had elapsed since the date that the sentence was imposed in 2008. *Id*. In the circuit court's view, the five-year expiration date occurred on September 16, 2013, which was five years after the September 15, 2008 sentencing for Schlick's violation of probation. *Id*. After a hearing, the circuit court dismissed the motion for modification, finding that it lacked jurisdiction because the five-year revisory period had expired under Md. Rule 4-345(e). *Id*. at 686-87, 689.

On appeal in this Court, Schlick contended "that when a belated Motion for Modification of Sentence is timely filed, [Md.] Rule 4-345 cannot divest the court of its authority to modify the sentence even if a modification hearing is not held within five years of the original sentencing date." *Id*. at 689. This Court agreed and held that "the trial court retained fundamental jurisdiction to rule on the belated Motion for Modification of Sentence." *Id*. at 690. We emphasized that the trial court did not set Schlick's motion for a hearing "until after the expiration of five years from the imposition of the original sentence." *Id*. at 693. We further explained that "[i]n a perfect world, a court should set the hearing within the five-year period[.]" *Id*. But if a circuit court fails to set a hearing to consider the merits of a motion for modification within the five-year window, "the consequence should not be held against the defendant." *Id*.

In sum, "the court has [fundamental] jurisdiction over the motion, but it is within the discretion of the trial court to consider the totality of the circumstances and determine whether to hear the motion on its merits." *Id*. We thus remanded the case "[b]ecause the court had fundamental jurisdiction and discretion, which it did not exercise[.]" *Id*. at 694.

Following our decision, the Supreme Court of Maryland granted the State's petition for a writ of certiorari. *Schlick II*, 465 Md. at 573. The Court affirmed our decision on different grounds:

> [T]o meaningfully restore Mr. Schlick's rights under [Rule 4-345], not only must Mr. Schlick be permitted to file a belated motion within 90 days of the postconviction court's order, but it follows that implicit in the postconviction court's grant of relief was the ability of the circuit court to exercise its revisory power over Mr. Schlick's motion for five years from the date of the postconviction court's order. Applying the aforesaid principles to the facts of the present case, Mr. Schlick was granted postconviction relief on March

> 20, 2013. In compliance with the postconviction court's order, he filed a motion for modification on May 24, 2013. Therefore, the trial court had revisory power over Mr. Schlick's sentence until March 20, 2018.

Id. at 585. In a footnote, the Court expressly stated that it was not deciding whether the circuit court may retain "indefinite fundamental jurisdiction[:]"

> Given that we hold that the circuit court's revisory power was ongoing when it dismissed Mr. Schlick's motion, it is not necessary for us to decide whether, as the [Appellate Court of Maryland] concluded, the circuit court retains indefinite fundamental jurisdiction to modify a sentence outside of the five-year period set forth in Maryland Rule 4-345(e). *See* [*Schlick I*, 238 Md. App. at 693-94].

Id. at 586 n.7. As a result, *Schlick I* and *Schlick II* are binding precedent in this Court.

Because Molter timely filed his motion for modification of sentence, the circuit court retained the authority to exercise its fundamental jurisdiction to rule on his motion beyond the five-year period outlined in Md. Rule 4-345(e). *Schlick I*, 238 Md. App. at 693. Thus, the court had discretion as to whether to exercise that fundamental jurisdiction and consider the merits of Molter's motion. As noted, the State did not object to Molter's substantive request for a sentence reduction or raise any related issue on appeal.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY HARFORD COUNTY.