Circuit Court for Wicomico County
Case No.: 22-K-15-000561

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 373

September Term, 2018

BYRON M. SMILEY

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: March 30, 2021

On March 21, 2016, Byron M. Smiley, appellant, pleaded guilty in the Circuit Court for Wicomico County to one count of possession with intent to distribute cocaine. The court sentenced him, as a subsequent offender, to twenty years' imprisonment, with all but the mandatory minimum of ten years without the possibility of being released on parole suspended, in favor of three years' probation.[1]

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act ("JRA").[2] Among other things, the JRA eliminated certain mandatory minimum sentences for persons convicted as subsequent offenders of certain drug offenses. In addition, the JRA created Maryland Code, Criminal Law Article ("CR"), § 5-609.1, which provides that a defendant who had received a mandatory minimum sentence prior to the elimination of such sentences could seek modification of that sentence pursuant to Maryland Rule 4-345 regardless of whether the defendant filed a timely motion for reconsideration or a motion for reconsideration was denied by the court.[3] Section 5-609.1 also provided some criteria for the court to consider when deciding whether to modify such a sentence.[4]

[1] During the same guilty plea proceeding, appellant also pleaded guilty to a separate unrelated count of possession with intent to distribute cocaine and was sentenced to 25 years' imprisonment with all but 15 years suspended to be served consecutively to the sentence in this case. The first 10 years of this sentence are also to be served without parole.

[2] Chapter 515, Laws of Maryland 2016.

[3] Pursuant to CR § 5-609.1(c), except for good cause shown, a request for a hearing on any such motion needed to have been filed on or before September 30, 2018.

[4] CR § 5-609.1(b) provides:

(continued)

In November 2017, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. The court held a hearing on the motion. At the conclusion of the hearing, the court denied appellant's motion for modification of sentence stating, in pertinent part, as follows:

> THE COURT: So we're here for a motion for modification of sentence pursuant to the Justice Reinvestment Act. The Court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that giving due regard to the nature of the crime, the history and character of the Defendant, the Defendant's chances of successful rehabilitation, retention of the mandatory minimum sentence would not result in substantial injustice to the Defendant and is necessary for the protection of the public.
>
> I think I have done about 25 of these now and, you know, I've made the comment that I am well aware and I think we all are that someone that appears in front of you on a JRA motion for modification is not going to have a good criminal history. You don't get a mandatory minimum on a first offense, you just don't. So it's not available and so in light of that it's sort of what the extent of the criminal history is and the nature of the offenses. You know, I always look for whether or not there are gun crimes in their past. Whether or not there are crimes involving things that while possession with intent to distribute in and of itself is not considered a violent crime for sentencing purposes, distribution and drugs in our community inherently leads to violence. I mean, we have people in front of us, as counsel are well aware, every day dealing with violent crimes, burglaries, robberies, shooting at each other, all of which stem out of the drug trade. So the nature of the crime in and of itself, while not considered technically a violent crime for sentencing purposes, the nature of that and what it is inflicting upon this community leads to violence, violence flows from it. So as I said, part of

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(b) The court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant's chances of successful rehabilitation:

(1) retention of the mandatory minimum sentence would not result in substantial injustice to the defendant; and

(2) the mandatory minimum sentence is necessary for the protection of the public.

what I'm looking at is is this someone who has a couple of distribution charges a while ago or is this someone that is a repetitive dealer. Is this someone that has, as I said, gun crimes in their past, that has ammunition in their past. I mean the sad part here is, quite frankly, after Mr. Smiley's first bout of charges when he was released he was taking some steps it appears to try to get himself together. He had gone to Wor-Wic, he passed the class, he had some options in front of him to potentially go work, be a truck driver, have a career, have a living, and instead what happens is we end up with another arrest with him in a house with a large volume of cocaine in his room. And while he's out on that, after that charge, he's stopped again with another amount of cocaine.

Now granted I appreciate counsel's view as to the volume that was on him, but it shows a question here of whether or not he is a good candidate for rehabilitation. He had a set of sentences, he got out, he had options in front of him to not go back down the road of drugs; we go back down the road of drugs, and even after being arrested again on distribution charges we then are picked up another time.

His history and his chances of successful rehabilitation – his history does not indicate that he is going to be successful at rehabilitation.

DEFENSE COUNSEL: If I may, I'd argue that points more towards a relapse instead of just going back down the wrong path.

THE COURT: You've made your point. But I would argue back to you, not argue back to you, I would just tell you that as to that singular arrest you may be correct, but we have a distribution arrest with a large amount of cocaine in a house where there is ammunition, granted it may be in a common area, but the optics, the full scope of that situation is not good, after having already served time on distribution, which does not seem to indicate – and he had other options at that point. And yet still chose to take or involve himself. The amount of cocaine found in his house in 2015 does not lead to the idea of simple use. I mean, the amounts that were found at that point lead to the idea of distribution, along with being in a house that has agents, scales, baggies, other things which would point to the idea of not just distribution, or I mean not just use and a problem but full scale distribution.

The Court, in light of this, in consideration of the multiple offenses, the fact that there are handgun arrests in his past, is going to deny the motion. I find it's not a substantial injustice and is necessary for the protection of the public.

Appellant took an appeal from that denial. That appeal was stayed pending the

Court of Appeals' decision in *Brown v. State*, 470 Md. 503 (2020) in which this Court had certified four questions to the Court of Appeals dealing with CR § 5-609.1. Once *Brown* had been decided, appellant filed a motion in this Court seeking to lift the stay, which we granted on December 14, 2020.

On appeal, appellant claims that the circuit court erred in finding (1) that the retention of the mandatory minimum sentence would not result in substantial injustice to the Defendant; and (2) the mandatory minimum sentence is necessary for the protection of the public.

The State contends that the circuit court properly exercised its discretion after hearing both parties' presentations during the hearing on appellant's motion for modification of sentence.[5]

In *Brown*, *supra*, the Court of Appeals explained that, even under the JRA, the question of whether to modify a sentence remains to be reviewed for an abuse of discretion, stating that the decision to modify a sentence:

> is a decision committed to the discretion of the circuit court and, accordingly, to be reviewed under the deferential abuse-of-discretion standard. Such a standard generally applies in the review of a sentencing decision because of the broad discretion that a court usually has in fashioning an appropriate sentence. *See Sharp v. State*, 446 Md. 669, 687 (2016). As has frequently been repeated, an abuse of discretion occurs "when the court acts without reference to any guiding rules or principles," "where no reasonable person would take the view adopted by the court," or where the "ruling is clearly

[5] In its Brief of Appellee, which the State filed before the Court of Appeals had decided *Brown*, *supra*, the State moved to dismiss this appeal because, ordinarily, an appeal does not lie from the denial of a motion for modification or reduction of sentence. *Hoile v. State*, 404 Md. 591, 617 (2008). However, in *Brown*, the Court of Appeals determined that a motion for modification of sentence filed pursuant to CR § 5-609.1 is appealable. *Brown v. State*, 470 Md. at 552. Consequently, we shall deny the State's motion.

> against the logic and effect of facts and inferences before the court." *Alexis v. State*, 437 Md. 457, 478 (2014).

Brown v. State, 470 Md. at 553.

On this record, we are not persuaded that the circuit court's decision to not modify appellant's sentence amounted to an abuse of discretion.

Consequently, we shall affirm the judgment of the circuit court.

APPELLEE'S MOTION TO DISMISS THIS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.