Circuit Court for Somerset County
Case No.: 19-K-07-008680

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 643

September Term, 2018

RONALD WHITE

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 12, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In April 2011, following trial in the Circuit Court for Somerset County, a jury found Ronald White, appellant, guilty of possession of cocaine, possession with intent to distribute cocaine, and possession with intent to distribute cocaine within 1,000 feet of a school.[1] Later that year, the court sentenced appellant, as a subsequent offender, to twenty-five years' imprisonment without the possibility of parole for possession with intent to distribute cocaine, and ten consecutive years' imprisonment, all suspended in favor of three years of supervised probation, for possession with intent to distribute cocaine within 1,000 feet of a school. The court merged the sentence for the other conviction.

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-

[1] In 2008 appellant was tried for the first time on these charges. His 2011 trial took place after we reversed those convictions in *White v. State*, No. 2183, Sept. Term 2008 (filed unreported July 14, 2010).

[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.

609.1 also provided some criteria for the court to consider when deciding whether to modify such a sentence.[4]

In October 2017, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. On January 11, 2018, the circuit court held a hearing on it. Appellant presented evidence that he had entered the Eligible Persons Program at the Patuxent Institution in 2012 and completed it in 2017. He said he mentored younger inmates in the program. At the time of the hearing appellant was forty-five years old. In completing the program, appellant participated in modules covering the following subject matter: addiction awareness; anger management; domestic violence; home group; mentorship; parenting; relapse prevention; reentry; sexual offender treatment; social skills; thinking for a change; trauma; 12-step groups; and victim impact.

In addition, he explained that his adjustment record contained very few disciplinary infractions.[5] He recounted the various job assignments he had had in the institution. He also explained that, among other things, that after he met with his son in prison, who was

[4] CR § 5-609.1(b) provides:

> (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.

[5] The most recent of which was in October of 2015 where he lost 30 diminution of confinement credits and was placed in disciplinary segregation for 10 days for testing positive for buprenorphine or Suboxone. Appellant claimed it was a mistake.

also incarcerated for distribution of controlled dangerous substances, he knew he had to change his life. He explained that when he was growing up, he never learned any other way to make money other than selling drugs.

The State made the following argument in support of its position:

> I'm glad Mr. White did a program. However, when you think back to what he did, when you look through those records, the Defendant didn't deal drugs because of things that happened in his past. The Defendant dealt drugs because, in his own words, he could make a profit, $30,000 a week, $1.5 million a year, from selling drugs. That's a lot of poison. That's a lot of people getting addicted. I don't know how many people overdosed from that, how many people may have died.
>
> I'm glad he did a program, but Mr. White, for the third time in his life, was convicted of dealing drugs, spreading poison around Crisfield and Somerset County. Like I said, I'm glad he did a program while incarcerated. But as recently as less than two years ago, he tested positive for having Suboxone in his system, that he's not sometimes following the rules.
>
> And, quite frankly, I don't know what he can expect to do with all those convictions on his record. I didn't see in those records where he had any specific job training. I could be wrong. There may be some skills in there.
>
> He's planning on going to live back to Crisfield, it's my understanding, and he's going to go back and deal drugs because that's what he knows. And he admitted in there, when he was first incarcerated, that he did it because he's impulsive, because he chose to put himself first and not think about others.
>
> I – I don't mean to get on a soapbox here, and I know the State of Maryland believes that drug dealing is a non-violen[t] offense, but the impact it has on the community and our children is severe. And given what's going on nowadays with the addition of fentanyl to the program, it's – it's scary what can be done.
>
> And Mr. White had multiple opportunit[ies], three convictions, for dealing. And he's here before you saying exactly what he needs to say. And I believe that there still is a public safety issue, and that he was given opportunities, and that the sentence imposed is fair because Mr. White was not any nickel-and-dime dealer. He was a large-volume dealer and, in his own words, making approximately $30,000 a week.

> I ask that you oppose his modification or perhaps hold it *sub curia* for a number of years to see how he continues to do, but I don't believe that completing one program within the Division of Corrections shows that he's completely rehabilitated.

On April 18, 2018, by way of a written memorandum opinion and order, the circuit court denied appellant's motion for modification of sentence. In pertinent part, the court stated as follows when denying appellant's motion on its merit:

> In support of his request to modify his sentence, Petitioner pointed out his completion of the Eligible Person Program while incarcerated as well as his age. In response, the State presented evidence of Petitioner's history and negative impact on the community, in addition to making arguments about potential future impacts he may have upon release. Giving due regard to the nature of the underlying crimes, the Petitioner's history and character, and the Petitioner's chances of successful rehabilitation, the Court finds the State has met its burden under the law.
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> CONCLUSION
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> Based on the facts and evidence presented, the State has met its burden in showing that (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 under Annotated Code of Maryland, Criminal Law Article § 5-609.1. Accordingly, Defendant's Application for Modification of Sentence is DENIED.

Appellant took an appeal from that denial. That appeal was stayed pending the Court of Appeals' decision in *Brown, et al. v. State of Maryland*, 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 November 2, 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 question of whether to modify a sentence is left wholly to the discretion of the circuit court, and that the record demonstrates that the court did not abuse its discretion in declining to modify appellant's sentence after conducting a hearing on the motion.[6]

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 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.

[6] 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 affirm the judgment of the circuit court.

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