Circuit Court for Charles County
Case No. 08-K-02-000568

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 657

September Term, 2021

STEVEN ANTHONY THOMAS

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Zic,

JJ.

Opinion by Kehoe, J.

Filed: May 8, 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.

Steven Anthony Thomas appeals from an order of the Circuit Court for Charles County that denied his motion for a modification of sentence. He presents one question, which we have slightly reworded:

> Did the circuit court err in denying his motion for modification of sentence on the grounds that it did not have authority to modify his sentence?

For the reasons that we will explain, we will reverse the judgment of the circuit court and remand this case for further proceedings.

BACKGROUND

In 1994, Mr. Thomas pled guilty to two counts of robbery with a deadly weapon and one count of second-degree burglary. On December 3, 2014, he withdrew an existing petition for post-conviction relief in exchange for a reduction in sentence. On the same day, he was sentenced to a total term of thirty-two years and six months to be served consecutively to any sentence he was serving at the time of his first sentencing. On February 9, 2015, Mr. Thomas timely filed a motion for modification of this sentence and requested a hearing on his motion.[1] On June 5, 2015, the court issued an order holding the motion in abeyance.

[1] The parties agree that Mr. Thomas had the right to file a motion to modify his newly-imposed sentence. *See Hoile v. State*, 404 Md. 591, 613–14 (2008) (For purposes of Md. Rule 4-345, "the granting of a motion for modification of sentence constitutes the imposition of a new sentence." (citing, among other cases, *State v. Green*, 367 Md. 61, 83–84 (2001), and *Greco v. State*, 347 Md. 423, 432 (1997)).

On September 7, 2017, Appellant's counsel filed a supplemental motion for modification of sentence and request for hearing. On September 29, 2017, the motion was stamped "NOTE. NO ACTION 9/29/2017,"[2] together with the initials "WRG."[3] About a year later, on September 21, 2018, Mr. Thomas filed another supplemental motion for modification of sentence and again requested a hearing. On October 18, 2018, the motion was stamped "NOTE. NO ACTION."

In August of 2019, Mr. Thomas again filed yet another supplemental motion for modification of sentence and requested a hearing. In this motion, Mr. Thomas stated:

> Md. Rule 4-345(e) requires that any revision or modification of sentence take place within 5 years from the date the defendant is sentence[d]. This 5-year period will expire on December 2, 2019[.] Mr. Thomas, wherefore, is respectfully requesting that a hearing be scheduled on or before December 2, 2019.

On December 6, 2019, the motion was stamped "NOTE. NO ACTION."

On January 8, 2021, Mr. Thomas filed another supplemental motion for modification of sentence together with a request for a hearing. The circuit court scheduled a hearing on the motion for June 16, 2021. At the conclusion of the hearing, the court denied Mr. Thomas's motion and explained:

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[2] In *Franklin v. State,* 470 Md. 154, 177 (2020), the Court observed that although "the denial of a hearing on a Rule 4-345(e) motion is tantamount to the denial of the motion itself[,] . . . . we do not believe that the 'no action' notation constituted a denial of the request for a hearing."

[3] In his brief, Mr. Thomas suggests that "WRG" was a reference to the Honorable William R. Greer.

> All right, I'm looking at [Rule 4-345] now, looking at the motions in this case. And I think in this case Mr. Thomas, that I'm going to have [to] deny the motion based upon the fact that the rule states that the court may not revise the sentence after the expiration of five years. [T]he motion for reconsideration is denied in this case on the grounds that the court does not have authority to modify . . . the sentence on this date.

Mr. Thomas filed a timely notice of appeal.[4]

THE PARTIES' CONTENTIONS

Mr. Thomas sets out a multi-step argument in support of his position that the circuit court erred in denying his motion to modify his sentence:

First, he asserts that "as a matter of general principle, a trial court encountering a matter that falls within the realm of judicial discretion must exercise that discretion in ruling on the matter, and that a court's failure to do so is itself an abuse of discretion." He cites *State v. Wilkins*, 393 Md. 269, 278 (2006); *Gray v. State*, 368 Md. 529, 565 (2002); and *Gunning v. State*, 347 Md. 332, 351 (1997) in support of this proposition.

[4] As a general rule, this Court does not have the authority to review a decision on a motion to modify a sentence under Rule 4-345(e) that is "'addressed to the court's discretion.'" *Schmidt v. State*, 245 Md. App. 400, 408 (2020) (quoting *Carter v. State*, 193 Md. App. 193, 207 (2010) (citation omitted). However, this Court "may review such a decision where, as here, the circuit court ruled as a matter of law that it did not have the ability to consider the motion on its merits." *Schmidt,* 245 Md. App. at 408 (citing *Hoile v. State,* 404 Md. 591, 617 (2008); and *Fuller v. State*, 169 Md. App. 303, 309 n.5 (2006), *aff'd*, 397 Md. 372 (2007)); *see also Brown, Bottini, and Wilson v. State*, 470 Md. 503, 548–49 (2020) ("The existing law on appealability of a denial of a motion under Maryland Rule 4-345(e) . . . . is an uneasy compromise between the claims of finality and the felt need for fair review.")

Second, the expiration of the five-year time limit for granting motions for modification of sentence contained in Rule 4-345(e) "does not divest courts of their fundamental jurisdiction[.]" In support, he directs our attention primarily to the Supreme Court of Maryland's[5] analysis in *Rosales v. State*, 463 Md. 552, 568 (2019). In *Rosales*, the Supreme Court of Maryland distinguished between the statute that provides for appeals from judgments of the circuit courts[6] and Md. Rule 8-202(a), which states that "[e]xcept as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." The Court concluded that "Maryland Rule 8-202(a) is a claim-processing rule, and not a jurisdictional limitation on this Court." 463 Md. at 568.

[5] 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.

[6] Md. Code, Courts & Jud. Proc. § 12-301 states:

> Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. In a civil case, a plaintiff who has accepted a remittitur may cross-appeal from the final judgment.

Third, there is no statutory limitation on a court's authority to grant a Rule 4-345(e)(1) motion; instead, the five-year limit is imposed by the rule itself. Thus, reasons Mr. Thomas, the rule is a "claims processing" regulation and therefore the trial court retained what he terms "fundamental jurisdiction" to address the merits of his motion even after the five-year deadline expired. Mr. Thomas directs us to *Schlick v. State*, 238 Md. App. 681, 690 (2018) ("*Schlick I*"), *aff'd on other* grounds in *State v. Schlick*, 465 Md. 566 (2019) ("*Schlick II*"). (We will discuss the *Schlick* decisions later in this opinion.) For these reasons, he states that the motions court erred when it "refus[ed] to recognize that it possessed fundamental jurisdiction to rule on the merits of the motion for modification outside the five-year limit[.]" Additionally, according to Mr. Thomas, "the court failed to exercise discretion within the five-year limit and thereby abused its discretion."

The State agrees with none of this. It contends that the plain language of Rule 4-345(e) means what it says. The State points to the text of the rule itself and asserts that it does not require a court to *rule* on a motion to modify a sentence; instead, the rule prohibits a court from *modifying* a sentence after the five-year deadline has expired. The State notes that, prior to the 2004 amendment to Rule 4-345, a court's authority to modify a sentence was not subject to any temporal limitation. The State asserts:

> [The Supreme Court of Maryland's] intent in enacting the five-year limit is clear. The Court made a deliberate decision to end the prior regime, in which for over 40 years, trial courts had been able to exercise revisory power for an unlimited time after sentencing if a timely motion was filed.

> In its place, the Court established an express five-year limit that applies to all criminal sentences without exception and cannot be waived.[7]

It is the State's position that *Schlick I* was wrongly decided and should be overruled. Alternatively, the State suggests that *Schlick I* is factually distinguishable from the case before us. The State urges us to restrict the scope of *Schlick I*'s holding to cases which are factually indistinguishable from it.

For reasons that we will explain, we conclude that *Schlick I* constitutes binding precedent in this appeal. Based on our reasoning in *Schlick I*, we hold that the trial court retained the authority to rule on Mr. Thomas's Rule 4-345(e) motion even after the five-year deadline had expired.

THE STANDARD OF REVIEW

Md Rule 4-345 governs the revisory power of courts over requests to modify sentences. It states in pertinent part (emphasis added):

> (e)(1) **Modification Upon Motion.** Generally. 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.
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> * * *

[7] In their briefs, both parties seek support for their positions in the administrative history of the current version of Rule 4-345(e). For reasons that we will explain, we believe that the outcome of this appeal is determined by *Schlick I.* Therefore, there is no need for us to address the administrative history of the rule.

> (f) **Open Court Hearing**. The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. . . . If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Whether to grant a motion to modify a sentence is a matter of the trial court's discretion. A court abuses its discretion when its ruling is premised upon a legal error. *See Brown, Bottini, and Wilson v. State*, 470 Md. 503, 554 (2020) (An "abuse of discretion . . . may include a legal error, such as the circuit court failing to recognize or exercise its discretion.") *Greco v. State*, 347 Md. 423, 437 (1997) (holding that "the trial court erred as a matter of law by ruling that it did not have jurisdiction to consider the motion [to modify a sentence] on the merits.").

ANALYSIS

At the core of Mr. Thomas's appellate contentions is the premise that, because his Rule 4-345(e) motion was filed within 90 days of the imposition of his sentence, the circuit court retained "fundamental jurisdiction" to address the merits of the motion even after the five-year limit provided in Maryland Rule 4-345(e) had lapsed. We agree. For the following reasons, it is our view that *Schlick I* requires this result.

Schlick I

In 2005, Schlick was convicted of distributing crack cocaine and sentenced to a term of incarceration for 16 years with all but 18 months suspended. He was also placed on probation for five years. 238 Md. App. at 684. In 2008, the probation was revoked and

the court imposed the suspended sentence. Schlick asked his trial counsel to file a Rule 4-345(e) motion to modify his sentence, but counsel failed to do so. In 2012, Schlick filed a petition for post-conviction relief, asserting that he had asked his trial counsel to file a Rule 4-345(e) motion. The post-conviction court granted Schlick the right to file a belated Rule 4-345(e) motion within 90 days of the date of the order, which he did. *Id.* at 685. However, the court dismissed the motion because more than five years had passed since the sentence had been imposed. *Id.* at 686. In concluding that the trial court had erred, we noted that "[a]t common law, Maryland trial courts possessed the inherent authority to modify judgments in both criminal and civil cases." 238 Md. App. at 690 (citing *Chertkov v. State*, 335 Md. 161 (1994)). We explained that the "concept of inherent authority" included:

> the power to protect itself; the power to administer justice; the power to promulgate rules for its practice; and the power to provide process where none exists. It is true that the judicial power of this court was created by the Constitution, but upon coming into being under the Constitution, this court came into being with inherent powers.

(quoting *State v. Jones*, 451 Md. 680, 691–92 (2017) (cleaned up).

We further explained (emphasis added):

> In a perfect world, a court should set the hearing [on a motion to modify a sentence] within the five-year period, but we know courts are busy, and if a court fails to do so, the consequence should not be held against the defendant. On the other hand, *the defendant and counsel have an obligation once the motion is filed within the five-year period, to make best efforts to ensure the hearing is heard in a timely manner*. All we are saying is that the court has 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.
>
> *The conflict in the five-year rule for hearing the matter in regard to Rule 4-345 does not remove the court's power to entertain the motion.* The fundamental jurisdiction of a court is "the power residing in such court to determine judicially a given action, controversy, or question presented to it for decision." *Fooks' Executors v. Ghinger*, 172 Md. 612, 621 (1937).
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> * * *
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> *Because the court had fundamental jurisdiction and discretion, which it did not exercise*, we remand this case to that court to consider whether to entertain the Motion for Modification of Sentence and to consider the merits of the motion.

238 Md. App. at 693-94.

Schlick II

Although the Supreme Court of Maryland affirmed our decision in *Schlick II,* it did so for different reasons. The Court explained its holding as follows (emphasis added):

> [W]hen the postconviction court granted Mr. Schlick 90 days from the date of its order to file a motion for modification of sentence, *implicit in the court's ruling was the circuit court's authority to exercise it revisory power over Mr. Schlick's sentence for five years following the postconviction court's final order*. Given that Mr. Schlick was granted postconviction relief on March 20, 2013, the circuit court had revisory power over his sentence for an additional five years from that date, or until March 20, 2018. On August 8, 2017, when the court dismissed Mr. Schlick's motion without a ruling on the merits because of a perceived lack of revisory power . . . . The court, in fact, had revisory power over Mr. Schlick's sentence for an additional 224 days, or until March 20, 2018. As such, when the circuit court dismissed Mr. Schlick's motion without a ruling on the merits, the circuit court erred as a matter of law.
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> * * *
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> In light of the 224 days that were outstanding when the circuit court dismissed Mr. Schlick's motion, we hold that the Circuit Court for Baltimore City retains revisory power over Mr. Schlick's sentence for an

> additional 224 days accounting from the date of Mr. Schlick's written request to the circuit court.

465 Md. at 587.

The Supreme Court expressly declined to address our fundamental jurisdiction analysis:

> 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 Court of Special Appeals 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).

Schlick II, 465 Md. at 587 n.7.

Finally, the *Schlick II* Court referenced the distinction drawn in *Rosales* between a "jurisdictional" rule and a "claim processing" rule:

> In the case at bar, we do not expand or disregard the time frames set forth in Rule 4-345(e). Rather, we apply them to the present scenario, which arises in the postconviction context. Therefore, whether the Rule is properly classified as "jurisdictional" or "claim processing" is immaterial to our disposition of Mr. Schlick's case.

465 Md. 566, 579 n.4.

With this as background, we turn to the dispositive issue in this case.

"Under the doctrine of *stare decisis*, generally, a court must follow earlier judicial decisions when the same points arise again in litigation." *E. N. v. T. R.*, 474 Md. 346, 378 n.13 (2021) (quoting *Sabisch v. Moyer*, 466 Md. 327, 372 n. 11 (2019) (cleaned up). In *E. N.*, the Court noted that the doctrine of *stare decisis* "is not absolute" and that "an appellate court may overrule a case that either was clearly wrong and contrary to

established principles, or has been superseded by significant changes in the law or facts." *Id.* (cleaned up).[8]

Our reasoning in *Schlick I* was not "clearly wrong." Nor has our reasoning in that case been superseded by significant changes in the law. While the facts of Mr. Thomas's case are different from those in *Schlick I,* those differences are not outcome-determinative. We conclude that *Schlick I* constitutes *stare decisis* as to whether the circuit court had the inherent authority to grant relief to Mr. Thomas even though the five-year time period in Rule 4-345(e) had expired.[9]

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[8] In its brief, the State asserts that *Schlick I* was wrongly decided. But its argument focuses on the fact that the *Schlick I* Court did not "devot[e] substantial attention to the history of Rule 4-345" and that neither party had addressed the fundamental jurisdiction issue in the briefs. Neither of these arguments is persuasive. The focus of our holding in *Schlick I* was on the inherent and long-recognized principle that Maryland trial courts have the "inherent power," among other things:

> to administer justice [and] to provide process where none exists. It is true that the judicial power of this court was created by the Constitution, but upon coming into being under the Constitution, this court came into being with inherent powers.

238 Md. App. at 690 (quoting *State v. Jones*, 451 Md. 680, 691–92 (2017)).

A court's inherent power to pursue the interest of justice does not depend upon the administrative history of any Maryland Rule of Procedure. Nor does a court's inherent power disappear when counsel fail to remind the court that it has this authority.

[9] Maryland's appellate courts often treat as precedential authority cases which have been affirmed on other grounds. *See Redkovsky v. State*, 240 Md. App. 252, 261-62 (2019) ("We have recognized, however, that a motion for judgment of acquittal may be sufficient to preserve an issue where the acquittal argument generally includes the issue raised on appeal." (citing, among other cases, *Shand v. State*, 103 Md. App. 465, 488–89

We conclude that the circuit court erred in failing to exercise that authority. In this context, our Supreme Court's reasoning in *Franklin v. State,* 470 Md. 177 (2020), is instructive.

The dispositive issue in that case was whether Franklin satisfied the deficient performance and resulting prejudice parts of the test established in *Strickland v. Washington*, 466 U.S. 668, 686 (1984). *Id.* at 176. In this context, the Court explained (emphasis added):

> [I]n this context, the "reasonable probability" of a different result, for purposes of prejudice, is not the reasonable probability that the court will schedule a hearing, let alone ultimately grant the motion. Rather, *the question is whether there is a reasonable probability that, had counsel not acted deficiently, the court would have exercised its discretion one way or the other,* and either conducted a hearing or denied the motion without a hearing, within the five-year period.

Id. at 154.

(1995), *aff'd* on other grounds, 341 Md. 661(1996)). Other cases applying this principle include *State v. Mazzone*, 336 Md. 379, 399 (1994) (relying on *United States v. Focarile*, 340 F. Supp. 1033, 1047 (D.Md.1972), *aff'd on other grounds sub nom*., *United States v. Giordano*, 469 F.2d 522 (4th Cir.1972), *aff'd*, 416 U.S. 505 (1974)); *Riggins v. State*, 223 Md. App. 40, 61 (2015) (relying on *McNeal v. State*, 200 Md. App. 510, 528 (2011), *aff'd* on other grounds, 426 Md. 455 (2012); *Bowser v. State*, 50 Md. App. 363, 3736 (1981) (relying in part on *State v. Talbot*, 135 N. J. Super. 500 (1975), *aff'd on other grounds*, 71 N. J. 160 (1976).

A majority of the Court[10] also addressed the prejudice issue:

> [T]he "different outcome" for purposes of *Strickland* prejudice in this context is not the ultimate reduction of the sentence, or even the scheduling of a hearing, *but rather the exercise of the court's discretion to decide whether to hold a hearing in the first place*.

Id. at 197 (footnotes omitted).

Returning to the case before us, Mr. Thomas, through counsel, timely filed a Rule 4-345(e) motion. In 2017, 2018, and 2019, he filed supplemental motions asking for a hearing on the motion. In his 2019 motion, which was filed on August 9th, he drew the court's attention to the fact that the five-year deadline expired on December 2, 2019 and requested a hearing on or before that date. The circuit court took no action on any of these motions. It is difficult to imagine what more counsel could have done to bring the approaching deadline to the court's attention.

Applying the holding of *Schlick I* to the facts of this case points ineluctably to the conclusion that the circuit court retained fundamental jurisdiction over the merits of this appeal even though the five-year deadline in Rule 4-345(e) had expired. Therefore, the court erred as a matter of law when it concluded that it was without authority to revise Mr. Thomas's sentence. We reverse the circuit court's judgment and remand this case so that the court, in the exercise of its discretion, can decide whether to deny the motion

[10] In a concurring opinion, and among other reservations regarding the majority's analysis, Justice Watts, joined by Justices Hotten and Booth, stated that she "would not address the prejudice prong" of the *Strickland* test. 470 Md. at 198.

without a hearing, or to hold a hearing and then to decide whether to deny or to grant Mr. Thomas's motion to modify his sentence.

THE JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY THE COUNTY COMMISSIONERS OF CHARLES COUNTY.