

Circuit Court for Caroline County
Case No.: 05-K-01-005224

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 680

September Term, 2019

GEORGE LANE

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 15, 2020

*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.

Following trial in the Circuit Court for Caroline County, a jury found George Shawn Lane, appellant, guilty of a total of fifty-one charges arising from sexual activities he performed on an unconscious child victim which he video recorded and photographed. On January 23, 2002, the court sentenced appellant to an aggregate of ninety years' imprisonment. On April 16, 2002, he filed a timely motion for modification of sentence, pursuant to Md. Rule 4-345, and requested that the court not rule on it at that time. The circuit court granted that latter request, and did not, at that time, rule on the motion.

On December 12, 2018, and on May 24, 2019, appellant filed written requests for the circuit court to hold a hearing on his still pending motion for modification of sentence. On June 3, 2019, the circuit court denied appellant's motion for modification without a hearing by written order which stated, in pertinent part, that the court found "that the allowable time for the Court to revise [appellant's] sentence, under Md. Rule 4-345, has passed."

Appellant claims that the circuit court made an error of law in determining that Md. Rule 4-345 prohibited the court from ruling on his pending motion. The State agrees, and so do we.

Maryland Rule 4-345(e) provides, in pertinent part, that "[u]pon a motion filed within 90 days after imposition of a sentence . . . 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[.]*" (emphasis added). That five-year time limit was not always a part of Rule 4-345, however. The five-year time limit on the court's authority to act on a timely filed motion for modification of sentence was added to the Rule

effective July 1, 2004 by the Court of Appeals’ May 11, 2004 Rules Order. That Rules Order also made it explicitly clear that the changes being made to Rule 4-345 “shall take effect and apply to all sentences imposed on or after July 1, 2004[.]” (See *Bereska v. State*, 194 Md. App. 664, 688 (2010), noting that the five-year time limit is applicable only to sentences entered after July 1, 2004). Prior to July 1, 2004, there was no time limit for a court to act on a timely filed motion for modification or reduction of sentence. *Id.* Because appellant filed his motion for modification prior to July 1, 2004, the circuit court made a legal error in determining that Md. Rule 4-345 prohibited it from considering appellant’s pending motion for modification of sentence.

As a result, we vacate the order of the circuit court denying appellant’s motion for modification of sentence and remand the case with instructions to consider appellant’s request for a hearing on his pending motion for modification of sentence. We note that we do not offer any guidance to that court about whether to hold a hearing, or how to rule on the pending motion. Those are questions left to the sound discretion of the circuit court.

**ORDER OF THE CIRCUIT COURT
FOR CAROLINE COUNTY
DENYING APPELLANT’S MOTION
FOR MODIFICATION OF
SENTENCE VACATED. CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO
BE PAID BY CAROLINE COUNTY.**