Circuit Court for Baltimore County
Case No.: 03-K-11-005621

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 680

September Term, 2020

ANTHONY STEVEN WEBB, SR.

v.

STATE OF MARYLAND

Shaw Geter,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: July 30, 2021

On May 16, 2012, Anthony Steven Webb, Sr., appellant pleaded guilty in the Circuit Court for Baltimore County to conspiracy to distribute heroin, and conspiracy to distribute cocaine, pursuant to a binding guilty plea agreement.[1] In accordance with that agreement, the court sentenced him, as a subsequent offender, to 25 years' imprisonment to be served without the possibility of being released on parole for conspiracy to distribute cocaine, to 20 consecutive years' imprisonment, all suspended, for conspiracy to distribute heroin, and five years' probation.

I.

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] Appellant entered his guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970) on the third day of a jury trial.

[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 September 2018, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. In his motion, and during a hearing on it, appellant explained his progress while incarcerated which has included mentoring younger inmates. He presented to the court certificates, diplomas, commendations, and letters from family members. Through his testimony, and through the testimony of several witnesses, he endeavored to demonstrate to the court that he was older, wiser, and no longer a threat to society.[5] Moreover, he presented the court with information about his long history of untreated substance abuse. Appellant asked the court to consider suspending his sentence so that he could take advantage of the substance abuse treatment options afforded under §§ 8-505 through 8-507 of the Health General Article of the Maryland Code.

In its written response and during the hearing, the State presented evidence of the facts of the offense for which appellant is currently incarcerated as well as his criminal history. According to the State, in this case, appellant and his associates sold 70 grams of

[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] Appellant was 52 years old at the time the court imposed the sentence in this case.

crack cocaine to confidential informants. Appellant became the target of a lengthy investigation which included surveillance and wiretapping. During February and March of 2011 the police recorded numerous conversations wherein appellant and his associates repeatedly discuss the buying and selling of heroin and cocaine. Moreover, when the police searched appellant's home they found three pistols in appellant's dresser.

The State pointed out that, previously, appellant had been sentenced to 10-year and 16-year terms of imprisonment for distributing narcotics and handgun offenses. The State alleged that he had been distributing drugs "for decades."

On January 28, 2019, at the conclusion of the hearing held on appellant's motion, the circuit court decided to hold appellant's motion *sub curia*, but before doing so, stated as follows:

> I just wanna put some preliminary findings on the record. Here, as I've stated before, the purpose of this hearing is in a very limited scope. Again, the Court is guided by Criminal Law Article Section 5-609.1[.]
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> What is undisputed here is that the Defendant … was convicted in this case on two counts. Specifically, Count 1 is conspiracy to distribute heroin in which he received a 20-year suspended, but a consecutive sentence to Count 4, in which he received a mandatory minimum sentence of 25 years without the possibility of parole on the charge of conspiracy to distribute cocaine, in which a guilty plea was tendered …during a jury trial.
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> ****
>
> The Court has heard a lot. The Court has heard about the nature of the crime the history and the character of the Defendant, and the proposed chances the Defendant has of becoming successful in rehabilitation. The Court has considered and will continue to consider – there are many letters and support of the Defendant.

So the Court has considered both what the State and the Defense have provided to the Court. The Court has considered that … prior to the conviction that made the Defendant eligible for the 25 years without parole, he had two previous [felony] convictions; one in which he was sentenced to 16 years, and one to 10 years to the Division of Corrections [sic] on both cases of active incarceration time in different counties and the county of Baltimore, in which he was convicted of felony narcotics offenses. …

The Court has heard that prior to those convictions … it seems like in 1981 there was a possession charge; '81, an assault; a resisting arrest; a violation of probation; and, perhaps, another unlawful possession [of a firearm] at that time.

In 1989 the Court heard of a CDS possession and the first felony conviction, which was a CDS manufacturing. It is all one, but it was manufacturing, possession with intent, and there was talk of a handgun violation but I don't think there was a conviction of it, so the Court won't consider that. In 1989 there was also, it looks like – what was the second possession with intent? It looks like that was '99.

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I have it before me here. One looks like it was from Howard County in which he was convicted – I have it – in 1999, possession with intent to distribute, which originally he was given 10 years under case number – it's part of the court file, and it looks like the other one that was referenced was part of the court file was in 1989, which was in Cecil County. The Court has also considered that this case involved – oh, in that case, the 1999 case, there was a conviction of a firearm charge.

In the 2011 series of cases before the Circuit Court for Baltimore County on which the firearm charge is not before the Court, the Court takes notice that there was an additional firearms violation, and in this case there were the two convictions of two felonies of two separate substances.

Again, the Court has heard from the overwhelming support from family members and in letters from who – the family members who presented in Court here today, and also the letters from other persons such as friends that are in what would be Defendant's Number 1, the Court has also considered the certificates of achievement and has also considered that there was proffered to be the fact that the Defendant was viewed as a mentor within the Division of Corrections [sic].

The Court heard also from the Defendant who stated that he was deeply remorseful, and he stated that he never had the opportunity for drug treatment and counseling. There was also, the Court has had an opportunity to preliminarily review Defendant's Number 2, which I believe is the pamphlet from a proposed drug treatment program, and the Court heard about the facts of the underlying charges, and the Court heard that it was a wiretap investigation.

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At the time the Defendant was arrested or there was some sort of search of the Defendant's home in proximity which would be in his dresser drawer to where the Defendant's bedroom was, the State proffered that there were three handguns recovered.

The Court heard argument from the State that the Defendant would distribute narcotics in public places, and that he was a caregiver in caring for what was defined as vulnerable type of adults, and would have both – have had incidences to, both, bring someone that he was caring for to a narcotics transaction, or to the location of where the people lived in which he watched.

The Court also heard examples from multiple calls from the wiretap investigation notes that the Defendant was identified as the one who was actually – it was called cooking or manufacturing the drugs, taking them from powder cocaine to crack cocaine or rock cocaine, and that the Court heard about the level of distribution[.]

The Court has also heard there was a conviction for contraband, and it's proffered to be at least, I guess, tobacco, which would – anything could be prohibited in an institution could be considered contraband. There obviously are different types of things that could be prohibited.

So, the Court has had an opportunity to hear all of those things and to preliminarily consider what the Court must consider under Subsection B of the statute. What the Court is going to do is have an opportunity to review, again, the transcript, and to review the exhibits and to digest the Court's notes to see whether or not the State has met its burden of proving to the Court by a preponderance of the evidence the retention of the mandatory sentence, not resulting in substantial injustice, and that the sentence was necessary for the protection of the public.

So, I'm going to issue my – I'm gonna incorporate the findings that I found that have been proven to the Court, which are what I've articulated, and I will issue my order. If the Court is inclined to grant the relief … the

> Defendant would be transported back before me for any further relief of sentencing. If the Court declines to grant the relief, then it will be articulated in my order.

The court held the motion *sub curia* until March 26, 2020, when it issued an order denying the motion. That order stated as follows:

> The Court has considered the Defendant's Motion to Modify, the State's Response, all additional pleadings of the parties, and the Hearing previously held before this Court.
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> Having considered the same, it is this 26th day of March, by the Circuit Court of Baltimore County, hereby so
>
> ORDERED, Defendant's Motion to Modify, previously held *sub curia*, is hereby DENIED without further hearing.

Appellant took an appeal from that denial arguing that the trial court erred in denying his motion without stating any reasons for its decision or making any findings with respect to CR § 5-609.1. In the alternative, he contends that the circuit court abused its discretion in denying his motion because appellant's chances for successful rehabilitation are very good and he is therefore an ideal candidate for a sentence modification under the JRA.

The State contends that there is no legal requirement for the court to state its reasons for denying a motion under the JRA, and that, even if there were, the court's statements at the conclusion of the hearing on appellant's motion plainly demonstrated the circuit court was aware of, and considered, the criteria listed in CR § 5-609.1. The State also 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.

In *Brown v. State*, 470 Md. 503 (2020), 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.

We are persuaded that, when viewed collectively, the statements the court made during the hearing on appellant's motion and the language of the order denying appellant relief demonstrate that the circuit court carefully and thoughtfully analyzed appellant's motion under the JRA with full knowledge of what the JRA required. 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.

II.

Relying on the Court of Appeals' decisions in *Cuffley v. State*, 416 Md. 568 (2010), *Baines v. State*, 416 Md. 604 (2010), and *Matthews v. State*, 424 Md. 503 (2012), appellant contends that his 20-year consecutive suspended sentence for conspiracy to distribute heroin is illegal because it was imposed in violation of the guilty plea agreement.

As noted earlier, appellant pleaded guilty pursuant to a binding guilty plea agreement. At the outset of the guilty plea proceeding, the State described the terms of the agreement on the record, as follows:

> [THE STATE]: Thank you, your Honor. Your Honor, after speaking with counsel and your Honor in chambers, it is my understanding that we have an agreed upon plea, and I would like to put that on the record at this time with the Court's permission.
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> THE COURT: Yes, ma'am.
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> [THE STATE]: Thank you. In case K-11-5621, we agreed this will proceed by way of a guilty plea to Counts 1 and 4. On Count 1, the recommendation will be a 20-year suspended sentence to run consecutive to Count 4's sentence, which is 25 years without the possibility of parole. At sentencing today, your Honor, the State will hand up a copy of a notice that was served and corresponding documentation to show the Defendant, in fact, qualifies under Maryland Rule 4-245 as a repeat offender and, therefore, is subjected to the 25 years without the possibility of parole.

Shortly thereafter, the court confirmed with appellant that he heard the State's recitation of the terms of the agreement and confirmed that he was satisfied with the agreement. The following exchange occurred:

> THE COURT: Mr. Webb, you heard the plea agreement placed on the record by [The State], is that correct?
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> [APPELLANT]: Yes, sir.
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> THE COURT: Did you participate with [Defense Counsel] in negotiating this agreement?
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> [APPELLANT]: Yes, sir.
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> THE COURT: You're satisfied with the agreement?
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> [APPELLANT]: Yes, sir.
>
> THE COURT: Do you have any questions about it?
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> [APPELLANT]: No, not at this particular time.

Later, when appellant's counsel and the court explained how pleading guilty limits what can be raised on appeal, the following occurred:

> THE COURT: The next would be whether or not there was a sentence that was legal, and that's call [sic] the legality of sentence. Now because of the statutory requirement, this sentence carries ordinarily would be a 20-year sentence, but because of the number of offenses and the State having served notice, it is enhanced. There's a 25-year minimum mandatory that the State has filed notice about. You understand that?
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> [APPELLANT]: Yes.
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> [DEFENSE COUNSEL]: Based on that it means that this Court is bound and obligated at a bare minimum to sentence you to 25 years, and he's not going over that. Do you understand that?
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> [APPELLANT]: Yes.
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> [DEFENSE COUNSEL]: There's also another count where they are running 20 years to run consecutive, but all that is being suspended. So the maximum amount of time you are looking at is 25 years. A legal sentence is that which is prescribed within the statute. If the judge for some reason sentenced you beyond the 25 years, that would be deemed an illegal sentence and we could challenge that based on that ground. Do you understand that?
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> [APPELLANT]: Yes.

Appellant claims that the guilty plea agreement was ambiguous because he received "conflicting information" about the terms of the agreement when, on the one hand, he was told that the agreement contemplated a 20-year consecutive suspended sentence, and on the other hand, he was told that "this Court is bound and obligated at a bare minimum to sentence you to 25 years, and he's not going over that," and "[i]f the judge for some reason sentenced you beyond the 25 years, that would be deemed an illegal sentence."

Cuffley, *Baines*, and *Matthews*, *supra*, all broadly stand for the proposition that any ambiguity in a guilty plea agreement is to be construed in favor of the defendant. When

that is done, any sentence imposed by the court that exceeds the terms of the guilty plea agreement when interpreted in the light most favorable to the defendant, is illegal. In *Ray v. State*, 454 Md. 563 (2017), the Court of Appeals set forth a three-step inquiry for interpreting an allegedly ambiguous guilty plea agreement:

> First, we must determine whether the plain language of the agreement is clear and unambiguous as a matter of law. If the plain language of the agreement is clear and unambiguous, then further interpretive tools are unnecessary, and we enforce the agreement accordingly.
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> Second, if the plain language of the agreement is ambiguous, we must determine what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be, based on the record developed at the plea proceeding. If examination of the terms of the plea agreement itself, by reference to what was presented on the record at the plea proceeding before the defendant pleads guilty, reveals what the defendant reasonably understood to be the terms of the agreement, then that determination governs the agreement.
>
> Third, if, after we have examined the agreement and plea proceeding record, we still find ambiguity regarding what the defendant reasonably understood to be the terms of the agreement, then the ambiguity should be construed in favor of the defendant.

Id. at 577-78. (cleaned up) (paragraph breaks added).

We are not persuaded that the terms of appellant's guilty plea were ambiguous. When read in context, appellant's counsel's statements to appellant that the court would not sentence him in excess of the 25-year mandatory minimum clearly referred to active incarceration. Because we find the plain language of the agreement clear and unambiguous, "further interpretive tools are unnecessary." *Id*. Nevertheless, even if appellant's lawyer injected a measure of ambiguity into the agreement by telling appellant that the court would not sentence him beyond the 25-year mandatory minimum, we are

persuaded, on this record, that not only a reasonable lay person would have understood that appellant's counsel was referring to active incarceration, but that appellant understood that too.

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

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.