

Circuit Court for Baltimore County
Case No. 03-K-09-002162

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 792

September Term, 2021

MICHAEL DONALDSON, JR.

v.

STATE OF MARYLAND

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 28, 2022

*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 2009, Michael Donaldson, Jr., appellant, was convicted of first-degree murder, conspiracy to commit first-degree murder, and use of a handgun in the commission of a crime of violence following a jury trial in the Circuit Court for Baltimore County. The court sentenced him to life imprisonment without the possibility of parole on the murder count, a consecutive term of life imprisonment on the conspiracy count, and a consecutive term of 20 years' imprisonment on the handgun count. This Court affirmed his convictions on direct appeal. *Donaldson v. State*, 200 Md. App. 581 (2011).

In 2020, appellant filed a petition for post-conviction relief, claiming that his trial counsel had been ineffective in failing to file a timely motion for modification of sentence and that his appellate counsel had been ineffective in failing to raise certain issues on appeal. Following a hearing, the court entered an order on May 20, 2021, granting appellant the opportunity to file a belated motion for modification of sentence and granting appellant's motion to withdraw his post-conviction petition without prejudice. Appellant subsequently filed a motion for modification of sentence. The court denied that motion without a hearing on July 19, 2021, finding that the original sentence had been "fair, reasonable, and proportional." This appeal followed.

On appeal, appellant contends that the court erred in denying the motion on the merits and in not holding a hearing. He also contends that his post-conviction counsel was ineffective in failing to request a hearing and in advising him that he would likely receive a more lenient sentence if he filed a motion for modification of sentence and withdrew his post-conviction petition. He thus asserts that his agreement to withdraw his post-

conviction petition was involuntary. The State has moved to dismiss the appeal as not allowed by law.

The denial of a motion for modification of sentence pursuant to Maryland Rule 4-345 is not an appealable order unless the court concludes that it lacks jurisdiction to consider the motion, which it did not in this case. *See Hoile v. State*, 404 Md. 591, 615 (2008) (“[T]he denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable.” (citations omitted)).¹ Moreover, any issues related to the post-conviction process must be raised by way of an application for leave to appeal. *See* Md. Rule 8-204.² Consequently, we shall grant the State’s motion to dismiss.

**APPELLEE’S MOTION TO DISMISS
GRANTED. COSTS TO BE PAID BY
APPELLANT.**

¹ Even if the appeal was not subject to dismissal, we note that appellant’s claim that the court erred in not holding a hearing lacks merit as Maryland Rule 4-345 does not require a hearing in open court unless the court intends to modify, reduce, correct, or vacate the sentence. *See Scott v. State*, 379 Md. 170, 190 (2004).

² In any event, appellant’s claims that he received ineffective assistance of post-conviction counsel and that he did not voluntarily withdraw his post-conviction petition would not be properly before us as they were not raised in the circuit court.