Circuit Court for Howard County
Case No.: 13-K-92-026377

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0835

September Term, 2023

ALTON ROMERO YOUNG

v.

STATE OF MARYLAND

Reed,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 10, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On March 2, 2022, Alton Romero Young, appellant, filed a motion in the Circuit Court for Howard County seeking modification of his sentence pursuant to Section 8-110 of the Criminal Procedure Article ("CP") of the Maryland Code, which authorizes a person who committed an offense as a minor prior to October 1, 2021 to file such a motion once the person has served at least 20 years imprisonment for that offense.[1] After holding a hearing, the court issued a written opinion and order denying the motion. Appellant timely appealed and presents the following questions for our review:

1. In ruling on the appellant's Motion for Reduction of Sentence Pursuant to the Juvenile Restoration Act, did the circuit court err in retaining the sentence of life without the possibility of parole after the General Assembly prohibited that penalty for individuals who were under 18 years of age at the time of the crime?

2. Did the circuit court err in failing to address "the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences," Md. Code Ann., Crim. Proc. Art. § 8-110(d)(10), in its written decision as required by § 8-110(e)?

We answer the first question in the negative and the second question in the affirmative. We shall therefore vacate the judgment of the circuit court and remand this case for further proceedings consistent with this opinion. In addition, the State has filed a motion to dismiss this appeal which we shall deny.[2]

[1] CP § 8-110 was created in 2021 as part of the Juvenile Restoration Act. 2021 Md. Laws, ch. 61, § 1.

[2] The crime victim and the Maryland Crime Victim's Resource Center filed an amicus brief in this case. They took no position on the State's motion to dismiss the appeal. Otherwise, they, along with the State, supported affirming the judgment of the circuit court.

BACKGROUND

The Underlying Offenses

On January 27, 1993, a jury found appellant guilty of first-degree felony murder, first-degree rape, and unauthorized use of a motor vehicle. On March 30, 1993, the court sentenced him to life without the possibility of parole ("LWOP") for first-degree murder plus four concurrent years for unauthorized use of a motor vehicle. We glean from our prior opinion on direct appeal of appellant's convictions the following recitation of the facts underlying appellant's convictions in this case:

> It is undisputed that on March 25, 1992, when appellant was sixteen years old, he killed his high school tutor. The murder was proven in a series of statements made by appellant to the Howard County police and to a friend. Appellant denied, however, that he raped the victim. The State's proof of rape was based on DNA profiles. DNA present in semen stains on the victim's undergarment matched appellant's DNA profile. According to expert testimony, there was only a 1 in 590,000 chance of such a match randomly occurring. In addition to DNA-based evidence, the State provided serological-based evidence that concluded that semen taken from the victim's vaginal swabs was consistent with appellant's ABO blood type but not consistent with that of the victim's husband. Further, two blood stains on the victim's undergarment were consistent with [appellant]'s blood type, and one stain was consistent with either [appellant], the victim, or the victim's husband.

Young v. State, No. 900, Sept. Term 1993, slip op. at 1-2 (Md. App. April 12, 1994).

The JUVRA Motion for Modification of Sentence.

As indicated earlier, on March 2, 2022, appellant filed a motion for modification of sentence pursuant to the provisions of CP § 8-110 and the Juvenile Restoration Act ("JUVRA").[3] After holding a hearing on appellant's JUVRA motion, the court denied it

[3] We have appended the text of CP § 8-110 to the end of this opinion.

by way of a written memorandum opinion filed on June 8, 2023. As will be discussed in much greater detail *infra*, at the outset of its memorandum opinion, the court analyzed and rejected appellant's argument that a JUVRA proceeding amounted to a re-sentencing proceeding, and that, as a result of a change in the law which eliminated LWOP for juvenile offenders, the court was prohibited from imposing LWOP when re-sentencing appellant. Next, as required by statute, the court addressed the factors listed in CP § 8-110(d). In summary, the court found as follows with respect to each factor:

(1) the individual's age at the time of the offense: The court found that appellant was sixteen years old at the time of the offense.

(2) the nature of the offense and the history and characteristics of the individual: The court noted that appellant raped and killed a teacher who came to his home to assist him with school after he was removed from school as a result of inappropriate sexual conduct there. Although the court acknowledged that the reasons for appellant being suspended from school were somewhat unclear, it appeared to the court that he "may have had sexual relations with a female in a bathroom" during school hours. The court also explained that it had gleaned from the pre-sentence investigation report that, at the time of the rape and killing, appellant was on probation for theft and a traffic offense. Moreover, due to behavioral issues, appellant had been a resident at several facilities in the years preceding the commission of the offenses in this case. The court noted reports of appellant's aggressive and assaultive behavior in those facilities and his removal from one of them because of such behavior. Also, the court observed that, after it had been reported that appellant sexually abused a six-year-old girl, he was referred to a juvenile sexual

offender program. The court explained that appellant had been diagnosed with attention deficit disorder and conduct disorder and "received psychiatric intervention and medication in relation to his impulsive behavior and poor self-control."

(3) whether the individual has substantially complied with the rules of the institution in which the individual has been confined: The court cataloged appellant's numerous disciplinary rule infractions while incarcerated including multiple infractions involving weapons, violence, and sexual conduct toward female institutional staff. The court recognized that appellant had no infractions in the last decade with the exception of one infraction for possession of two micro-SD memory cards.

(4) whether the individual has completed an educational, vocational, or other program: After noting that appellant had limited educational opportunities in prison due to his LWOP sentence, the court recognized that appellant "has attempted to obtain more educational opportunities and has availed himself of various programming opportunities that are offered."

(5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction: The court noted that appellant had provided some information germane to his maturity, rehabilitation, and fitness to reenter society including his participation and involvement in various institutional programing, his placement on the honor tier, work evaluations, and letters from correctional staff. The court also noted his participation, at the request of the victim's family, in a restorative justice program which ultimately did not have a positive impact on the victim's family.

(6) any statement offered by a victim or a victim's representative: The Court explained that it had heard victim impact statements from the victim's friend, husband, daughter, granddaughter, and granddaughter's husband. They expressed the continuing difficulties they face because of the victim's absence and because of thoughts about the brutal nature of the crime. As noted earlier, the victim's family and appellant participated in a restorative justice program involving community mediation. The court observed, however, that the mediation was not successful "as the mediation highlighted how [appellant] could have saved the victim instead of leaving her for dead."

(7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional: The court noted that, since the time of appellant's 1993 sentencing proceeding, the court had not been provided with any reports of physical, mental, or behavioral examinations. From the court's review of a transcript of a sentence review hearing held in August 1993, it noted that appellant had been diagnosed with "conduct disorder of long-standing duration, deficit disorder, and personality disorder." In addition, at that time appellant had a number of symptoms of chronic depression. The doctor who examined appellant sometime before the prior sentencing review testified at that proceeding "that there were indications of some physical brain damage and that [appellant]'s condition would likely 'burn out' and greatly dimmish [sic]" by the time appellant reached his "thirties and forties."

(8) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system: The court recounted that, at age 13, appellant moved to Maryland with his mother

who was trying to keep him "out of trouble after exhibiting behavioral problems in school." Two years later, appellant's mother got married and they all eventually moved to Columbia, Maryland together. The court noted that appellant's mother was active in appellant's life and made efforts to correct appellant's behavior, but ultimately was unable to do so which resulted in appellant's placement in residential treatment.

(9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense: The court observed that appellant was the only person involved in committing the murder and rape of the victim. The court also recounted that the pre-sentence investigation report acknowledged that appellant took responsibility for killing the victim.

(10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences: The court described appellant's circumstances at the time of the offense, including his age, the reason he was removed from school, and his history of aggressive behavior and of placements in treatment facilities.

(11) any other factor the court deems relevant: By not addressing this factor in writing, it appears to us that the court found no other factor relevant.

The court concluded its decision by first recognizing that CP § 8-110(c) permits, but does not require, the court to modify an individual's sentence if (l) the individual is not a danger to the public, and (2) the interests of justice will be better served by a reduced sentence. The court then stated the following when denying appellant's JUVRA motion for

modification:[4]

> In evaluating the evidence and arguments provided relating to the factors, the crime committed in this case was nothing short of horrific. A teacher who offered to help [appellant], was raped and then murdered by [appellant]. The [c]ourt notes that both of the horrific acts, the rape and the murder, were committed by the sole hands of [appellant]. There was no one else pressuring, encouraging or forcing him in any way to commit these acts. Prior to the crime resulting in this conviction, [appellant] exhibited aggressive and assaultive behavior. Professionals attempted to address these behaviors but clearly were unsuccessful. Since the time of the crime, while institutionalized, [appellant]'s track record has not been perfect as the [c]ourt thinks would be impossible. However, concern is raised over the sexual nature of some of [appellant]'s institutional infractions. In 1994, [appellant] fondled himself in front of a female correctional officer and continued to do so after being told to stop. In 1995, [appellant] made kissy noises and sexual gestures towards a female correctional officer. In 2001, he refused orders from a female correctional officer and stated "You mother fucking bitches kills me. Yes, I called you a bitch." In 2010, [appellant] propositioned a female correctional officer and a note was intercepted that listed several female staff members on a "hit" list. In 2011 an infraction was filed by [a correctional officer] indicating "Young attempts to have affairs with female staff at every location he is assigned. He clearly presents an overall risk to the security of this facility. Please place this inmate on the transfer list." This apparently led to an investigation and ultimately [appellant] was transferred to a different facility due to attempting to engage a female staff member in a relationship. He was subsequently housed in a location with limited female staff. These acts are highly concerning considering the nature of this crime. [Appellant]'s infractions regarding propositioning staff and masturbating in front of female staff speak to an inability to control one's actions. This draws concern for public safety – especially for women.
>
> In determining whether the interests of justice will be served by a reduced sentence, the court does not find that it will. Justice is a legal structure designed to judge in a general sense who should be accorded a benefit or burden when the law is applied to a person's factual circumstance. The victim lost her life at the hands of [appellant] who had the opportunity to lessen the harm and save her life before she died. Instead, [appellant] left her for dead behind a dumpster and took her car to go play basketball with his friends. Since being incarcerated, [appellant] has incurred numerous infractions - many sexual in nature. He has had to be housed in a facility with

[4] For clarity, the court's comments have been slightly modified.

> few female officers to reduce his security risk. How justice would be served with a reduction of his sentence, is unclear to this [c]ourt. One might say that serving 31 years in jail is justice itself, however, the sentence imposed is appropriately reflective of the nature of the crimes committed and how the victim must have suffered. The [c]ourt is not convinced that [appellant]'s inner core, which allowed him to commit these callous, brutal acts, has changed such that the public – especially women – would not be at risk should [he] be released.
>
> The [c]ourt, having considered the above factors in accordance with Maryland Criminal Procedure § 8-110(a), does not find that a reduction in sentence is appropriate in this matter. [Appellant]'s Motion for a Reduction in Sentence is DENIED.

Appellant noted an appeal from the court's denial of his JUVRA motion asserting (1) that the court's denial of his JUVRA motion was tantamount to imposing LWOP on a juvenile which it was legally prohibited from imposing, and (2) that the court erred by effectively failing to address the tenth statutory factor (the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences).

DISCUSSION

In 2021, the Maryland General Assembly passed the JUVRA in response to recent decisions by the United States Supreme Court concerning the incarceration of juveniles who have committed a crime. In *Malvo v. State*, 481 Md. 72 (2022), the Maryland Supreme Court explained that the JUVRA brought Maryland into compliance with these federal cases by "ma[king] three significant changes to Maryland's sentencing practices for juvenile offenders convicted as adults." *Id*. at 85. First, the JUVRA "gave sentencing courts discretion to impose sentences less than the minimum required by law." *Id*. Second, it prospectively banned sentences of life without the possibility of parole. *Id*. Third, the

JUVRA "authorized offenders sentenced before October 1, 2021 who have spent more than 20 years in prison to file a motion to reduce their remaining sentence." *Id*.

Standard of Review

In *Sexton v. State*, 258 Md. App. 525 (2023), we had occasion to address a circuit court ruling on a motion for modification of sentence filed under the JUVRA. In that case, we explained that, although the decision to modify a sentence under the JUVRA rests in the discretion of the circuit court, we reiterated that a court abuses that discretion if it applies the wrong legal standards when doing so:

> Under JUVRA, the decision to grant or deny a motion for reduction of sentence under CP § 8-110 generally rests in the discretion of the circuit court upon consideration of the required factors. Yet even under that deferential standard of review, the circuit court's discretion is tempered by the requirement that the court apply the "correct legal standards[.]" *Faulkner v. State*, 468 Md. 418, 460-61 (2020) (citing *Jackson v. Sollie*, 449 Md. 165, 196 (2016)); *Schisler v. State*, 394 Md. 519, 535 (2006) (quoting *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004)). When a court fails to do so, it abuses its discretion. *See, e.g.*, *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 675 (2008) ("[T]rial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature."); *Matter of Dory*, 244 Md. App. 177, 203 (2019) ("[T]rial courts do not have discretion to apply incorrect legal standards."). Whether the circuit court properly construed and applied CP § 8-110 is a question of law that we review *de novo*. *Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (citing *Schisler*, 394 Md. at 535); *Davis v. State*, 474 Md. 439, 451 (2021) (With issues of law, "[w]e are not looking at whether the trial court abused its discretion in its ultimate determination, but whether it applied the proper legal standard[] in exercising its discretion.").

Sexton, 258 Md. App. at 541-42.

Moreover, we accept the lower court's factual findings unless they are shown to be clearly erroneous. *Brown v. State*, 452 Md. 196, 208 (2017).

I.

As indicated earlier, at the outset of its memorandum opinion and order denying appellant's JUVRA motion, the circuit court disagreed with appellant's argument that the court was legally required to remove the "without parole" portion of his sentence as a result of the enactment of the JUVRA which, among other things, eliminated LWOP for juvenile offenders. On appeal, appellant challenges that decision.

Appellant's contention

Appellant's argument is premised on the notion that a JUVRA motion for modification of sentence proceeding results in a "new sentence" even if the court leaves the sentence the same. From that standpoint, given that the Maryland General Assembly prohibited the imposition of LWOP on a juvenile as part of the JUVRA, appellant argues that the court was prohibited from imposing LWOP as part of the "new sentence."

As noted earlier, as part of the JUVRA, in addition to creating the provision allowing for a motion for modification of sentence found in CP § 8-110, the General Assembly also created CP § 6-235[5] which provides as follows:

> Notwithstanding any other provision of law, when sentencing a minor convicted as an adult, a court:
>
> (1) may impose a sentence less than the minimum term required under law; and
>
> (2) may not impose a sentence of life imprisonment without the possibility of parole or release.

Appellant argues that "[t]he language of § 6-235(2), providing that a court 'may not

[5] Chapter 61, § 1, Laws of Maryland 2021, Senate Bill 494.

impose' a sentence of life without parole on a minor convicted as an adult, must be read as applying to a sentence imposed as a result of a ruling on a motion for reduction of sentence pursuant to [CP] § 8-110."

In arriving at the conclusion that a new sentence is imposed during a JUVRA motion for modification of sentence proceeding even if the court leaves the sentence the same, appellant relies heavily on the Maryland Supreme Court decision in *Brown v. State*, 470 Md. 503 (2020), which analyzed various aspects of the Justice Reinvestment Act (JRA). Among other things, the JRA (1) eliminated certain mandatory minimum sentences for repeat offenders of certain drug offenses, and (2) created section 5-609.1 of the Criminal Law Article ("CR") which authorized the court to modify the sentence of a person who had previously received a mandatory minimum sentence that the JRA had eliminated. Upon hearing such a motion filed under the JRA, the court could, but was not required to, modify the person's sentence. CR § 5-609.1(b).

One of the questions addressed in *Brown* was whether the denial of a JRA motion to modify was appealable. *Brown*, 470 Md. at 546-47. In arriving at the conclusion that the denial of such a motion is appealable, Maryland's Supreme Court pointed to some features of a JRA motion to modify that are distinct from a motion for modification of sentence filed pursuant to Maryland Rule 4-345,[6] and some features that are the same. *Id*. at 552. Specifically, the Court noted that the decision on both a Rule 4-345(e) motion to modify

[6] The denial of a motion for modification of sentence filed pursuant to Maryland Rule 4-345(e) is, generally, not appealable, absent fraud, illegality, or duress. *Hoile v. State*, 404 Md. 591, 615 (2008).

and a JRA motion to modify were both left to the discretion of the court. The Court also noted that, unlike a Rule 4-345(e) motion to modify, the State bears the burden of persuasion on a JRA motion to modify. *Id*. at 552. The Court went on to explain that a JRA motion to modify is an "extraordinary opportunity" for a person serving a mandatory minimum sentence to receive, for the first time, an "individualized sentencing based on the circumstances of [the] case, just as a sentencing judge would have conducted" absent the legislatively created requirement that the person receive a mandatory minimum sentence. *Id*. The Court then said: "Even should a motion be denied and the term of incarceration remain the same, a new sentence has been imposed – as the sentence is now an individualized sentence, the result of a sentencing judge's assessment that the term of incarceration meets the seriousness of the crime, and not merely the demand of a statutory mandate." *Id*.

Appellant argues that a JUVRA motion to modify is analogous to a JRA motion to modify, and therefore, like a ruling on a JRA motion to modify, a ruling on a JUVRA motion to modify results in a new sentence, even if the motion is denied. He points to common features of both the JRA and the JUVRA legislative schemes: (1) they both disallowed certain sentences that were previously allowed; and (2) they both allowed for certain persons to seek modification of their sentences.

As noted earlier, the JRA eliminated certain mandatory minimum sentences and it allowed persons who were subjected to such sentences to seek modification of them. CR § 5-609.1. The JUVRA, according to appellant, is similar because it (1) eliminates LWOP for juveniles, CP § 6-235(2); (2) allows a court to impose a sentence less than an otherwise

required mandatory minimum sentence if the person is a juvenile, CP § 6-235(1), and (3) allows persons convicted as juveniles to seek modification of their sentence if they have served 20 years of that sentence. CP § 8-110.

Appellant points out that, prior to the enactment of the JUVRA, the law required the court to sentence him a mandatory minimum of life pursuant to CR § 2-201(b).[7,8] He asserts that, like a JRA motion to modify, a JUVRA motion to modify allows a court to impose a sentence less than life for first-degree murder pursuant to CP § 6-235(1) based on an individualized assessment of the case and the defendant. From that standpoint, he claims he was re-sentenced when the court denied his JUVRA motion, and, because the law now prohibits LWOP for juveniles, at the very least, he is entitled to have the "without parole" provision removed from his sentence pursuant to CP § 6-235(2).

Appellant looks to *Webster v. State*, 359 Md. 465 (2000), for support of his position that, assuming that the JUVRA sentence modification proceeding amounted to a re-sentencing, the court was required to remove the "without parole" portion of his sentence

[7] Md. Code Art. 27 § 411 is the predecessor to CR § 2-201(b) and was in effect at the time Young committed his offenses. Section 411 provided three possible penalties for first-degree murder: death; imprisonment for life without the possibility of parole; and imprisonment for life.

[8] Appellant acknowledges that even though the court was required to impose at minimum a life sentence for first-degree murder, it had the discretion to suspend some or all of that sentence. He points out that, even if the court had suspended some of the life sentence, he would still have been subject to the same parole eligibility timeline as a person with a straight life sentence which is fifteen years minus whatever diminution of confinement credits earned to that point. He argues that, in order to avoid such an early parole eligibility date, a sentencing court's only option, prior to the enactment of the JUVRA, was imposition of LWOP.

during that proceeding. In that case, Webster had been convicted of daytime housebreaking at a time when that offense was still categorized as a violent offense implicating mandatory minimum sentences for subsequent offenders. Webster received such a mandatory minimum sentence – 25 years' imprisonment without the possibility of parole. *Id*. at 470.

Later that year, on October 1, 1994, daytime housebreaking came off of the list of violent offenses.[9] *Id*. at 471. A few years later, on May 9, 1997, the trial court granted a previously filed motion for modification of sentence filed pursuant to Md. Rule 4-345 and reduced Webster's sentence below the mandatory minimum. *Id*. The State appealed, asserting that the court lacked the authority to reduce Webster's sentence below the mandatory minimum that was in effect at the time Webster committed the offense, was tried, and sentenced.[10] This Court reversed and reinstated the mandatory sentence. *Id*. The Supreme Court of Maryland granted certiorari and reversed that aspect of this Court's opinion with instructions to reinstate the modified sentence that the circuit court had imposed. *Id*. at 491.

Maryland's Supreme Court first grappled with the fact that the law that removed daytime housebreaking from the list of violent offenses was specifically intended to apply prospectively only. Section 3, 1994 Maryland Laws, Chapter 712 provides, in pertinent

[9] Coincidentally, the bill that proposed to remove daytime housebreaking from the list of violent crimes was introduced the day after Webster was sentenced.

[10] One of the issues on that appeal was whether the State had the right to appeal under the circumstances. In a nutshell, it did. *Webster*, 359 Md. at 478.

part, that the change to law "shall apply prospectively only to defendants who are sentenced after the effective date of this Act and may not be construed to apply in any way to defendants who are sentenced before the effective date of this Act." The Supreme Court determined that when the trial court modified Webster's sentence, that was a new sentencing to which the change in the law was intended to apply notwithstanding that Webster had originally been sentenced before the effective date of the law removing daytime housebreaking from the list of violent offenses. *Id*. 487-88. The Court therefore approved of the trial court's reduction of Webster's sentence. In doing so, the Court explained that a contrary result could lead to, for example, the illogical result that, if the change in the law could not apply to Webster's situation, "a defendant who fails to appear and is able to avoid capture until the effective date of the act would avoid the mandatory minimum sentence, while the defendant who cooperates would not." *Webster*, 59 Md. at 490.

The circuit court's rejection of appellant's contention

As noted earlier, in denying appellant's JUVRA motion, the court disagreed with the first premise of appellant's argument – that proceedings upon a JUVRA motion for modification necessarily results in a new sentence, even if the motion is denied. That court distinguished the circumstances present in both *Brown* and *Webster*, *supra*, from those present here. First, the court determined that appellant was not subjected to any mandatory minimum penalties as both Webster and Brown were. From that standpoint, the court determined that appellant had already obtained that which neither Brown nor Webster had obtained – an individualized sentencing. The court noted that appellant had the benefit of

"a full sentencing hearing where the trial judge, who presided over the trial and was able to hear the testimony and consider evidence, heard from the State, Defendant, experts and the victim's representatives." Thereafter, "[t]he trial judge imposed an individualized sentence of life without the possibility of parole based on all circumstances before him."

Appellant's position on appeal

On appeal, appellant asserts that the trial court erred in finding that *Brown* and *Webster* were inapplicable to his case. He claims that the trial court erred in finding that he was not subjected to any mandatory minimum penalties at his original sentencing proceeding, because, prior to the enactment of the JUVRA, a sentencing court was required to impose a life sentence for murder and "the best a court could do was to suspend part of it." As a result of this error, according to appellant, the circuit court also erred in finding that he received an individualized sentencing at his original sentencing proceeding.

Appellant also points to the cautionary language in *Webster* where the court explained that, treating the change in the law in that case strictly prospectively only could lead to the illogical result that "a defendant who fails to appear and is able to avoid capture until the effective date of the act would avoid the mandatory minimum sentence, while the defendant who cooperates would not." *Webster*, 59 Md. at 490. Appellant asserts that *Webster*'s warning is equally applicable to the circumstances presented here and suggests that "[t]his Court should reject any construction of JUVRA that would encourage this kind of gamesmanship." He also explains that requiring a court to remove a LWOP sentence imposed on a juvenile when ruling on a § 8-110 motion would gradually eliminate all such sentences imposed before JUVRA's effective date, which, according to appellant, is

consistent with the intention of the General Assembly "that such sentences are no longer appropriate."

Analysis

While it is true that, at the time of appellant's original sentencing the court was statutorily required by Md. Code Art. 27 § 411 to impose at least a life sentence for first-degree murder, it is equally true that the court had the authority to suspend some or, indeed, all, of that sentence. *State v. Wooten*, 277 Md. 114, 119 (1976). We do not find the sentencing court's ability to suspend all of a life sentence as immaterial as appellant would have us find. The fact that the court can fully suspend a mandatory sentence sets this case apart from the situation in *Brown* and *Webster, supra*. This is so because, during a sentencing proceeding where the court has the authority to totally suspend the mandatory minimum sentence, a criminal defendant can present mitigation to the court who, while not bound to accept it, can choose a sentence appropriate for the offense and offender. That means that the criminal defendant will not be prevented from receiving an individualized sentence based on the circumstances of the case because of a mandatory minimum sentence. Hence, from an individualized sentencing proceeding standpoint, a mandatory minimum sentence that can be fully suspended is a far cry from a mandatory minimum sentence which cannot be suspended at all which was the situation in *Brown* and *Webster*.

Moreover, if we followed appellant down the path he would like to lead us, the result would be the elimination of all LWOP sentences for juveniles who have already lawfully received that sentence. If that was the intent of the General Assembly in creating the JUVRA, we believe that it would have simply said so directly and not created such a dimly

lit and convoluted path to achieve that result.

As a result, the denial of appellant's JUVRA motion did not amount to a re-sentencing and the circuit court's decision to leave the "without parole" portion of his sentence intact does not therefore reflect a legal error or abuse of discretion.[11]

II.

In deciding whether to grant a JUVRA motion filed pursuant to CP § 8-110, subsection (d) requires the court to consider certain factors, and paragraph (e)(2) requires that the circuit court's written decision "address the factors listed in subsection (d) of this section."

Appellant argues that the court effectively failed to analyze the tenth factor, which required the court to consider "the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences[.]" CP § 8-110(d)(10). Appellant argues that the court's discussion of the tenth factor actually addressed the first factor, "the individual's age at the time of the offense," and part of the second factor, "the nature of the offense and the history and characteristics of the individual."

According to appellant, the tenth factor, "the diminished culpability of a juvenile as compared to an adult," CP § 8-110(d)(10), "refers to the understanding that the neurological, psychological, social, and emotional immaturity of juveniles makes them less

[11] Nothing in this opinion should be read as a limitation on a circuit court's ability to remove the "without parole" portion of a sentence imposed on a juvenile if, in its discretion, it chose to do so.

culpable in the eyes of the law than mature adults." That understanding has been borne out in various decisions from the United States Supreme Court including *Roper v. Simmons*, 543 U.S. 551, 571 (2005) (recognizing "the diminished culpability of juveniles"); *Miller v. Alabama*, 567 U.S. 460, 471 & 479 (2012) (noting that "juveniles have diminished culpability and greater prospects for reform" and referring to "children's diminished culpability and heightened capacity for change"); and *Montgomery v. Louisiana*, 577 U.S. 190, 195, 207, 208 (2016) (referring repeatedly to the "diminished culpability" of children). From that standpoint, appellant suggests that "[i]t is clear from the language of the tenth factor that it refers to the diminished culpability of juveniles generally as opposed to an assessment of the specific movant."

Appellant argues that the circuit court made a reversible error in addressing the tenth factor because, rather than address the diminished culpability of juveniles generally, the circuit court instead addressed the first factor (the age of the defendant at the time of the crime, and part of the second factor (the nature of the offense and the history and characteristics of the defendant). According to appellant, because the circuit court did not address the diminished capacity of juveniles generally, it was as if the court did not address this factor at all.

We agree with appellant. Pursuant to CP § 8-110(e)(2), the circuit court was required to address each of the factors listed in CP § 8-110(d). Accordingly, a circuit court's failure to address even one of those factors amounts to reversible error. The statute required the court to analyze "[t]he diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences." CP § 8-110(d)(10). The

circuit court's decision in this case simply failed to do this. The court said the following about the tenth factor:

> At the time of the offense [appellant] was sixteen years old and in the tenth grade. [Appellant] was unable to attend school because he was suspended from school from what appears to be inappropriate sexual behavior. Prior to this, the [pre-sentence investigation] report notes that [appellant] was placed in residential facilities to address his psychiatric needs and behavioral issues. [Appellant] was first placed at Great Seneca, a facility for emotionally handicapped adolescents; however, his residency was terminated due to assaultive behavior after approximately a month. [Appellant] was then taken to the Muncie Center where he remained for over four months and showed significant improvement before being referred to RICA to receive the benefit of a structured living facility and psychiatric follow-up. The PSI notes that during this time [appellant] displayed "continuous and ongoing aggressive and intimidating behavior." Additionally, [appellant] was referred to the Juvenile Sex Offender Program after there were reports of him sexually abusing a six-year-old girl. The PSI also indicates that [appellant] assaulted his mother while on a home pass. It is apparent to the [c]ourt that [appellant] had a history of assaultive behavior and significant, but unsuccessful, efforts were taken to address these issues prior to this offense. [Appellant] was sixteen at the time of the offense and despite having behavioral issues and psychiatric needs, there was no indication to the [c]ourt that [appellant] was unable to understand the risks and consequences of his actions.

In our view, the circuit court focused much too narrowly on the history of appellant and the circumstances of his offense. We agree with appellant that the tenth factor required the court to discuss and apply the notion recognized by the Supreme Court of the United States that juveniles have diminished culpability compared to adults – which is the driving force behind the JUVRA. The circuit court's failure to correctly analyze the tenth factor amounted to no analysis at all which is a legal error amounting to an abuse of discretion. *Sexton*, 258 Md. App. at 541-42.

Therefore, we shall vacate the judgment of the circuit court and remand the case

for further consideration of, and a decision on, appellant's motion. In accomplishing that objective upon remand, the circuit court shall follow the same guidance we gave the court in *Sexton*:

> In so holding, we express no opinion on the proper result in deciding [appellant]'s motion – that matter is committed to the sound discretion of the circuit court. On remand, the circuit court should again weigh and address the factors set forth in CP § 8-110(d) and make the determinations required by CP § 8-110(c), both in light of the purpose of JUVRA and the Eighth Amendment jurisprudence from which the statute derives. The court must also comply with subsection (e), which requires that the court's decision be issued in writing and address the factors set forth in subsection (d). [I]n light of the passage of time and the nature of the required factors, prior to making its determination, the circuit court should allow the parties to present any additional evidence developed since the last hearing.

Sexton, 258 Md. App. at 545-46 (2023).

MOTION TO DISMISS APPEAL

The State has filed a motion to dismiss this appeal on the basis that the court's denial of appellant's motion for modification of sentence is not an appealable order unless the court denied such a motion based on its belief that it lacked the authority to modify a sentence.

The JUVRA does not include any provision specifically authorizing or foreclosing an appeal of a denial of a motion for modification filed pursuant to CP § 8-110. While CP § 8-110 does not specifically refer to a motion for modification of sentence filed pursuant to Maryland Rule 4-345(e),[12] functionally, the statute extends the opportunity to file such

[12] Rule 4-345 titled *Sentencing -- Revisory Power of Court*, contains subsection (e), titled *Modification Upon Motion*, which provides:

(continued)

a motion to inmates who were previously ineligible to file one. The statute also requires, *inter alia*, that the court hold a hearing and issue a written decision addressing the eleven factors outlined earlier. As such, we address the appealability of the denial of a motion under the JUVRA in the same way we address the appealability of the denial of a motion filed pursuant to Rule 4-345(e).

In general, a final order of a circuit court is appealable under section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code, which codifies the final judgment rule:

> 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.

Md. Code, Cts. & Jud. Proc. § 12-301.

However, the Supreme Court of Maryland has held that a "discretionary denial" of a motion for modification of sentence, under Maryland Rule 4-345(e), generally is not appealable. *Hoile v. State*, 404 Md. 591, 617 (2008). In *Hoile*, the Court distinguished "motions to correct a sentence based upon an error of law and motions to reconsider

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> *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.

sentence that are entirely committed to a court's discretion[.]" *Id*. The Court observed that "[t]here is much caselaw holding that the denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable." *Id*. at 615. The Court determined that only an appeal from the denial of a motion "entirely" within a sentencing court's discretion is barred. *Id*. at 617-18.

Recently, we squarely held that, based on our prior decisions in *Johnson v. State*, 258 Md. App. 71 (2023), and *Sexton v. State*, 258 Md. App. 525 (2023), the denial of a JUVRA motion is appealable if the movant alleges that the circuit court committed an error of law. *Trimble v. State*, 262 Md. App. 452, 473 (2024).

In this case, appellant alleges that the circuit court's denial of his JUVRA motion was premised on an error of law. Pursuant to *Trimble*, that makes the denial of his motion an appealable final order. We therefore deny the State's motion to dismiss this appeal.[13]

MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE SPLIT EVENLY.

[13] Appellant argues in the alternative (1) that the denial of his motion under the JUVRA is appealable because such a motion is similar to a motion filed under section 5-609.1 of the Criminal Law Article and the Justice Reinvestment Act ("JRA") which is appealable according to *Brown v. State*, 470 Md. 503, 552 (2020), and (2) that the cases holding that a discretionary denial of a motion for modification is not appealable should be overruled. Given our resolution of this case, we need not reach these issues.

APPENDIX

CP § 8-110, titled "Minor convicted as an adult; procedure to reduce duration of sentence" provides as follows:

Application of section

(a) This section applies only to an individual who:

(1) was convicted as an adult for an offense committed when the individual was a minor;

(2) was sentenced for the offense before October 1, 2021; and

(3) has been imprisoned for at least 20 years for the offense.

In general

(b) (1) An individual described in subsection (a) of this section may file a motion with the court to reduce the duration of the sentence.

(2) A court shall conduct a hearing on a motion to reduce the duration of a sentence.

(3) (i) The individual shall be present at the hearing, unless the individual waives the right to be present.

(ii) The requirement that the individual be present at the hearing is satisfied if the hearing is conducted by video conference.

(4) (i) The individual may introduce evidence in support of the motion at the hearing.

(ii) The State may introduce evidence in support of or in opposition to the motion at the hearing.

(5) Notice of the hearing under this subsection shall be given to the victim or the victim's representative as provided in §§ 11-104 and 11-503 of this article.

Considerations before court determines to reduce sentence

(c) Notwithstanding any other provision of law, after a hearing under subsection (b) of this section, the court may reduce the duration of a sentence imposed on an individual for an offense committed when the individual was a minor if the court determines that:

(1) the individual is not a danger to the public; and

(2) the interests of justice will be better served by a reduced sentence.

Factors to consider when determining whether to reduce sentence

(d) A court shall consider the following factors when determining whether to reduce the duration of a sentence under this section:

(1) the individual's age at the time of the offense;

(2) the nature of the offense and the history and characteristics of the individual;

(3) whether the individual has substantially complied with the rules of the institution in which the individual has been confined;

(4) whether the individual has completed an educational, vocational, or other program;

(5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction;

(6) any statement offered by a victim or a victim's representative;

(7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional;

(8) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system;

(9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense;

(10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences; and

(11) any other factor the court deems relevant.

Court's decision in writing; contents

(e) (1) The court shall issue its decision to grant or deny a motion to reduce the duration of a sentence in writing.

(2) The decision shall address the factors listed in subsection (d) of this section.

Timing of second and third motion to reduce sentence

(f) (1) If the court denies or grants, in part, a motion to reduce the duration of a sentence under this section, the individual may not file a second motion to reduce the duration of that sentence for at least 3 years.

(2) If the court denies or grants, in part, a second motion to reduce the duration of a sentence, the individual may not file a third motion to reduce the duration of that sentence for at least 3 years.

(3) With regard to any specific sentence, an individual may not file a fourth motion to reduce the duration of the sentence.