Circuit Court for Washington County
Case No.: 21-K-11-046412

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1088

September Term, 2018

EDGAR LORENZO SAYLES

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: March 30, 2021

On March 22, 2012, Edgar Lorenzo Sayles, appellant, was found guilty by a jury in the Circuit Court for Washington County of distribution of cocaine and related offenses. The court sentenced him, as a subsequent offender, to a mandatory minimum sentence of forty years' imprisonment to be served without the possibility of being released on parole.

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act ("JRA").[1] 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.[2] Section 5-609.1 also provided some criteria for the court to consider when deciding whether to modify such a sentence.[3]

[1] Chapter 515, Laws of Maryland 2016.

[2] 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.

[3] 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

(continued)

In May 2018, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. At the conclusion of a hearing held on the motion for modification of sentence, the circuit court denied it. In pertinent part, the court stated as follows:

> Okay. All right well I've heard the evidence presented from both parties, I've read the, uh, a little bit more of the case file. I've also received the criminal history of Mr. Sayles and quite frankly, [Defense Counsel], I disagree with your – first your rendition of the intent of the legislature in creating this law and also your view of your client's history. Uh, technically distribution of drugs is not [] a violent offense for purposes of parole, for purposes of calculating time in prison or jail, uh, you're absolutely correct. The Court does believe that distributing poison basically is a violent act. Whether anyone died from this or not is not the issue, whether the legislature has determined that distribution of drugs is a violent crime for administrative purposes or not is not the issue. What the issue is, is that Mr. Sayles had 12 convictions prior to this one. The last of those convictions was distribution of drugs. He was in jail it looks like at least through 2009, if not beyond, meaning that he had no [] meaningful street time to show that he could abide by the laws of this society. Instead in 2011 went right back to what the he'd been doing for the prior 20 years of his life. So, [] [u]p until the sentencing, he had demonstrated the majority of his life to criminal behavior. There is no indication that was ever going to stop. There's no indication it would stop now. The penalties are or the penalties at the time were known to all. They were known to Mr. Sayles, they were known to the State, they're known to defense counsel while he had defense counsel, and they are certainly recognized by the Court. [] There's no undue hardship in this case. Mr. Sayles is the one who committed the multiple, multiple offenses leading up to this one. He committed this offense too. He took his chances on I guess, trial or whatever, which is his right. I'm not punishing him for that, but at the end of the day, the sentencing was fair and legal under the law at that time and I do not believe there is any reason to modify it. Motion for modification is denied.

Appellant took an appeal from that denial. That appeal was stayed pending the

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> (2) the mandatory minimum sentence is necessary for the protection of the public.

Court of Appeals' decision in *Brown v. State*, 470 Md. 503 (2020) in which this Court had certified four questions to the Court of Appeals dealing with CR § 5-609.1. Once *Brown* had been decided, appellant filed a motion in this Court seeking to lift the stay, which we granted on December 14, 2020.

On appeal, appellant claims the circuit court erred in denying his motion. He asserts that the State failed to prove, as required by CR § 5-609.1, (1) that the retention of the mandatory minimum sentence would not result in substantial injustice to appellant; and (2) that the mandatory minimum sentence is necessary for the protection of the public. Appellant also claims that the circuit court erred in basing its denial solely on appellant's criminal record because, according to appellant, the JRA statutory scheme becomes pointless "if a bad record, standing alone, is grounds for denial of relief."

The State contends that the circuit court's findings were not clearly erroneous as they were based on facts available from the record.[4]

In *Brown*, *supra*, 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

[4] In its Brief of Appellee, which the State filed before the Court of Appeals had decided *Brown, supra*, the State moved to dismiss this appeal because, ordinarily, an appeal does not lie from the denial of a motion for modification or reduction of sentence. *Hoile v. State*, 404 Md. 591, 617 (2008). However, in *Brown*, the Court of Appeals determined that a motion for modification of sentence filed pursuant to CR § 5-609.1 is appealable. *Brown v. State*, 470 Md. at 552. Consequently, we shall deny the State's motion.

> 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.

As noted earlier, this case had been stayed pending the resolution of *Brown*. Moreover, the circuit court denied appellant's motion, and the parties filed their briefs in this Court without the benefit of *Brown*. As noted in *Brown*,

> A motion under CR § 5-609.1 is similar to a motion to modify under Maryland Rule 4-345(e) but is unique in certain key respects. Like a motion under Rule 4-345(e) to reconsider a sentence, the decision on a motion to modify a mandatory minimum sentence pursuant to CR § 5-609.1 is committed to the discretion of the circuit court. However, unlike a motion under Rule 4-345(e), the State bears the burden of persuasion under CR § 5-609.1 in the circuit court that modification of the sentence is inappropriate in the particular case.
>
> *Id*. at 552.

CR § 5-609.1(b) permits, but does not require, the court to modify a 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.

In the instant case, when denying appellant's motion, the court made no specific findings with regard to CR § 5-609.1 and whether the State had met its burden under the JRA. Mindful that the court did not have the benefit of the Court of Appeals' guidance in

Brown when it denied appellant's motion, on this record, we are persuaded that the circuit court's decision to not modify appellant's sentence cannot stand because of the court's failure to acknowledge the State's burden under CR § 5-609.1 and whether it had met that burden.

Consequently, we shall vacate the circuit court's order denying appellant's motion for modification of sentence and remand the case for the circuit court to reconsider appellant's motion in light of *Brown*.

APPELLEE'S MOTION TO DISMISS THIS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY WASHINGTON COUNTY.