

Circuit Court for Baltimore City  
Case Nos.: 108003034 & 108003028

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

Nos. 1307 & 1309

September Term, 2020

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NADIRAH MORENO

v.

STATE OF MARYLAND

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Kehoe,  
Beachley,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: November 19, 2021

\*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.

Nadirah Moreno (“appellant”) appeals the Circuit Court for Baltimore City’s denial of her motion for modification or reduction of sentence. Appellant maintains that the circuit court erred “in refusing to consider [her] rehabilitation since the offense or her character in ruling on her motion for modification of sentence[.]” The State moves to dismiss the appeal, arguing that the decision to deny the motion is not appealable. We agree with the State and shall grant the State’s motion to dismiss this appeal.

### **BACKGROUND**

In 2009, appellant was convicted by a jury of first-degree murder, conspiracy to commit murder, and use of a handgun in the commission of a crime of violence, and was sentenced to a total term of life imprisonment, with all but 40 years suspended. This Court affirmed the convictions on direct appeal. *Moreno v. State*, No. 1492, Sept. Term 2009 (filed Sept. 26, 2013). In 2019, the post-conviction court granted appellant the opportunity to file a belated motion for modification or reduction of sentence.<sup>1</sup> In November 2020, the circuit court held a hearing on appellant’s motion for modification or reduction of sentence. In both her written motion and during the hearing, appellant’s counsel pointed to evidence of her rehabilitation, including a positive institutional progress report from the Maryland Correctional Institution for Women (“MCIW”), support from Chaplain Karen Hall from the Bible Institute program at MCIW, and her employment with the Maryland Correctional

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<sup>1</sup> We presume that appellant did not file a timely motion to modify or reconsider sentence after her 2009 conviction.

Enterprises Sew and Flag shop at MCIW. Both appellant and a former fellow inmate at MCIW testified at the hearing in support of her motion.

The court denied appellant’s motion. Because her appellate argument relies on statements the court made when ruling on her motion, we repeat them in full:

All right. Sentencing is a difficult part of the process a court, the judge have [sic] to make a decision about individuals who -- and the sentence that they -- that the judge believes an individual -- the court believes individual [sic] should have. It’s not a question of what they deserve but it’s a question of what they should have and there is a difference there. Court should not be making decisions about how people are at a certain point in their life. Court should be making decisions based upon what an individual’s prior record is and the crime for which they were convicted.

It’s interesting regarding impact statements because the case law indicates that the court should consider those impact statements but should not be swayed by any emotion of the impact statement. There’s a good reason why. Because that would place in the judge in making decisions about individuals based upon the statements, emotional statements of their loved ones regarding what occurred or how it affected them. Well, sadly all victims are not the same. Some victims may have long criminal records. Some victims may be upstanding members of the community, loved by everyone.

No one should be -- should get a greater or lesser sentence because they -- because of the person that they killed. Those are the things the [c]ourt has to keep in mind. The things the [c]ourt has to keep in mind, therefore, is the individual’s prior record and the circumstances of the offense surrounding the offense. If Judge B[yrnes]<sup>[2]</sup> made a decision about the moral character of an individual, then that is something that Judge B[yrnes] decided to do at the particular time. The court -- I do not believe it’s the court’s position to make a decision about the moral character of an individual, but the court can make decisions about the moral character of the crime in making a decision regarding the sentence.

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<sup>2</sup> The record before us reflects that Judge John Carroll Byrnes sentenced appellant in 2009. Judge Gregory Sampson heard appellant’s motion for modification of sentence in 2020. It appears that Judge Byrnes had retired by the time appellant filed her motion.

I can't reach to somebody's soul[,] figure out what they do, or who they are, or what they're doing, or whether, at the time, they were a bad person or now, whether, at the time, at this time whether they are [a] good person. I applaud the Defendant's ability to help other individuals along the way and her use of her time while she's incarcerated in this matter, but the [c]ourt doesn't make -- the [c]ourt should not make decisions based upon how good an adjustment she makes or how bad an adjustment that she makes. If that's the best she makes of it, the [c]ourt would expect that individuals, at least hope that individuals make a good adjustment. The [c]ourt knows that that is not always the case.

Regarding the circumstances of this case, the circumstances of the case is [sic] not good. She led someone to their death[] knowing that they're going to die and that's extremely unfortunate obviously for the victim but for the Defendant as well. These are the circumstances that, sadly, she has to live with regardless of whether the [c]ourt decides the [c]ourt is going to modify her sentence or not. And the [c]ourt does believe that the court -- she had taken into consideration the sentence that she received in this matter. The sentence she received in this matter would allow Ms. Moreno to eventually get out, eventually have some sort of life in this -- regarding this case and allow her to continue all with her life.

I think that that sentence in this matter, considering what occurred in this case, was appropriate. The [c]ourt does not believe that that sentence should change in any way, shape, or form. The [c]ourt will hope that Ms. Moreno would continue along the path that she's continuing on so that she can be released as soon as possible; however, I do not believe that it is the purview -- well, I do not believe that her sentence should change under the circumstances of the crime in this particular matter. And the [c]ourt denies the request for any modification. Thank you.

Ms. Moreno filed this appeal, asserting that the court erred in refusing to consider mitigation evidence, including her post-sentencing rehabilitation.

### **DISCUSSION**

Appellant contends that “a judge must consider a defendant's positive behavior since the original sentencing” and that the statements made by the court during its ruling indicate that it “failed to consider crucial mitigation offered by [appellant].” She asserts

that the court’s denial of her motion was thus tainted by legal error and must be reversed. Appellant further maintains that she has a right to appeal the court’s ruling under Article 19 of Maryland’s Declaration of Rights.

The State responds that this appeal should be dismissed under Maryland Rule 8-602(b) because the court’s denial of appellant’s motion is not subject to appellate review. The State also asserts that the court heard and considered the mitigating information appellant presented, and decided, within its discretion, that modification of the sentence was not warranted.

As the Court of Appeals noted in *Hoile v. State*, 404 Md. 591, 615 (2008), “[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.” Noting that this principle had been “called into question recently by dicta,” the *Hoile* Court clarified that motions to reconsider sentences are “entirely committed to a court’s discretion” and, accordingly, a denial of a motion for modification of sentence is not appealable. *Id.* at 615-18. The Court of Appeals recently reaffirmed this principle in *Brown v. State*, 470 Md. 503 (2020). Although the *Brown* Court stated that “[t]here may be merit in revisiting the general issue of the appealability of orders denying motions brought under Rule 4-345(e)[,]” it declined to do so, acknowledging *Hoile*’s principle that Rule 4-345(e) motions are committed to the court’s discretion (and not appealable when denied). *Id.* at 548, 552.

Here, appellant’s motion alleged no error or illegality in the sentence itself. She sought modification of the sentence based solely on her character and rehabilitation

subsequent to sentencing, including her positive adjustment in prison, her enrollment in the Bible Institute program at MCIW, and her employment with the Maryland Correctional Enterprises Sew and Flag Shop. Appellant, however, has cited no authority in support of her position that the court, when ruling on a motion for modification of sentence, “must consider a defendant’s positive behavior since the original sentencing,” and we are aware of none. In the parlance of *Hoile*, her motion was “entirely committed to the court’s discretion,” and under the established caselaw set forth in *Hoile* and *Brown*, the denial of her motion for modification of sentence is not appealable.<sup>3</sup>

Finally, appellant asserts that “prohibiting appellate review of claims that a circuit court’s denial of a motion was tainted by legal error . . . would violate Article 19 of the Maryland Declaration of Rights.” However, as the State correctly points out, a criminal defendant’s right to appellate review in Maryland is statutory, not constitutional. *Seward*

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<sup>3</sup> Even if we were to assume that the denial of appellant’s motion for modification was appealable, she would fare no better. The court held a hearing and considered the testimony and other evidence presented. The court, however, found the circumstances surrounding the crime justified the sentence, noting that “the circumstances of the case is [sic] not good. She led someone to their death[] knowing that they’re going to die and that’s extremely unfortunate obviously for the victim but for the Defendant as well.” The court then found that the “sentence in this matter, considering what occurred in this case, was appropriate.”

We note that the circumstances here are similar to those before the Court in *Hoile*, where the Court noted that Hoile alleged “no error of law that might infect the sentence imposed” in his motion for modification, and instead, “[t]he support for his motion consist[ed] of his enrollment in Narcotics Anonymous, good behavior while in prison, securing a position as a maintenance worker, and obtaining his G.E.D.” 404 Md. at 618 n.24. There, the Court held that the ruling on the motion for modification was “addressed to the trial court’s discretion” and “would not be appealable.” *Id.* at 618, n.24.

*v. State*, 446 Md. 171, 176 (2016) (“The right of appeal is entirely statutory in Maryland.”); *Douglas v. State*, 423 Md. 156, 170 (2011) (“In Maryland, criminal defendants do not have a constitutional right to appeal.”)

Although appellant is correct that Article 19 generally guarantees access to the courts, this guarantee is subject to reasonable regulation. *Doe v. Doe*, 358 Md. 113, 127-28 (2000) (listing relevant cases). Here, appellant was convicted after a seventeen-day jury trial. She appealed, and the convictions were affirmed by this Court. The post-conviction court granted appellant an opportunity to file a belated motion for modification of sentence, and, after a hearing on the motion, the court exercised its discretion to deny modification of appellant’s sentence. We are not persuaded that appellant’s constitutional right to access the courts has been unreasonably restricted under these facts.

**MOTION TO DISMISS APPEAL GRANTED.  
APPEAL DISMISSED. COSTS TO BE PAID  
BY APPELLANT.**