Circuit Court for Baltimore County
Case No.: 03-K-93-002682

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1470

September Term, 2022

DERRICK ADAMS

v.

STATE OF MARYLAND

Beachley,
Shaw,
Killough, Peter K.
(Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: October 11, 2023

*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).

This is an appeal from the denial of a motion for reduction of sentence. On May 12, 2022, Appellant Derrick Adams filed a motion in the Circuit Court for Baltimore 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 question for our review:

> 1. Did the circuit court apply the wrong legal standards and/or fail to properly construe and apply Criminal Procedure Article § 8-110 in denying [Appellant's] motion for reduction of sentence pursuant to the Juvenile Restoration Act?

We answer that question in the affirmative, vacate the judgment of the circuit court, and remand the case for further proceedings.

BACKGROUND

The offense.

Nearly 30 years ago, on February 8, 1994, Appellant entered a guilty plea to a first-degree sexual offense pursuant to an agreement which called for him to testify as a State's witness in the prosecution of his co-felon, Horace Montague. In accordance with the agreement, the State entered a *nolle prosequi* on the balance of the charges in this case,

[1] CP 8-110 was created in 2021 as part of the Juvenile Restoration Act.

along with six other indictments for unrelated cases (one in Baltimore County and five in Baltimore City). The court sentenced Appellant to 50 years imprisonment.[2]

At the time of the offense, Appellant was 72 days shy of his 18th birthday. During the guilty plea colloquy, the following statement of facts was read into the record:

> [O]n May 30th, 1993, at approximately three a.m., [L.][3], who was age 28, was on her way home from visiting with her brother. She pulled into a parking space in front of her apartment building [.]
>
> She went to … the trunk of her car … and she was reaching in to remove a vacuum cleaner to take into her apartment, when she heard footsteps behind her. She looked, and she saw a black male running toward her car. She, however, believed the person to be a neighbor and continued to reach into the trunk for the vacuum cleaner.
>
> [L.] was then grabbed from behind by the black male, who would later be identified as Horace Montague. [L.] was pushed to the ground. Montague began to rip the clothes off of her. He dragged her between her car and another parked car. [L.] would describe Horace Montague as between the age of twenty and thirty, five-seven, 160 pounds, medium build. He also had dark clothing on and a dark mask, covering his face.
>
> Once between the two cars, Montague then began to pull [L.]'s pants[,] underwear and shoes off. Montague implied by his actions that he had a gun. He then pulled [L.]'s shirt over her face. Montague told her to, shut up, b----, or I will kill you. [L.] was in fear for her life and stopped resisting, at which point Montague raped her and sodomized her without her consent.
>
> While Montague was raping [L.], the second black male approached, who was also in a dark mask. The second subject stood over top of [L.] at her head and ordered her to, suck my d---, b----. He then shoved his penis into

[2] The court initially sentenced Appellant to a "split" sentence of life with all but 50 years suspended. However, because the court did not impose any period of probation, the sentence was later converted to a straight 50-year sentence pursuant to the holding of *Cathcart v. State*, 397 Md. 320 (2007).

[3] Out of privacy concerns, we refer to the victim as "L."

her mouth. [L.] was in fear for her life and submitted to this act without consent.

Montague then ejaculated inside [L.] and got off of her. The second subject then removed his penis from her mouth. Again, he told her to shut up or she would be killed. [L.] then heard some type of wrapper and the second subject doing something. The second subject then got on top of her and raped and sodomized her. [L.] believes the second subject, during the attack, wore a condom. She was in fear for her life and submitted without consent.

[L.] also suffers from multiple sclerosis and was unable to run from her attackers.

Once the second subject had finished, he got off of her. Then both Horace Montague and the second subject drug her to her feet and put her pants and shoes back on her. She was ordered to keep her head down or she would be killed and was then put into the back seat of her [car]. The two men then demanded money. [L.] told them she had $600 in a bank machine.

A black male then got into the back seat with her and forced her head to the floor. The other subject began to drive the car. She was unable to differentiate between her two attackers at that point, as she was not looking at them and their faces were covered. The person in the back seat with [L.] continuously kept putting his fingers into her vagina and rectum.

When the car stopped, [L.] was ordered to stay down or she would be killed. The men had already taken her ATM card and had demanded the necessary information to obtain money from her account. [L.] then gave the men this information, because she believed she would be killed if she did not.

The men then came back to the car and told her that they could not get the money out of the machine, and they demanded that she get it. The first ATM machine did not work, so she was taken to a second ATM machine. At the second machine, one of the black males tried to work the machine again but was unable to get it to work. Again, [L.] was ordered to make the withdrawal. This subject was later identified as the defendant here today, Derrick Adams.

The ATM machine … had a camera at that location. After this crime was reported, the film was examined. On the film were photos which revealed the defendant, Derrick Adams, attempting to withdraw money from [L.]'s account at 3:15 a.m. The next the photo shows [L.] also working the machine at 3:19 a.m.[.]

> [L.] then was able to withdraw $80 from her account. She gave this money to the defendant, Derrick Adams, because she was in fear for her life. She did not look at the defendant when he removed his mask, again because she was afraid if she saw him, she would be killed.
>
> She was then put into the back seat of the car. One of the suspects got into the back seat with her. She was then ordered to suck his d--- and don't bite me. [L.] submitted without consent, for she was in fear for her life.
>
> In addition, a hard object was placed against her arm, and she believed it to be a gun, based upon the size, shape and feel. Again, she was told she would be killed if she did not keep her head down.

The statement of facts also indicated that police found a used condom at the victim's property, including her underwear, in the parking lot where the crime commenced. Appellant's fingerprint was found on the victim's car, genetic material belonging to Montague was recovered from swabs taken from the victim's vagina and photographs of Appellant were retrieved from one of the ATM machines referenced earlier.

Appellant was eventually arrested and, when interviewed, he waived his *Miranda* rights and gave a statement implicating both he and Montague in the offense. He stated that they had been waiting in a car that Montague had stolen earlier for approximately an hour looking for a victim. Appellant identified himself as the person in the back seat with the victim while the group drove to the ATM machines in search of cash.

Appellant admitted that, in an attempt to remove any fingerprints, he and Montague had wiped the victim's car down but that they had forgotten to wipe one of the door handles. Appellant also admitted that he and Montague used a silver .25 caliber automatic handgun in the commission of the offense. Appellant stated that "the reason he got involved in the offense was that, when he held a gun on someone, it gave him power."

The motion for modification.

On May 12, 2022, Appellant filed a motion for modification of sentence pursuant to CP § 8-110 and the Juvenile Restoration Act ("JUVRA").[4] The court held a hearing on

[4] 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*

(continued)

(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.

(continued)

September 9, 2022, and October 24, 2022. There, the court issued a written opinion and order which, as required by the statute, addressed each of the factors listed in CP § 8-110(d). It stated:

> **(1) the individual's age at the time of the offense**: As noted above, the Defendant was approximately 72 days away from his eighteenth birthday. I believe that fact weighs against the Defendant. Had this crime occurred a few short months later this Defendant would not have had the opportunity to even make this request. This is not a case where the Defendant was fifteen or early sixteen -- he was about as close to being a legal adult as it gets.
>
> **(2) the nature of the offense and the history and characteristics of the individual**: It is an understatement to characterize the facts of this crime as horrendous and violent. It is particularly disturbing that this was not a one-time, drug-induced crime of opportunity. Instead, this lengthy and premeditated attack was but one in a string of crimes of violence. The Pre-Sentence Investigation details a lengthy juvenile record, establishing repeated violent criminal behavior. Furthermore, the Defendant's statements about the power he felt with a handgun are gravely concerning.
>
> **(3) whether the individual has substantially complied with the rules of the institution in which the individual has been confined**: The Defendant's institutional history includes a number of infractions and incidents over the years. To be clear some of these are quite old. I believe the number of infractions is, of course, concerning but I am weighing this factor less heavily given the age of the infractions.

> (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.

(4) whether the individual has completed an educational, vocational, or other program: To his credit, the Defendant has taken advantage of several educational and vocational programs over the years. I am giving the automotive classes and courses significant weight as these skills are entirely geared toward post-incarceration employment self-help.

(5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction: It is clear from the chronology of infractions that the Defendant's rule-breaking has leveled off as the Defendant has aged and matured. He has been incident free for approximately fourteen years. That certainly weighs in his favor.

(6) any statement offered by a victim or a victim's representative: Mr. Cox from the State's Attorney's Office learned during his preparation for this hearing that the victim unfortunately passed away some time ago. The only statement attributable to [L.] is contained within the Pre-Sentence Investigation wherein she voiced compassion. Given the particularly violent and degrading nature of this case the victim's sentiment is remarkable.

(7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional: Dr. Eric Lane, Psy.D., a licensed psychologist and neuropsychologist, evaluated the Defendant. He submitted a nineteen-page report and testified as an expert during the hearing of this matter. Dr. Lane's report and testimony are helpful to the determination to be made. However, some concerns came to light when reviewing the report prior to the hearing and were confirmed during the hearing (mostly on cross-examination). A certain percentage of the information relied upon by the doctor in forming his opinions is largely self-reported information conveyed by the Defendant. There is an inherent tension that exists within self-reported, unverifiable information. This was demonstrated, for example, by the inconsistency regarding the Defendant's past drug/alcohol use. Dr. Lane relied upon the Defendant's historical recitation of past abuse by stating "Making matters worse; and from an early age, Mr. Adams abused alcohol and marijuana" (p. 16 of Dr. Lane's report). However, the Pre-Sentence Investigation reports that

> The Defendant reports that he does not drink alcohol. However, he does report experimenting with marijuana once or twice in 1988. He further states that he did not like the effects of the marijuana and has not used this drug since. He does not report any other illicit drug use.

These two statements cannot be reconciled.

In addition, Dr. Lane, to his credit, explained that the Defendant does not meet DSM-5 criteria for any psychiatric disorders and has a long history of being psychiatrically and behaviorally stable (report at p. 16). Further, his report states

> the index offense would appear to have been an opportunistic sexual assault, which emerged out of a robbery, and was partially driven by various proximal factors, such as the influence of his older codefendant, as well as substance abuse at the time. Beyond the index offense, [Mr.] Adams does not have any other history of assaultive sexual behaviors (Id.).

In short, a medical/psychological diagnosis cannot explain the crime - it was simply a crime of opportunity.

(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: This factor also contains competing information, again, much being self-reported by the Defendant. Candidly, the PSI is not very detailed and broadly describes his parents "not getting along" and having periods of separation. In contrast, Dr. Lane's report explains in greater depth the mother's supposed drug abuse and the Defendant's unstable home life. The inconsistent information about alcohol and drug use appears again, with the PSI reporting that the Defendant did not use substances, whereas the Defendant reported to Dr. Lane daily use of alcohol and drugs beginning at age 8. The Defendant's current description of substance abuse at the time of the crime may be indicative of a more mature, savvy, inmate.

(9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense: Although this Defendant's role was arguably somewhat less involved than his twenty-one-year-old Co-Defendant's, to differentiate each participant's actions is largely academic. In short, this crime was about as bad as it gets -- a stranger rape/sodomy/armed robbery at gunpoint that went on for an appreciable length of time. It is difficult to parse what influence, if any, the four-year older Co-Defendant had on this Defendant's involvement, as there is a complete lack of evidence to consider on the subject. In fact, there is no actual evidence indicating the age difference had any impact on this Defendant's participation. It was not a spur of the moment, drug-induced crime perpetrated solely for drug proceeds, for example. This was one in a series of violent crimes, used with a real gun, a condom and asportation to more than one ATM machine. It appears this Defendant was a fully involved, willing participant.

(10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences: I do not believe this Defendant bears diminished culpability relative to his four-year older Co-Defendant. This Defendant was a fully-participating principal in this shockingly violent crime. His statement to the police included alarming details such as that the Defendants waited for approximately an hour looking for someone to attack. In addition, the Defendant's statement included him being the rear seat passenger, which leads to the inescapable conclusion that he was the attacker that forced fellatio, ostensibly at gunpoint. An attempt to characterize one participant's actions as somehow worse than another's in this type of crime is simply meaningless. This Defendant was an active and willing participant, and no weight should be given to gradations of criminality in such a crime.

(11) any other factor the court deems relevant. I appreciate the efforts the Defendant has made in terms of the programming and skill-building classes he has taken to optimize his chances at successful re-entry into the community upon his release and I am giving that weight in my determination.

The court concluded:

I have carefully and deliberately reviewed the pleadings from both the Defense and the State. l listened intently during the hearing on this matter and have thoroughly reviewed my extensive notes taken during both my preparation for this hearing, as well as those taken during the hearing. I remain concerned that the Defendant would continue to be a danger to the public. This was, simply stated, a brutal crime of opportunity. It was carefully planned and premediated, given both the length of time the criminals lied in wait and searched for a victim to attack. The criminals made efforts prior to executing their crime to both arm themselves, have a condom and even admitted to post-crime anti-detection efforts of wiping down the vehicle to avoid apprehension. This analysis is only further supported by Dr. Lane's testimony that, in essence, no psychological affliction could explain such behavior – in fact Dr. Lane, to his credit on cross-examination, basically conceded it was a crime of opportunity.

Additionally, I do not believe the interests of justice would be better served by reducing this Defendant's sentence. As explained above, this simply was a shockingly violent, opportunistic, degrading crime of the utmost heinous variety. The Defendant took advantage of a plea agreement offered and received exactly what he deserved. Even after considering the Defense's skillful arguments and advocacy in her attempt to make the most out of each factor, I am left firmly believing the interests of justice would not

> be better served by reducing this Defendant's sentence. Rather, this sentence should be left to the oversight of the Parole Commission.

DISCUSSION

Appellant argues the circuit court applied the wrong legal standard and, thereby, abused its discretion in denying his motion for reduction of sentence. Specifically, Appellant contends the court's denial was based only on the severity of the crime and the judge ignored the "pivotal importance of rehabilitation." Appellant also claims the court misapplied the first factor (the "age at the time of the offense" factor) because it treated his age at the time of the offense, nearly 18 years old, as an aggravating factor when it was required to treat it as a mitigating factor. Finally, Appellant asserts the court failed to correctly apply the tenth factor (the "diminished culpability of a juvenile as compared to an adult" factor) and, as a result, it was as if the court failed to address the factor at all.

For the reasons explained below, we agree with Appellant's contention that the court erred in its treatment of the tenth factor listed in CP § 8-110(d).

Standard of Review

This Court recently examined a circuit court's ruling on a motion for modification of sentence filed under the JUVRA in *Sexton v. State*, __Md. App __ (2023), No. 1324, Sept. Term, 2022 (Filed July 27, 2023). In that case, we explained that, although the decision to modify a sentence under the JUVRA rests in the discretion of the circuit court, a court abuses that discretion if it applies the wrong legal standards:

> 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 v. State, 258 Md. App. 525, 541-42 (2023).

The severity of the crime.

Appellant first contends the court erred because it denied his motion "based only on the severity of the underlying crime." According to Appellant, all of the factors that a court is required to consider when ruling on a motion for modification filed pursuant to the JUVRA must be viewed through the lens of the intent of the legislature in creating the statute. Appellant summarizes "the core legislative purpose of the" JUVRA as "giving rehabilitated juvenile offenders a second chance[.]"

As noted, the JUVRA contains eleven factors for a court to consider when ruling on a motion for modification of sentence. Appellant asserts that, because the fifth factor ("whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction") embodies the core purpose of the JUVRA, that factor is the most important one and the one through which all other factors,

including the severity of the crime, must be viewed. Appellant relies on the reasoning of *Davis v. State*, 474 Md. 439 (2021). In *Davis*, the Supreme Court of Maryland interpreted the statutory factors that a court is required to consider when making a decision whether to transfer a case of a child charged as an adult to juvenile court. In so doing, the Court found that one of the factors in the statute, the "amenability to treatment" factor, is "the ultimate determinative factor that takes into account each of the other four factors[.]" *Id*. at 466.

Appellant argues that *Davis* teaches that because the "public safety consideration is best viewed as being in harmony with the legislative purpose, not in competition with it" the legislature's concern expressed in CP § 8-110(c) that a court not reduce the sentence of an individual who is a danger to the public is counter-balanced by the overarching determination of "whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction[.]" Appellant asserts that *Davis* established that "the nature of the offense should not be treated as a reason to deny relief."

According to Appellant, the court erred by giving the nature of Appellant's offense "dispositive weight" and failed to "adequately consider" his "demonstrated maturity and rehabilitation." Appellant claims the court's reasoning for denying Appellant's motion "suggests that no matter the extent of [Appellant's] rehabilitation, it is immaterial to the court when ruling on this motion."

We do not agree. When ruling on a motion filed under the JUVRA, the nature of the underlying offense is not as minimal as Appellant suggests. Assuming, without deciding, that the most important factor for consideration is "whether the individual has

demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction," we conclude that the court did not abuse its discretion in its analysis in regards to the nature of the offense. The court separately considered each factor and recognized that, although Appellant had matured and progressed, he nevertheless still posed a threat to the public and the interests of justice would not be served by reducing his sentence. To be sure, the court expressed its concerns about the heinous nature of the offenses in this case, but it also noted, among other things, that Appellant was nearly 18 at the time of the offense, had already amassed a "lengthy juvenile record, establishing repeated violent criminal behavior," that he had initial difficulty with institutional discipline, and there was conflicting information concerning Dr. Lane's assessment. The court observed that the sentence in this case was the product of guilty plea negotiations resolving six other indictments against Appellant.

In summary, the circuit court did not give more weight to the nature of Appellant's offense than the JUVRA permits and further, the court did not base its decision solely on the severity of the offense.

The first factor: The individual's age at the time of the offense.

Appellant next contends that the court erred by "failing to treat [Appellant's] youthful age as mitigating, and instead holding it against him because he was a couple months shy of his 18[th] birthday." Appellant contends that, for various reasons, the fact that an individual is under 18 years old, is always a mitigating fact and that the circuit court erred in weighing Appellant's age, 72 days shy of his 18th birthday, "against [Appellant.]"

Under the JUVRA, a court is required to examine the age of an eligible defendant in two ways. On the one hand, the age of the defendant operates as a gatekeeping mechanism because the statute is only applicable to persons who committed their offenses when they were under the age of 18. CP § 8-110(a)(1). On the other hand, it is, by itself, a factor for the court to consider when deciding whether to modify an eligible person's sentence, and it is a component of, *inter alia*, the tenth factor ("the diminished culpability of a juvenile as compared to an adult" factor). CP §§ 8-110(d)(1) & (d)(10). The age factor, like all of the factors, is case specific and, in keeping with the overarching purpose of the JUVRA, is intended for the court to take into account that the defendant was under 18 at the time of the offense.

In the present case, when addressing CP § 8-110(d)(1), the court stated:

> As noted above, the Defendant was approximately 72 days away from his eighteenth birthday. I believe that fact weighs against the Defendant. Had this crime occurred a few short months later this Defendant would not have had the opportunity to even make this request. This is not a case where the Defendant was fifteen or early sixteen -- he was about as close to being a legal adult as it gets.

As we see it, the court's decision to weigh the first factor "against" Appellant did not contravene the purpose of the JUVRA. Further, it did not amount to legal error or an abuse of discretion. The JUVRA simply does not require in all circumstances that age be deemed a mitigating factor.

The tenth factor: The diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences.

Appellant next 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 the court's discussion of the tenth factor actually addressed the ninth factor, *i.e.*, "the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense." CP § 8-110(d)(9). Appellant contends the court erred because it focused on the relative culpability of Appellant specifically and not the diminished culpability of juveniles generally as required by CP § 8-110(d)(10). Because the court did not address the diminished capacity of juveniles generally, Appellant asserts the court did not fully address this factor.

Pursuant to CP § 8-110(e)(2), a court must address each of the factors listed in CP § 8-110(d). A court's failure to address each of the factors is considered reversible error. The tenth factor examines "[t]he diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences." CP § 8-110(5)(10). This factor requires a 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. *Roper v. Simmons*, 543 U.S. 551, 571 (2005); *Miller v. Alabama*, 567 U.S. 460, 471 (2012). For example, in *Miller*, the Court noted:

> First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from

> horrific, crime-producing settings. And third, a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.

Id. at 471 (cleaned up).

Here, the court's opinion, in examining the tenth factor, stated:

> I do not believe this Defendant bears diminished culpability relative to his four-year older Co-Defendant. This Defendant was a fully-participating principal in this shockingly violent crime. His statement to the police included alarming details such as that the Defendants waited for approximately an hour looking for someone to attack. In addition, the Defendant's statement included him being the rear seat passenger, which leads to the inescapable conclusion that he was the attacker that forced fellatio, ostensibly at gunpoint. An attempt to characterize one participant's actions as somehow worse than another's in this type of crime is simply meaningless. This Defendant was an active and willing participant, and no weight should be given to gradations of criminality in such a crime.

On this record, we hold the court did not fully analyze the "diminished capacity" factor. Instead, the court focused on the relative culpability between Appellant and his co-defendant Montague. The court began its analysis by stating "I do not believe this Defendant bears diminished culpability relative to his four-year older Co-Defendant." The court then continued to discuss the relative culpability of Appellant and Montague while focusing on the heinousness of their actions. In essence, the court focused on the details of the offense, but did not examine the juvenile's diminished capacity as compared to an adult, including whether there was an inability to fully appreciate risks and consequences. As a result, the court did not apply the correct legal standard. *Sexton*, 258 Md. App. at 541-42.

We shall, therefore, vacate the judgment of the circuit court and remand the case for further consideration of, and a decision on Appellant's motion. Upon remand, the circuit court shall follow the guidance we gave 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).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.