

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1506

September Term, 2023

HARRY L. BONSALE,

v.

STATE OF MARYLAND

Leahy,
Reed,
Ripken,

JJ.

Opinion by Reed, J.

Filed: March 10, 2026

In October of 2021, Harry L. Bonsall (“Appellant”) filed a motion in the Circuit Court for Charles County seeking modification of his sentence pursuant to section 8-110 of the Criminal Procedure Article (“CP”) of the Maryland Code (2021, 2025 Repl. Vol.) (referred to herein as “JUVRA”). The State opposed Appellant’s motion. Following a hearing, the court issued a written opinion and order denying the motion. Appellant noted a timely appeal, and has presented the following issue for our review:¹

Whether the circuit court abused its discretion in denying Appellant’s motion for modification of his sentence.

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

Underlying Convictions

In November of 1990, Appellant, who was then seventeen years of age,² broke into the family home of his former girlfriend, E.S. He was accompanied by a fourteen-year-old associate, S.F. In addition to seeking food and money, Appellant also sought revenge on

¹ Rephrased and consolidated from:

1. Did the [c]ircuit [c]ourt err in denying the Appellant’s JUVRA Motion for Modification, Reconsideration, and/or Reduction of Sentence, by failing to consider all of the eleven factors mandated to be considered by Maryland Code, Crim. Proc. Art. Sec. 8-110(d)?
2. Did the [c]ircuit [c]ourt err in denying the Appellant’s JUVRA Motion for Modification, Reconsideration, and/or Reduction of Sentence, by inaccurately characterizing the findings as presented in a Psychological Evaluation and Risk Assessment conducted by Dr. James Fleming?

² Appellant was approximately three months short of his eighteenth birthday.

his former girlfriend,³ who had accused Appellant of rape two years prior.⁴ Once inside the house, Appellant and S.F. stole food and alcohol and disconnected the telephone cords.

Late in the evening, D.S.—E.S.’s older sister—was the first to arrive home. Appellant confronted her with a “small caliber handgun” before knocking her to the floor, tying her up with phone cords, and taking her to an upstairs bedroom. The remaining family members, including E.S., later arrived home and were tied up by Appellant and his associate and forced into the upstairs part of the house. Appellant, after forcing E.S. into her bedroom and gagging her with a shirt, raped her at gunpoint.

With all four victims still bound in the upstairs rooms, Appellant and S.F. obtained gasoline from the garage, poured it throughout the downstairs of the house, and used matches to start a fire. Appellant claimed that he started the fire to provide a diversion allowing time to flee the scene; however, S.F. recounted to police that Appellant expressed his intent to ensure no evidence was left behind.

Appellant was charged for these events by way of an indictment. In September of 1991, Appellant pled guilty to arson and first-degree rape. On the same date, as part of the plea, he entered an Alford plea to attempted murder. The court accepted the pleas. At the

³ In Appellant’s Mirandized police interview, the following exchange took place between Appellant and a police officer:

[Police]: Didn’t you tell [S.F.] and the others that you wanted revenge [on E.S.]?

[Appellant]: I told them that was why we were breaking into the house. But I did not plan[] on doing that to [E.S.].

⁴ The prior rape allegation proceeded in a case in the juvenile system in which Appellant was found to be not involved.

sentencing hearing, the circuit court sentenced Appellant to a term of life incarceration for the attempted murder conviction; a term of life incarceration for the first-degree rape conviction; and a term of thirty years for the arson conviction. The convictions were set to run concurrently.

JUVRA Petition

On October 1, 2021—the date that JUVRA went into effect—Appellant filed a petition under CP section 8-110, seeking a “reduction, modification, and/or reconsideration” of his sentence. Appellant, asserting that he qualified for relief under the statute, argued that he had made substantial progress toward rehabilitation in light of his “outstanding institutional record[,]” his maturation, and insight. In preparation for the hearing on his petition, Appellant obtained the services of a licensed psychologist, Dr. James Fleming, to conduct a psychological evaluation and risk assessment report on Appellant (“the Report”). After the Report was completed, Appellant filed it with the circuit court in October of 2022. The State opposed Appellant’s petition.

JUVRA Hearing

The circuit court scheduled a hearing to occur in June of 2023. At the hearing, Appellant presented testimony from Dr. Fleming, who was qualified as an expert. Dr. Fleming testified at length regarding the investigation he had conducted and the tests and procedures he had used in reaching his assessment of Appellant’s risk for future offense.⁵

⁵ Among the data Dr. Fleming indicated he used in preparing the report were a psychological report conducted on Appellant in March of 1991; the Pre-Sentence Investigation report; a Department of Corrections Institutional Progress Report of

As related to risk of sexual re-offense, Dr. Fleming explained that he could not do a formal risk assessment of Appellant because none of the tools designed for such an assessment could be used on offenders such as Appellant, who was an adolescent at the time of the crimes, and who had been incarcerated for decades without treatment. However, based on his experience, Dr. Fleming explained that he conducted a heuristic assessment of Appellant’s risk of sexual re-offense based on the relevant factors known to him. He explained that “[p]rior charges or convictions for sex offenses are disproportionately predictive of future risk for sex offense[.]” Dr. Fleming found this factor relevant because when Appellant was twelve, he had been found involved in a sexual offense relating to a six-year-old, which was “a repeat instance.” He also explained that aging was disproportionately associated with a reduced risk of future re-offense. In his report, Dr. Fleming added that the decrease in risk associated with aging is “much greater for offenders who are 60 or older.” Dr. Fleming explained that he took both factors into account in concluding that for sexual re-offense, Appellant’s risk was “below average but not low.”

Dr. Fleming also testified that he conducted a formal assessment of Appellant’s future risk for non-sexual interpersonal violence, which he found to be low.

Appellant elicited testimony from his mother, his brother, and testified himself related to his personal history and background, his accomplishments while incarcerated, his institutional record, and his potential support system should his request for relief under JUVRA be granted.

Appellant conducted in 2021; and Appellant’s JUVRA petition. Dr. Fleming also interviewed Appellant and Appellant’s Mother.

Appellant presented exhibits for the court’s consideration, including the Report; Dr. Fleming’s curriculum vitae; letters of support from family members and other references; and reports, recommendations, and evaluations from the Department of Corrections.

The State presented testimony from E.S., who testified as to the continued impact Appellant’s crimes had on her. She also testified that Appellant had sent her multiple letters, starting “eight to [ten] years after he was incarcerated[.]” She testified that “[e]very time [she] read one of those letters it re-opened the deepest wounds.” She testified that she was “outraged” when Appellant sent his mother to her home to hand-deliver the last letter.⁶ E.S. testified that for her, the night of Appellant’s crimes “never ends” and that she was “constantly reminded of it.”

The State also presented to the court several exhibits, including the transcript of Appellant’s guilty plea hearing; the transcript of Appellant’s sentencing hearing; the written account of Appellant’s statement to police; and two of the letters sent by Appellant to E.S. The State additionally requested that the court take judicial notice of the entire court file.

JUVRA Opinion and Order

In September of 2023, the circuit court issued a twelve-page opinion outlining the history of the crime, the JUVRA petition, and the applicable law. The court then considered each of the factors required under CP section 8-110(d), making the following findings:

⁶ The last letter, which was presented by the State to the court, was dated September 18, 2013, when Appellant was forty years old.

1. Individual's age at the time of offense[.]^[7]

At the time of the offense, [Appellant] was seventeen[] years and nine months old.

2. Individual's family and community circumstances at the time of the offense[.]^[8]

[Appellant's] childhood included some traumatic events. As recounted in Dr. Fleming's report, [Appellant] experienced the death of his younger brother . . . to the chicken pox. For many years, [Appellant] felt an intense sense of guilt stemming from his belief that [his brother] caught the virus from him. In the years following the death, [Appellant] displayed numerous behavioral problems, such as lashing out at his parents and repeatedly missing school. At age twelve, [Appellant's] parents separated.

Throughout his childhood, [Appellant] also struggled with his family's lack of sexual boundaries. According to [Appellant], he discovered his father's pornographic magazines at a young age and was later suspended from school after attempting to sell them to fellow students. [Appellant] also disclosed two instances of sexual assault that he experienced at age eight at the hands of same-age male peers. Notably, during [Appellant's] initial pre-sentence investigation, [Appellant] had also alleged that he was sexually abused by both his maternal grandfather and a family friend throughout his childhood; however, in Dr. Fleming's report, [Appellant] admitted that these statements had been a lie told based on another inmate's advice that the allegations would garner him sympathy from the court.

3. The nature of the offense and the history and characteristics of the individual[.]^[9]

As outlined *supra*, the facts of this case are abhorrent. From the multiple acts of violence to a gross indifference to human life, [Appellant] purposefully subjected the S[.] family to a horrific invasion of privacy and safety that undoubtedly has had long-lasting effects on the victims' physical and emotional wellbeing. While [Appellant] had not previously committed an act rising to this level of severity, at age twelve, he was found involved in

⁷ See CP § 8-110(d)(1).

⁸ See CP § 8-110(d)(8).

⁹ See CP § 8-110(d)(2).

Attempted Second-Degree Rape of a six-year-old female neighbor. [Appellant] was subsequently placed on an indefinite period of probation and completed two years of court-ordered therapy, which he recounts as being unhelpful.

[Appellant's] next involvement with the legal system occurred while repeating the eighth grade. At the beginning of the school year, [Appellant] began dating his then[-]classmate E.S., also a victim in the current case. Following the couple's breakup, [Appellant] was charged with four counts of Second-Degree Rape and two counts of Carrying a Dangerous Weapon after E.S. accused [Appellant] of having raped her during their prior relationship. [Appellant] was found not involved on five counts and [the remaining count was] dismissed.

Due to [Appellant's] escalating behavioral problems following the acquittal, [Appellant] moved in full-time with his father. [Appellant] subsequently dropped out of school and struggled to maintain employment. At this time, [Appellant] also reports having engaged in daily alcohol and occasional marijuana use. However, just as [Appellant] alleged childhood sexual abuse in his initial pre-sentence investigation, [Appellant] also claimed to use PCP daily beginning at the age of seventeen; [Appellant] later admitted to Dr. Fleming that this was also a lie based on advice of older detainees. [Appellant] further told initial investigators that he had twice tried to commit suicide as a teenager; [Appellant] again later admitted that these statements were also false.

Not long prior to the instant offense, [Appellant] was charged with auto theft in Virginia. While no official account of the offense is available, [Appellant] states that the charges stem from an incidence where, along with a group of friends, [Appellant] stole and flattened the tires of one car before then stealing another and being apprehended by police. [Appellant] was found involved and placed on probation, the terms of which he failed to comply with after failing to re-enroll in school or find employment. At this time, [Appellant] also began an intense and volatile relationship with a young woman which fueled [Appellant's] heavy alcohol used. [Appellant] then left home and moved into a motel with his then-girlfriend.

4. Extent of the individual's role in the offense and to what extent an adult was involved in the offense[.]¹⁰

¹⁰ See CP § 8-110(d)(9).

For the duration of the current offense, seventeen-year-old [Appellant] was accompanied by his fourteen-year-old co-defendant, S.F., who was charged as a juvenile based on the State’s finding that [Appellant] acted as the ultimate mastermind while S.F. tagged along. Given the age difference between S.F. and [Appellant] and [Appellant’s] leading role in the offense, [Appellant] here acted in a role of authority without which the offense would not have occurred.

5. Whether the individual has substantially complied with the rules of the institution[] [in] which he has been confined[.]^[11]

By all formal accounts, [Appellant] has been a model inmate throughout the majority of his incarceration. While [Appellant] did receive several infractions at the beginning of his imprisonment, he has not received any formal disciplinary action since 1995. His good behavior has earned him a special duty position as a property distributor on the prison’s administrative segregation tiers, which requires [Appellant] to check other inmates’ possessions and turn in any discovered contraband to prison officials. [Appellant] has received glowing reviews in this role, with multiple officers noting [Appellant’s] strong work ethic.

While [Appellant’s] formal record is largely free of infraction, [Appellant] himself admits that, throughout his first fifteen[] years of imprisonment, he “never really changed” and was “living a life of crime.” This lifestyle included engaging in an unsanctioned business, the nature of which is unknown, which culminated in [Appellant] being attacked in 2006 after the “business relationship went bad.” Following this attack, [Appellant] writes that he had planned “to hurt” his cellmate in retaliation but did not take action after having a spiritual awakening. Rather, [Appellant] claims that the attack finally led him to take responsibility for his role in the current offense.

6. Whether the individual has completed an educational, vocational, or other program[.]^[12]

While incarcerated, [Appellant] has completed numerous prison-run programming, including both the basic and advanced sections of the Alternatives to Violence program, the Thinking, Deciding, Changing module, and a Communication module. [Appellant] has also furthered his education by getting his GED and attending non-degree eligible courses

¹¹ See CP § 8-110(d)(3).

¹² See CP § 8-110(d)(4).

through Coppin State College as well as completing a paralegal course. Additionally, [Appellant] has been involved in the management and treatment of an estimated four thousand inmates and over a thousand sex offenders.

7. Any report of a physical, mental, or behavioral examination of the individual conducted by a health professional^{13]} and the diminished culpability of a juvenile as compared to an adult[.]^{14]}

[Appellant] frequently references Dr. Fleming’s psychological evaluation and risk assessment in which Dr. Fleming relied on clinical and forensic interviews with [Appellant], case filings, and various risk assessment tools. Notably, while Dr. Fleming states that his conclusions are valid, he also warns that they are to be viewed with caution due to limitations of the evaluation. Specifically, as Dr. Fleming was only able to evaluate [Appellant] over video conference, he was unable to administer a multi-scale inventory of psychopathy. According to Dr. Fleming, this additional test provides an independent source of clinical information regarding a person’s emotional functioning. Based on the evaluations he was able to complete, Dr. Fleming ultimately concludes that, while [Appellant] may have exhibited symptoms of Antisocial Personality Disorder at the time of the offense, he no longer meets the requirements for a formal diagnosis; rather, [Appellant’s] responses indicate few antisocial features, which Dr. Fleming attributes to his adaptability to incarceration and positive employment record. [Appellant] does qualify for DSM-5 diagnoses of Persistent Depressive Disorder (in full remission), Post[-T]raumatic Stress Disorder (PTSD), Alcohol Use Disorder (in sustained remission), and Imprisonment or Other Incarceration.

Further, Dr. Fleming concludes that [Appellant’s] risk for future non-sexual interpersonal violence is low on a scale of low, moderate, or high. Integral to this conclusion is [Appellant’s] age at the time of the offense; Dr. Fleming cites several studies focused on post-juvenile recidivism, one of which concludes “that the combination of age and length of sentence that is unique to juvenile lifers is associated with a lower risk for future interpersonal violence.” Dr. Fleming also concludes that [Appellant’s] risk for sexual re-offense is below average, but not low. Notably, this is not a formal conclusion as the tools used to assess such risk cannot “be used on an offender who was under [seventeen] at the time he committed the offense and who is now an adult.”

¹³ See CP § 8-110(d)(7).

¹⁴ See CP § 8-110(d)(10).

Regardless, Dr. Fleming notes that, because [Appellant] was previously convicted of a prior sex offense relating to his six-year-old neighbor, [Appellant] has a disproportionately high risk of future re-offense.

8. Any statement offered by a victim or a victim’s representative[.]^[15]

At [Appellant’s] hearing, E.S. testified to the ongoing impact that [Appellant’s] actions have had on her and her family. In her testimony, E.S. specifically noted the continued effect that the trauma has had on her interpersonal relationships and sense of overall physical safety and wellbeing. This unease has only been exacerbated by [Appellant’s] attempts to contact her, including multiple letters that [Appellant] has sent to her place of work despite E.S. never having provided him with the address. An additional letter was also hand[-]delivered to her home by [Appellant’s] mother, also without E.S.’s consent. In these letters, [Appellant] asserts that God compelled him to write to E.S. and proclaims that his communications are for E.S.’s benefit. [Appellant] further encourages E.S. to reach out to him with questions that she may have regarding various religious beliefs. [Appellant’s] knowledge of E.S.’s home and work address, combined with the content[] of these letters, have furthered E.S.’s anxiety and reinforced her feelings of hypervigilance. Ultimately, speaking on behalf of herself and her family, E.S. asks the court to deny [Appellant’s] request for a sentence modification.

9. Other considerations: remorse and acceptance of responsibility[.]^[16]

In addition to the previously specified inconsistencies in [Appellant’s] rendition of events and lies regarding his own personal history, [Appellant] also now denies raping E.S. despite pleading guilty to the offense. At his plea hearing, [Appellant] was asked: “You are entering the plea to rape in the first degree because you committed that offense, right?” to which he replied, “Yes, Your Honor.” [Appellant] additionally provided a statement to officers describing, in detail, how he committed the assault in the days following the offense. Despite these prior admissions, [Appellant] now denies culpability.

¹⁵ See CP § 8-110(d)(6).

¹⁶ See CP § 8-110(d)(11).

(internal footnotes omitted). The court then discussed these factors, evaluating Appellant’s maturity and fitness to re-enter society, stating the following:

Overall, based on the above factors, the [c]ourt cannot find that [Appellant] is not a danger to the public or that the interests of justice will be better served by a sentence modification. The facts of the case reflect cold and calculating actions that transcend mere teenage recklessness. Further, despite [Appellant’s] favorable disciplinary record while incarcerated, he has admitted to undetected rule breaking and cites his deception skills in allowing his behavior to go unnoticed. This deception aligns with [Appellant’s] previous falsities reported to police, including accounts of prior sexual assault and drug use, all of which [Appellant] later rescinded and explained as an attempt to gain judicial leniency. These inconsistencies have continued to the present day as [Appellant] now denies raping E.S. despite evidence to the contrary. [Appellant] has also shown a lack of foresight and maturity by attempting to contact E.S. at both her work and home address.^[17]

Additionally, while [Appellant] now takes responsibility for select aspects of the offense, it was not until ten years into his incarceration that he viewed himself as anything other than a victim. This lack of remorse existed far past the point of juvenile brain maturation and thus cannot be solely attributed to a lack of cognitive development; rather, it reflects a deeper, more insidious egotistic worldview.^[18]

Overall, the above considerations reflect a person capable of committing appalling violence with questionable remorse, the likes of which are not fit for re-entry into society.

The court then denied Appellant’s motion. Appellant filed this timely appeal.

STANDARD OF REVIEW

Under JUVRA, the decision to grant or deny a motion for reduction of sentence rests within the discretion of the circuit court “upon consideration of the enumerated factors.” *Trimble v. State*, 491 Md. 378, 405 (2025). An abuse of discretion exists when

¹⁷ See CP § 8-110(d)(5).

¹⁸ See CP § 8-110(d)(10).

“no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.” *Otto v. State*, 459 Md. 423, 446 (2018) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)). The decision under consideration must be “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (quoting *Evans v. State*, 396 Md. 256, 277 (2006)).

An abuse of discretion occurs if the circuit court applies an incorrect legal standard. *Trimble*, 491 Md. at 405 (citing *Sexton v. State*, 258 Md. App. 525, 541 (2023)). This is because “trial courts do not have discretion to apply incorrect legal standards.” *Sexton*, 258 Md. App. at 542 (quoting *Matter of Dory*, 244 Md. App. 177, 203 (2019)). “Whether the circuit court properly construed and applied CP [s]ection 8-110 is a question of law that we review *de novo*.” *Trimble v. State*, 262 Md. App. 452, 462 (2024), *aff’d*, 491 Md. 378 (quoting *Sexton*, 258 Md. App. at 542). In conducting *de novo* review, the reviewing court does not examine whether the trial court abused its discretion in its ultimate determination; rather, it examines whether the trial court applied the proper legal standard in the exercise of its discretion. *Sexton*, 258 Md. App. at 542 (citing *Davis v. State*, 474 Md. 439, 451 (2021)).

DISCUSSION

Appellant contends that the circuit court abused its discretion in denying his JUVRA petition on two grounds: first, Appellant contends that the circuit court failed to consider two of the required factors under CP section 8-110(d); and second, Appellant accuses the circuit court of “inaccurately characterizing” a portion of Dr. Fleming’s report, suggesting

that the court was required to be persuaded by elements of the report that favored Appellant. The State responds that the circuit court did, in fact, consider each of the factors required under CP section 8-110(d), and that the circuit court was free to determine the weight of the evidence and its supporting inferences. We address each contention in turn.¹⁹

A. The circuit court considered each of the factors required under CP section 8-110(d).

In deciding a JUVRA petition, a circuit court has the discretion to reduce the sentence of a qualified individual, following a hearing, if the court determines that the individual is not a danger to the public and that the interests of justice will be better served by a reduced sentence. *Trimble*, 491 Md. at 408 (citing CP § 8-110(c)). In making this determination, a circuit court is required to consider the factors identified in CP section 8-110(d).²⁰ *Id.* The circuit court is required to issue its decision in writing and to address the factors listed in CP section 8-110(d). *See* CP § 8-110(e).

¹⁹ Both parties address the issue of whether the denial of a JUVRA petition is an appealable order. An appeal from the denial of a motion that is “entirely” within a sentencing court’s discretion under Maryland Rule 4-345(e) is barred. *See Johnson v. State*, 258 Md. App. 71, 87 (2023) (quoting *Hoile v. State*, 404 Md. 591, 617 (2008)). However, where a circuit court makes legal determinations concerning a JUVRA petitioner’s eligibility for relief under the statute, this Court has held that those are legal determinations which are reviewable as final judgments. *Id.* Further, the prohibition against review of a discretionary denial of a sentence modification is inapplicable in JUVRA cases, where, although the trial court has discretion, it does not have the discretion to employ an incorrect interpretation of CP section 8-110. *See Sexton*, 258 Md. App. at 541–42; *see also Trimble*, 262 Md. App. at 472–73 (holding that where “primary allegations” of error in a JUVRA petition determination concerned improper interpretation and application of CP section 8-110, the denial of that petition was an appealable order because it was “based upon an alleged error of law.”). Because this appeal concerns Appellant’s allegations of the circuit court’s improper application and interpretation of CP section 8-110 in denying the JUVRA petition, we agree with Appellant that the order is an appealable order.

Appellant argues that the circuit court failed to consider two of the required factors under CP section 8-110(d); specifically, Appellant claims that the circuit court did not consider CP section 8-110(d)(5)²¹ or CP section 8-110(d)(10).²² This assertion is not accurate. As described above, the circuit court examined and made findings related to each

²⁰ The factors to be considered are:

- (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.

Trimble, 491 Md. at 391–92 (quoting CP § 8-110(d)).

²¹ See CP § 8-110(d)(5) (requiring consideration of “whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction”).

²² See CP § 8-110(d)(10) (requiring consideration of “the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences”).

of the factors listed in CP section 8-110(d). As to the factors Appellant contends are missing, the circuit court made the following findings:

Further, despite [Appellant’s] favorable disciplinary record while incarcerated, he has admitted to undetected rule breaking and cites his deception skills in allowing his behavior to go unnoticed. This deception aligns with [Appellant’s] previous falsities reported to police, including accounts of prior sexual assault and drug use, all of which [Appellant] later rescinded and explained as an attempt to gain judicial leniency. These inconsistencies have continued to the present day as [Appellant] now denies raping E.S. despite evidence to the contrary. [Appellant] has also shown a lack of foresight and maturity by attempting to contact E.S. at both her work and home address.^[23]

Additionally, while [Appellant] now takes responsibility for select aspects of the offense, it was not until ten years into his incarceration that he viewed himself as anything other than a victim. This lack of remorse existed far past the point of juvenile brain maturation and thus cannot be solely attributed to a lack of cognitive development; rather, it reflects a deeper, more insidious egotistic worldview.^[24]

Although the circuit court did not specifically cite the portions of CP section 8-110(d) to which the court referred, the context and language surrounding the court’s discussion make clear that the court considered each factor. Beyond the requirement that a circuit court’s JUVRA order be in writing, CP section 8-110(e) requires only that the circuit court consider the factors contained within subsection (d). As this Court stated in *Trimble*, “all that is required of a circuit court is that each factor is considered in the court’s decision and that its decision is issued in writing.” 262 Md. App. at 466. The circuit court here did just that—it considered each factor contained in CP section 8-110(d), and the court issued

²³ See CP § 8-110(d)(5).

²⁴ See CP § 8-110(d)(10).

its decision in writing. Appellant does not cite any cases, and nor are we aware of any, that suggest that the circuit court was required to use any particular language or address the CP section 8-110(d) factors in any particular order. *See also Trimble*, 491 Md. at 405 (citing *State v. Chaney*, 375 Md. 168, 183–84 (2003)) (“Absent an indication that the trial judge misstated or misapplied the applicable legal principles, we presume that trial judges know the law and apply it properly.”).

Because the circuit court considered each of the factors contained in CP section 8-110(d) when deciding Appellant’s JUVRA petition, the court applied the correct legal standard and did not abuse its discretion. *See Trimble*, 491 Md. at 405, 424–25 (a circuit court did not abuse its discretion in denying a petition for sentence modification under JUVRA when the record demonstrated that the court carefully considered all the evidence presented by the parties and evaluated the mandatory factors).

B. The circuit court findings related to Dr. Fleming’s report were not clearly erroneous.

This Court has held that “the decision to grant or deny a motion for reduction of sentence under JUVRA rests with the sound discretion of the circuit court so long as each enumerated factor is considered and the correct legal standard is applied.” *Trimble*, 262 Md. App. at 469. “On review of matters arising from a circuit court’s evidentiary hearing, we exercise clear error deference to the court’s first-level findings, including the resolution of conflicts in evidence, credibility determinations, and determinations about relative evidentiary weight.” *Trimble*, 491 Md. at 406. The Supreme Court of Maryland, in

reviewing an argument that circuit courts are required to consider certain factors in favor of a movant, stated the following:

We start with the recognition that it is CP [section] 8-110(c) that prescribes the ultimate criteria governing whether a movant is entitled to receive a reduced sentence: that the movant is not a danger to the public and that the interests of justice will be better served by a reduced sentence. Only if those criteria are met is a movant entitled to a reduced sentence. The factors listed in CP [section] 8-110(d)—while required to be “consider[ed]” in every case—are the guideposts to assist the circuit court in determining the inquiry presented under subsection (c). *CP [section] 8-110(d) is silent regarding the weight that a court must give to any particular factor in its dangerousness and interests-of-justice analysis. That silence indicates that the factors listed in subsection (d) are intended to provide a circuit court maximum flexibility in considering each factor.*

Id. at 411–12 (emphasis added) (footnote omitted).

When a trial court makes factual findings, we review those findings for clear error and determine whether the court’s findings are supported by substantial evidence in the record. *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 473–74 (2019). “When the trial court’s findings are supported by substantial evidence, the findings are not clearly erroneous.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). In reviewing the trial court’s findings under this deferential standard, this Court considers that the trial court, as the factfinder, was “free to believe some, all, or none of the evidence presented[.]” *Sifrit v. State*, 383 Md. 116, 135 (2004). “We give due regard to the fact finder’s finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and

assess the credibility of witnesses.” *Trimble*, 262 Md. App. at 471–72 (internal quotations and citations omitted).

Appellant contends that the circuit court “inaccurately characteriz[ed]” Dr. Fleming’s report. Specifically, Appellant takes issue with the court’s focus on Dr. Fleming’s assessment of Appellant’s risk for sexual re-offense. Appellant suggests that the circuit court should have given more weight to the other elements of Dr. Fleming’s testimony and report—particularly in relation to the tests for non-sexual interpersonal violence, for which Appellant was deemed to be a low risk. Appellant asserts that when the court addressed Dr. Fleming’s discussion of the risk of sexual re-offense, the court “mis[stated]” Dr. Fleming’s testimony. We disagree.

The court stated the following in relation to Appellant’s risk of re-offense:

Further, Dr. Fleming concludes that [Appellant’s] risk for future non-sexual interpersonal violence is low on a scale of low, moderate, or high. Integral to this conclusion is [Appellant’s] age at the time of the offense; Dr. Fleming cites several studies focused on post-juvenile recidivism, one of which concludes “that the combination of age and length of sentence that is unique to juvenile lifers is associated with a lower risk for future interpersonal violence.” Dr. Fleming also concludes that [Appellant’s] risk for sexual re-offense is below average, but not low. Notably, this is not a formal conclusion as the tools used to assess such risk cannot “be used on an offender who was under [seventeen] at the time he committed the offense and who is now an adult.”

Regardless, Dr. Fleming notes that, because [Appellant] was previously convicted of a prior sex offense relating to his six-year-old neighbor, [Appellant] has a disproportionately high risk of future re-offense.

Based on these considerations and findings, it is evident that the court considered and gave weight to Dr. Fleming’s assessment of Appellant’s risk for future non-sexual interpersonal violence. It is also evident that the court gave weight to Dr. Fleming’s heuristic assessment

that Appellant’s risk for sexual re-offense was “below average, but not low.” There was substantial evidence in the record to support this finding, including Dr. Fleming’s report, which directly stated that Appellant’s risk for sexual re-offense was “below average but not low.” Dr. Fleming also repeated this conclusion during his testimony at the JUVRA hearing.

With respect to the court’s comment that Dr. Fleming had noted a “disproportionately high risk of future re-offense[,]” there was also evidence in the record to support this inference. Dr. Fleming’s report stated that “[a] history of prior convictions or arrests for sex offenses is disproportionately associated with risk of future offenses, and so it must be considered accordingly.” Dr. Fleming specified that in considering this, Appellant had been found involved in a sexual offense at age twelve and had been charged with another at age fifteen, in which he had been found not involved. Dr. Fleming repeated at the hearing that “[p]rior charges for sex offenses are disproportionately predictive for future risk for sex offense[.]” In addition to the offenses that Dr. Fleming considered, Appellant also pled guilty to rape in the instant matter. There was substantial evidence in the record to support the inference that Appellant’s history—as an individual who had been charged, found involved, or convicted in more than one sexual offense incident—predicted a disproportionately higher risk than someone without that history.

Appellant contends that Dr. Fleming concluded that, as related to risk of sexual re-offense, Appellant’s risk was “below average.” The language in Dr. Fleming’s report did not end there. Dr. Fleming stated in his report, and confirmed in his testimony, that Appellant’s risk of sexual re-offense was “below average but not low.” The trial court was

not required to accept Appellant's interpretation of Dr. Fleming's assessment; nor was the court required to give additional weight to Appellant's interpretation of the assessment. *See Trimble*, 491 Md. at 411–12. Because the court's factual findings were supported by substantial evidence in the record, they were not clearly erroneous. *See Korotki*, 465 Md. at 473–74; *see also Innerbichler*, 132 Md. App. at 229–30.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**