UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2835

September Term, 2014

REGINALD HILL

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 4, 2016

Six years after he was sentenced, Reginald Hill filed a motion asking the Circuit Court for Prince George's County to modify his twenty-year sentence on the grounds that his trial attorney failed to make the modification request for him in a timely manner. The court denied the motion, and then denied Mr. Hill's motion to amend that denial, after which Mr. Hill filed a timely appeal. Because he invoked the wrong rules in each of his motions, the circuit court properly denied his requests, and we affirm.

I. BACKGROUND

Mr. Hill was sentenced on April 29, 2008 to twenty-five years imprisonment, five suspended, after pleading guilty to charges of first- and second-degree assault. He did not appeal his conviction, nor did he seek any relief within the statutory ninety-day period during which the court may revise a sentence. On June 20, 2014, Mr. Hill filed a "(Belated) Motion for Modification and/or Reduction of Sentence(s)" ("Belated Motion"), using a form that relied expressly on Md. Rule 4-345(e). The court summarily denied the Belated Motion four days later, and the record shows that Mr. Hill was served with notice of this denial on August 8, 2014. Mr. Hill then filed a "Motion to Alter or Amend Judgment/Motion to Revise Judgment and for Other Appropriate Relief" ("Motion to Amend") on September 25, 2014, this time requesting that the court exercise its revisory power under Md. Rules 2-534 and 2-535. After reviewing Mr. Hill's written arguments and the State's written opposition, the court denied the Motion to Amend on October 30, 2014. Mr. Hill appealed from this latter decision.

II. DISCUSSION

Mr. Hill frames his appeal as a jurisdictional issue, claiming not, as we usually see, that the court erred in denying his motions, but that the circuit court erred in ruling on that motion in the first place.[1] He cites Md. Rule 4-345(e), which extends the court's revisory power for only ninety days after imposing a sentence, and argues that "a judge errs when it entertains any motion for modification [under Rule 4-345] filed beyond the 90-day period, because it has been divested of any jurisdiction to act." And he argues that the judge's decision to deny the Belated Motion, rather than dismiss it, constituted reversible error. Mr. Hill's Motion to Amend asked the court to correct the alleged error pertaining to his Belated Motion, and Mr. Hill challenges the court's decision to deny that motion on

[1] Mr. Hill phrases the issue as follows: "Does a circuit court judge have the authority to entertain a motion for sentence modification filed beyond the 90-day jurisdictional limit?"

appeal.[2] As such, we don't have the merits of the Belated Motion before us,[3] and we find no error in the court's decision to deny the Motion to Amend.

We review the denial of a motion for reconsideration for abuse of discretion, but the appeal "does not serve as an appeal from the underlying judgment." *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999). Abuse of discretion exists "where no

---

[2] Mr. Hill obviously wanted the court to review and revise his 2008 sentence. But the proper procedural vehicle for such a request is the Maryland Post-Conviction Procedure Act, Md. Code (2001, 2008 Repl. Vol., 2015 Supp.), Title 7 of the Criminal Procedure Article, an avenue that Mr. Hill seems not, at least on the record before us here, to have tried. (That said, we do not have before us all motions filed in the history of Mr. Hill's case, and so we express no opinion as to whether Mr. Hill in fact still has any right to seek post-conviction relief.)

In *State v. Flansburg*, the Court of Appeals held that an attorney's failure to file a motion for sentence modification is in itself a deficient act, and this deficient act is prejudicial because it results in the defendant's loss of the opportunity for reconsideration. 345 Md. 694, 705 (1997). The remedy for such deficient representation is to grant permission for the defendant to file a belated motion for reconsideration of sentence under the Post-Conviction Procedure Act. *See also Matthews v. State*, 161 Md. App. 248, 252 (2005) (requiring a showing of deficient representation—*e.g.*, that the attorney failed to file the motion as requested by the defendant—but not requiring production of any other evidence of prejudice). According to *Matthews*, the complaining defendant must establish that he did, in fact, request that the attorney seek a sentence modification, *id.* at 249 (warranting a belated motion only where a criminal defendant was "denied his right to a desired appeal through no fault of his own, and . . . [was] diligent in attempting to assert his appeal rights" (quoting *Garrison v. State*, 350 Md. 128, 139 (1998))).

[3] Before addressing the merits, the State moved to dismiss the appeal because "[a] motion for sentence modification is directed to the sound discretion of the trial court, and its denial is not appealable," citing *State v. Rodriguez*, 125 Md. App. 428, 442 (1999) and *State v. Strickland*, 42 Md. App. 357, 359 (1979). That's true in general, but not if the challenged sentence is alleged to be tainted by illegality, fraud, or duress. *See Hoile v. State*, 404 Md. 591, 615 (2008) (citing *Costello v. State*, 237 Md. 464, 469-70 (1965)). We don't see any allegations of illegality, fraud, or duress in the Belated Motion, although it does cite other Maryland Rules as well. But the only appeal before us arises from the denial of Mr. Hill's Motion to Amend, so we will address that decision, and only that decision.

reasonable person would take the view adopted by the trial court . . . or when the court acts without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (citations and internal quotations omitted). "[T]rial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 675 (2008).

In the Belated Motion, Mr. Hill asked the court to reduce his sentence pursuant to Md. Rule 4-345(e).[4] The plain language of this Rule, however, narrows the court's revisory power to ninety days after imposing the sentence. (This was the Rule under which Mr. Hill's attorney could have filed a motion for modification back in 2008.) Because Rule 4-345(e) does not permit modification of a sentence after the ninety-day period has lapsed, it could not afford Mr. Hill any relief six years later. In his Motion to Amend—the motion which is actually before us on appeal—Mr. Hill identifies the error in the Belated Motion, *i.e.*, that he should have sought relief via the Maryland Post-Conviction Procedure Act, Md. Code (2001, 2008 Repl. Vol., 2015 Supp.), Title 7 of the Criminal Procedure Article ("Title 7"). However, the purpose of his Motion to Amend and of his appeal confuse the appropriate remedy for his initial error. Fearing that the ill-filed Belated Motion would

[4] He further requested that the court hold the Motion "in abeyance, *sub curia*," so he could "come at a later time, after completion of appropriate rehabilitative measures, to ask [the] court to consider his request." We are not quite sure what to make of this request, which suggests that Mr. Hill filed his Belated Motion, albeit belated, prematurely. This addition, however, has no bearing on the merits of the Belated Motion.

preclude him from filing for post-conviction relief under Title 7, he asked that the trial court revise the denial of the Belated Motion to reflect its status as either a denial without prejudice or a dismissal. But the Motion to Amend was also defective in that it rested on Md. Rules 2-534 and 2-535, the civil counterparts to the relevant criminal law authority,[5] and so the trial court properly denied it.

We would reach the same conclusion even if Mr. Hill had relied on the proper rules. Rule 4-345(e) permits the sentencing court to revise a sentence it imposed within the last ninety days. Mr. Hill's Motion to Amend was filed outside the ninety-day limitation. The fact that Mr. Hill was served with the June 24, 2014 denial of his Belated Motion on August 8, 2014 is not the sort of mistake that might bring the Motion to Amend under the purview of the trial court's general revisory power, as Mr. Hill contends.

Nor do we see any "mistake," as that term is used in Rule 2-535 (which Mr. Hill cited in the Motion to Amend) and its counterpart, Rule 4-345(b) (which Mr. Hill invokes on appeal). He asserted in his Motion to Amend that his Belated Motion should have been denied without prejudice or dismissed either on the merits or "due to a jurisdictional 'mistake' by the [c]ourt" pursuant to Rule 2-535. On appeal, Mr. Hill argues that the trial court acted beyond its jurisdiction when it ruled on Mr. Hill's own motions, both of which were filed beyond the ninety-day limit imposed by Rule 4-345(e). But the term "mistake"

[5] Rules 2-534 and 2-535 are the civil counterparts to Md. Rules 4-331 and 4-345. Rules 2-535(b) and 4-345(b) allow courts to revise a judgment or sentence, respectively, at any time in cases of fraud, mistake, or irregularity. *See Minger v. State*, 157 Md. App. 157, 172 (2004).

within the meaning of both Rules is confined to jurisdictional mistakes, and specifically jurisdictional mistakes committed in connection with the judgment or sentence, not in ruling on a motion. *See Minger v. State*, 157 Md. App. 157, 172-73 (2004) (providing examples of modifiable jurisdictional mistake, such as when a judgment was entered without valid service of process and so the court never obtained personal jurisdiction over the party) (internal citations omitted). That is not what happened here. In this case, Mr. Hill invoked the wrong rules to nullify the results of a faulty motion that he filed in the first place, and we see no abuse of discretion in the court's decision to deny that request.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.