UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 132

September Term, 2016

CHRISTOPHER A. MCBRIDE

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2017

In 1995, Christopher A. McBride, appellant, was convicted, by a jury, in the Circuit Court for Frederick County, of first-degree murder, burglary, carrying a deadly weapon, and assault with intent to murder. That same year, the court sentenced McBride to an aggregate term of life imprisonment. On the day of sentencing, McBride filed a motion for modification of his sentence, which, pursuant to McBride's request, was held *sub curia* until 2015.[1] In February 2016, the court held a hearing on the motion for modification and then denied the motion. This appeal followed.

The State has moved to dismiss the appeal, on the ground that it is not allowed by law. We agree that the appeal should be dismissed.

"[T]he denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable." *Hoile v. State*, 404 Md. 591, 615 (citations omitted), *cert. denied*, 404 Md. 591 (2008). *See also State v. Rodriguez*, 125 Md. App. 428, 442 (stating that "[a] motion to modify or reduce a sentence is directed to the sound discretion of the trial court and is not appealable.") (citation omitted), *cert. denied*, 354 Md. 573 (1999)). As we noted in *Fuller v. State*, 169 Md. App. 303 (2006), a defendant is, however, "entitled to appellate review of the issue of whether 'the [circuit] court erred as a matter of law by ruling that it did not have jurisdiction to consider the motion on the merits.'" *Id.* at 309-10, n. 5 (quoting *Greco v. State*, 347 Md. 423, 438 (1997)), *aff'd*, 397 Md. 372 (2007).

[1] McBride's motion for modification of sentence was filed before Rule 4-345 was revised in 2004, setting a five-year limitation upon the circuit court's authority to modify sentences imposed on or after July 1, 2004. *See* Md. Rules Order, May 11, 2004.

McBride asserts that the court's denial of his motion for modification is reviewable because, in his view, the court erroneously concluded that it "did not have jurisdiction to consider the motion on the merits" and that only the parole board could grant the relief he requested. In support of this contention, McBride points to two comments made by the court.

The first comment was made when the evidentiary portion of the hearing had concluded, and the court announced its ruling. After discussing the evidence weighing in favor of, and against, a modification, the court stated:

> Judge Rollins imposed a life sentence with parole and I agree with [the State] that the appropriate place for this to be presented is to the parole board. . . . actually I even said that close to the beginning . . . [defense counsel] did some explanations to me, but I'm not gonna modify the sentence and the motion to modify is denied.

(Emphasis added).

McBride contends that, by stating that the parole board was "the appropriate place for this to be presented[,]" the court, "in no uncertain language declared that a motion for modification was not the 'appropriate' vehicle for requesting relief." We disagree with this conclusion. The court merely expressed its belief that it was "appropriate," in McBride's case, for his claim for leniency to be presented to the parole board, but did not make a "ruling that it did not have jurisdiction to consider the motion on the merits." *See Fuller, supra.*

The second comment highlighted by McBride was made after the court denied the motion, and then concluded the hearing by wishing McBride "good luck," and stating the following observation:

> Hopefully . . . the governor will recognize that . . . they have an obligation to review each case and make a decision. I mean that's what life with parole means. That they need to look at those cases and the appropriate person being paroled. But that's for the parole board and then . . . the governor.

(Emphasis added). We reject McBride's assertion that this comment demonstrates that the court denied his motion "on the ground that whether to reduce his sentence was a matter 'for the parole board and then . . . the governor.'" Read in context, the court's comment that it was "for the parole board and . . . the governor" to fulfill their "obligation" to review each case and decide whether a prisoner serving a life sentence should be granted parole appears to be in response to defense counsel's point that McBride had no "reasonable possibility" of release on parole because parole had not been granted to any prisoner, serving a life sentence, since 1993.

McBride also contends that the court did not "give meaningful consideration" to his motion, and committed reversible error in "refus[ing] to exercise its discretion to consider [his] sentence."[2] Contrary to McBride's claim, however, the record reflects thoughtful consideration of the merits. The court read 22 letters that were submitted on McBride's behalf, reviewed an evaluation report from a social worker, heard from several character witnesses, considered the oral argument of defense counsel, and listened while McBride addressed the court on his own behalf. Then, before ruling, the court discussed the

[2] In support of this claim, McBride cites *State v. Wilkens*, 393 Md. 269, 279 (2006) (stating that "a trial judge who encounters a matter that falls within the realm of judicial discretion must exercise his or her discretion in ruling on the matter[,]" and that a "failure to fulfill this function can amount to error, that 'ordinarily' requires reversal." (citations omitted)).

evidence that weighed in favor of modification and contemplated the "brutal murder" McBride had committed, before declining to modify the life sentence.

Moreover, the instant case is distinguishable from *Sanders v. State*, 105 Md. App 247 (1995), which McBride cites as "particularly instructive." In that case, after the judge granted Sander's motion to correct an illegal sentence that had been imposed by a different judge, the judge then "imposed virtually the same [but not illegal] sentence." *Id.* at 257. In announcing the new sentence, the judge commented that he felt he was "struck with a handicap" because he had been appointed to take the place of the judge who had originally sentenced Sanders, and that he found it hard to "second guess" what that judge would have done. *Id.* at 251. We granted a new resentencing hearing, concluding that "it appear[ed] that the judge erroneously felt constrained to follow his predecessor's decision and was therefore motivated by impermissible considerations[.]" *Id.* at 257.

That is not the case here. There is no indication in the record that the court felt "constrained" to deny the motion for modification or that it otherwise relied on an "impermissible consideration."

In sum, there is nothing in the record suggesting that the court made a determination that it lacked jurisdiction to consider the merits of the motion, or that the court declined to consider the merits of the motion. Accordingly, the court's ruling is not subject to appeal.

APPELLEE'S MOTION TO DISMISS APPEAL GRANTED. COSTS TO BE PAID BY APPELLANT.