Circuit Court for Worcester County
Case No.: 23-K-13-000215

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2030

September Term, 2017

JERRY LEE HURT, JR.

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 12, 2021

In March 2014, following trial in the Circuit Court for Worcester County, a jury found Jerry Lee Hurt, Jr.,[1] appellant, guilty of possession, and possession with intent to distribute oxycodone and cocaine, and two firearms offenses. Later that year, the court sentenced appellant, as a subsequent offender, to twenty years' imprisonment, with all but ten years suspended, to be served without the possibility of parole for possession with intent to distribute oxycodone. The court sentenced appellant to twenty years' imprisonment, with all but ten years suspended for possession with intent to distribute cocaine. On the firearm counts, the court sentenced him to five year prison terms, one as a mandatory minimum sentence with limited parole eligibility, both to run concurrent with each other but consecutive to the sentences in the possession with intent to distribute counts. On direct appeal, we vacated the conviction and sentence for one of the firearm counts, but otherwise affirmed the judgment. *Hurt v. State*, No. 620, Sept. Term 2014 (filed unreported Sept. 4, 2015).

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act ("JRA").[2] Among other things, the JRA eliminated certain mandatory minimum sentences for persons convicted as subsequent offenders of certain drug offenses. In addition, the JRA created Maryland Code, Criminal Law Article ("CR"), § 5-609.1, which provides that a defendant who had received a mandatory minimum

[1] In his Brief of Appellant in this Court, appellant asserts that Lee is not his middle name.

[2] Chapter 515, Laws of Maryland 2016.

sentence prior to the elimination of such sentences could seek modification of that sentence pursuant to Maryland Rule 4-345 regardless of whether the defendant filed a timely motion for reconsideration or a motion for reconsideration was denied by the court.[3] Section 5-609.1 also provided some criteria for the court to consider when deciding whether to modify such a sentence.[4]

In October 2017, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. At the conclusion of a hearing held on the motion, the circuit court denied appellant's motion for modification of sentence. In pertinent part, the court stated as follows when denying appellant's motion on its merit:

> You're correct that in 1993 he was found guilty of prohibited use of a weapon in Colorado. The facts are illuminating in that. The defendant pointed a TEC-9 handgun at another male during an argument and attempted to discharge the weapon twice but the weapon did not discharge.
>
> After the weapon misfired, the victim fled the scene and the defendant fired the weapon several times into the ground and the air. He was sentenced to a term of imprisonment, placed on probation, revoked – the probation was subsequently revoked.
>
> And then also in 1993, he was charged with and found guilty of obstructing

[3] Pursuant to CR § 5-609.1(c), except for good cause shown, a request for a hearing on any such motion needed to have been filed on or before September 30, 2018.

[4] CR § 5-609.1(b) provides:

> (b) The court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant's chances of successful rehabilitation:
>
> (1) retention of the mandatory minimum sentence would not result in substantial injustice to the defendant; and
>
> (2) the mandatory minimum sentence is necessary for the protection of the public.

a police officer or a fireman. Apparently[,] the sentencing information on that was unavailable.

In 1993 he was found guilty of harassment, sentenced to 30 days in jail. He received a deferred sentence, and that was revoked three years later and sentenced to 30 days in jail.

In 1994 he was found guilty of possession of a controlled substance, sentenced to four years of supervised probation. He was found guilty of possession of 1.5 grams of crack cocaine and attempting to give false identification information to a police officer. That probation was revoked, and ultimately he was sentenced to four years of supervised probation. That probation was again revoked and he was sentenced to ten years in prison concurrent with the sentence imposed in another case – actually two other cases. And then he was resentenced to apparently seven years, the sentence was modified.

Subsequent to that he was charged with assault menacing. The disposition on that was unavailable. He was carrying a concealed weapon. The disposition on that was unavailable. Disturbing the peace, the disposition on that was unavailable.

And then in 1994, again, he was found guilty of theft by receiving I infer stolen property, sentenced to 30 days in jail. It says he sold a stolen camera at a pawn shop, reported stolen from a vehicle. That probation was revoked, sentenced to six years in prison. Reconsideration was granted, and he was resentenced to four years in prison.

Again in 1994 he was charged with possession of marijuana. The disposition on that unavailable.

In 1996, charged with distribution or sale of a controlled substance, sentenced to ten years in prison. That's the one in which he was resentenced to seven years.

In 2007 he was in Maryland in Baltimore City, found guilty of unlawful possession of a controlled substance, received a suspended three-year sentence. The defendant was stopped due to not wearing a seat belt, and a partially consumed beer can was found in a car, found in possession of a baggie containing several rocks of crack cocaine, resisted arrest, attempted to swallow the crack cocaine.

> Found guilty of possession of marijuana in 2008. Harford County, found guilty of possession of a controlled substance, not marijuana, sentenced to three years suspend all but ten days.
>
> And of course that brings us up to this case.
>
> The defendant has at least in my assessment wasted his life thus far. And it may well be that he's a drug dealer, that's what he's been, and that's what he was found guilty of because he also has a drug problem. But he's had multiple, multiple, multiple opportunities to address that drug problem through his contacts with the criminal justice system and has obviously failed to do so.
>
> The Court is persuaded based on all the circumstances that the retention of this minimum mandatory sentence would not result in any substantial injustice to this defendant. And indeed, given the – his possession of weapons, the availability of weapons to him in connection with his drug trafficking, that the minimum mandatory sentence is necessary for the protection of the public. The motion to modify is denied. Good day, sir. Thank you.

Appellant took an appeal from that denial. That appeal was stayed pending the Court of Appeals' decision in *Brown, et al. v. State of Maryland*, 470 Md. 503 (2020) in which this Court had certified four questions to the Court of Appeals dealing with CR § 5-609.1. Once *Brown* had been decided, appellant filed a motion in this Court seeking to lift the stay, which we granted on November 2, 2020.

On appeal, appellant claims that the circuit court erred in finding (1) that the retention of the mandatory minimum sentence would not result in substantial injustice to the Defendant; and (2) the mandatory minimum sentence is necessary for the protection of

the public. The State contends that the circuit court's findings were not clearly erroneous as they were based on facts available from the record.[5]

In *Brown, supra*, the Court of Appeals explained that, even under the JRA, the question of whether to modify a sentence remains to be reviewed for an abuse of discretion, stating that the decision to modify a sentence:

> … is a decision committed to the discretion of the circuit court and, accordingly, to be reviewed under the deferential abuse-of-discretion standard. Such a standard generally applies in the review of a sentencing decision because of the broad discretion that a court usually has in fashioning an appropriate sentence. *See Sharp v. State*, 446 Md. 669, 687 (2016). As has frequently been repeated, an abuse of discretion occurs "when the court acts without reference to any guiding rules or principles," "where no reasonable person would take the view adopted by the court," or where the "ruling is clearly against the logic and effect of facts and inferences before the court." *Alexis v. State*, 437 Md. 457, 478 (2014).

Brown v. State, 470 Md. at 553.

On this record, we are not persuaded that the circuit court's decision to not modify appellant's sentence amounted to an abuse of discretion.

Consequently, we shall affirm the judgment of the circuit court.

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

[5] In its Brief of Appellee, which the State filed before the Court of Appeals had decided *Brown, supra*, the State moved to dismiss this appeal because, ordinarily, an appeal does not lie from the denial of a motion for modification or reduction of sentence. *Hoile v. State*, 404 Md. 591, 617 (2008). However, in *Brown*, the Court of Appeals determined that a motion for modification of sentence filed pursuant to CR § 5-609.1 is appealable. *Brown v. State*, 470 Md. at 552.