Circuit Court for Baltimore City
Case No.: 112199003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2194

September Term, 2018

MICHAEL MONROE

v.

STATE OF MARYLAND

Leahy,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Shaw Geter, J.

Filed: July 1, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On January 30, 2014, Michael Monroe, appellant, pleaded guilty in the Circuit Court for Baltimore City to one count of possession with intent to distribute cocaine. The court sentenced him, as a subsequent offender, to ten years' imprisonment without the possibility of being released on parole.[1]

THE JUSTICE REINVESTMENT ACT

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 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]

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[1] During the same guilty plea proceeding, appellant also pleaded guilty to a count of possessing a firearm in connection with a drug trafficking crime and was sentenced to 20 years' imprisonment to be served concurrently with the sentence in this case. In addition, he pleaded guilty to unlawful possession of a firearm by a prohibited person, and received a five-year concurrent sentence.

[2] Chapter 515, Laws of Maryland 2016.

[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:

(continued)

MOTION FOR MODIFICATION OF SENTENCE

In June 2018, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. Appellant explained in his motion that he needed substance abuse treatment, he outlined his achievements while incarcerated, and his steps toward rehabilitation. On July 12, 2018, the court denied appellant's motion for reconsideration of sentence under the JRA, stating that a "hearing would not aid the [c]ourt in the decision-making process[,]" and noting that the "papers and exhibits submitted by the parties are sufficient for this court's consideration" of appellant's motion.

Appellant took an appeal from that denial. That appeal was stayed pending the Court of Appeals' decision in *Brown v. State*, 470 Md. 503 (2020), which addressed four questions certified by this Court 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 March 9, 2021.

CONTENTIONS ON APPEAL

On appeal, appellant claims that the circuit court erred in denying his motion for

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(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.

modification without first holding a hearing on it.[5] He argues that, under the JRA, he has a liberty interest protected by the Due Process Clause which required that a hearing be held on his motion for modification of sentence. While he acknowledges that the JRA does not specifically require that a hearing be held, he argues that an "application of some of the principles derived from the line of cases from the Supreme Court addressing whether state parole statutory and regulatory schemes create expectant liberty interests counsels in favor of finding that [the JRA] created an expectant liberty interest" in people such as appellant.

Appellant also argues that, given that the JRA grants the court the power to modify a mandatory minimum sentence unless the State meets a statutory burden, a hearing was necessary. Appellant also relies on the fact that the JRA requires that the court notify the State of any hearing requests, which, according to appellant was not done in this case. He suggests that it "is illogical to think that a trial court is required to notify the State of a request for a hearing where the State bears the burden of proof and then not hold a hearing even in the face of non-compliance with the directives of the same statute."

Generally, the State argues that, for various reasons, the JRA does not require a court to hold a hearing or for it to explain its assessment of the factors outlined by the JRA. The State contends that, in this case, that the court's decision to not hold a hearing, or explain itself, did not amount to an abuse of discretion.

DISCUSSION

[5] It is noteworthy that the Brief of Appellant was filed on February 28, 2019 – nearly 18 months before the Court of Appeals decided *Brown*. The State's Brief of Appellee was filed on April 22, 2021 – nearly eight months after the issuance of *Brown*.

In *Brown*, *supra*, the Court of Appeals explained that, even under the JRA, the question of whether to modify a sentence is 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).

470 Md. at 553.

Among the questions *Brown* addressed was whether a defendant is entitled to a hearing on a motion for modification of sentence filed pursuant to CR § 5-609.1. *Id.* at 541–46. After a discussion of the issue the Court concluded that, even though a hearing is not always required, a court usually should hold a hearing.

> In considering the factors set forth in [§] CR 5-609.1(b) and exercising its discretion to decide whether to modify a mandatory minimum sentence pursuant to that statute, a court should, in most circumstances, conduct a hearing to receive evidence when such evidence will aid the exercise of the court's discretion and to hear argument from the parties concerning the application of the factors in CR § 5-609.1(b). Under Maryland Rule 4-345, the court must hold a hearing before it grants a motion. There is no absolute requirement in the statute or rule to hold a hearing when the court denies a motion.

Id. at 554.

In explaining why the court had appellate jurisdiction over a denial of a motion for modification filed under the JRA, the Court noted how such a proceeding "is akin to a

resentencing." The Court said:

> Even should a motion be denied and the term of incarceration remain the same, a new sentence has been imposed – as the sentence is now an individualized sentence, the result of a sentencing judge's assessment that the term of incarceration meets the seriousness of the crime, and not merely the demand of a statutory mandate. Like the proceeding in the circuit court in *Hoile* [*v. State*, 404 Md. 591 (2008)] in which the modified sentence was vacated, the decision on a motion to modify a mandatory minimum sentence pursuant to CR § 5-609.1 is akin to a resentencing – as the [Justice Reinvestment Coordinating Council] Report contemplated and characterized it.

Id. at 552.

The Court of Appeals also explained how the allocation of the burden of persuasion is different between a Maryland Rule 4-345(e) motion for modification, and a JRA motion for modification.

> A motion under CR § 5-609.1 is similar to a motion to modify under Maryland Rule 4-345(e) but is unique in certain key respects. Like a motion under Rule 4-345(e) to reconsider a sentence, the decision on a motion to modify a mandatory minimum sentence pursuant to CR § 5-609.1 is committed to the discretion of the circuit court. However, unlike a motion under Rule 4-345(e), the State bears the burden of persuasion under CR § 5-609.1 in the circuit court that modification of the sentence is inappropriate in the particular case.

Id. at 552.

Regarding the State's burden, CR § 5-609.1(b) permits, but does not require, the court to modify a 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.

In the instant case, when denying appellant's motion without a hearing, the court made no specific findings with regard to CR § 5-609.1 and whether the State had met its burden under the JRA. Mindful that the court did not have the benefit of the Court of Appeals' guidance in *Brown* when it denied appellant's motion, on this record, we are persuaded that the circuit court's decision to not modify appellant's sentence cannot stand because of the court's failure to acknowledge the State's burden under CR § 5-609.1 and whether it had met that burden. In addition, we note the Court of Appeals' guidance in *Brown* that "a court should, in most circumstances, conduct a hearing" on a motion for modification of sentence filed under the JRA.

Consequently, we shall vacate the circuit court's order denying appellant's motion for modification of sentence and remand the case for the circuit court to reconsider appellant's motion in light of *Brown*.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.