Circuit Court for Worcester County
Case No.: 23-K-15-000382

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2208

September Term, 2017

TROY MARCHAND HENRY, SR.

v.

STATE OF MARYLAND

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

PER CURIAM

Filed: February 12, 2021

On February 25, 2016, Troy Marchand Henry, appellant, pleaded guilty in the Circuit Court for Worcester County, to possession of a controlled dangerous substance ("CDS") with the intent to distribute, and use of a minor for the purpose of distributing CDS. Later that year, the court sentenced appellant, as a subsequent offender, to ten years' imprisonment to be served without the possibility of parole for possession with intent to distribute CDS, and to five consecutive years' imprisonment for using a minor in the distribution of CDS.

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act ("JRA").[1] 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.[2] Section 5-609.1 also provided some criteria for the court to consider when deciding whether to modify such a sentence.[3]

[1] Chapter 515, Laws of Maryland 2016.

[2] 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.

[3] 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

(continued)

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:

> Let me first address the issue that Mr. Henry accepts responsibility, I'm not convinced of that based on the statement that Mr. Henry fully intended to go to trial, but decided not to in order to save his son, in order to make sure his son wasn't involved. The irony of Mr. Henry coming in here and using his son to garner sympathy because of the fact that he's having a hard time while Mr. Henry is in jail and he doesn't want to see him go down the same path is not lost on me because – and in many – well, I won't say many cases, in some cases that involve distribution of drugs, which even though they're serious cases, after several years, at least myself doesn't remember each individual case, the facts of each individual case, this case I do. And the reason being is that I was dumbfounded that somebody – be that as it may, that they were involved in the transportation and sale of drugs, would involve their young son. And in order to attempt to avoid detection would attempt to have their son – the drugs given to their son and hidden. To come in here now and say, well, my concern is for my son and therefore I need to be out there for him. While he was out there he involved his son in this type of procedure.
>
> Additionally, the reference to members of his family that have had and do have addictions problems and have succumbed to those addiction problems by overdosing or at least dying from the use of drugs, again is ironic because of the fact that when stopped he had 190 bags of heroin in his possession, which we all know is a serious drug and people are dropping dead from the use of that almost every day, not every day, but far too often. So the Court is not swayed by those facts.
>
> So addressing the issues under this particular section, which is 609, the nature of the crime committed, the nature of the crime in this particular case was

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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.

> very – the transportation and potential sale of those drugs in and of itself is serious, but the involvement of his son makes it especially heinous. The history and character of the Defendant, I likewise am taken aback and don't agree that this is the type of record that anybody involved in addictions would have because it is especially egregious as pointed out by the State. For all intents and purposes, he's in here as a four-time offender on this particular offense. His criminal record is lengthy and concerning to the Court is a number of violations of probation when he'd been given the opportunity to address the addiction and head in the right direction he has not. And the Defendant's chance of successful rehabilitation, I've just really addressed that particular issue because of the fact that I'm concerned with his inability to successfully complete supervision.
>
> And therefore, based on all of that, I find that the mandatory – the imposition – retention of the mandatory minimum sentence would not result in substantial injustice to the Defendant and because of his continued involvement in the sale or attempted sale of drugs, I find that the mandatory minimum sentence is necessary for the protection of the public. And for all of those reasons I will deny the motion.

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.[4]

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.

[4] 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.