Circuit Court for Wicomico County
Case No.: 22-K-12-000371

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2335

September Term, 2017

SHAWN LEE BROWN

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: April 1, 2021

On October 22, 2013, Shawn Lee Brown, appellant, pleaded guilty to possession with intent to distribute cocaine, and conspiracy to possess with the intent to distribute cocaine, in the Circuit Court for Wicomico County. The court sentenced him, as a subsequent offender, to twenty years' imprisonment, with all but the mandatory minimum ten years suspended, for the possession with intent to distribute conviction, and 15 years' imprisonment, all suspended, consecutive, for the conspiracy to possess with the intent to distribute conviction.

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. During the hearing on his motion for modification of sentence, appellant put on evidence that, among other things, he had no disciplinary infractions while incarcerated, and that he had been steadily working. He also took a course in funeral services which he said had a significant positive impact on him and his outlook on life particularly because he had family members pass away while he was incarcerated including a brother who overdosed on drugs.

The State presented evidence of the facts of the offense for which he is currently incarcerated as well as appellant's criminal history. In this case, the police recovered 239.9 grams of cocaine, a bulletproof vest, $26,167 in U.S. currency, and $80,000 worth of jewelry as a result of a narcotics investigation. Previously, appellant had been convicted of fleeing and eluding police, malicious destruction of property, possessing or issuing forged currency, felony possession of cocaine, and distribution of cocaine.

At the conclusion of the hearing, the circuit court denied appellant's motion for modification of sentence stating, in pertinent part:

> All right, the Court notes that Mr. Brown was sentenced October 22, 2013, I believe it was 20 years, suspend all but ten years, the mandatory minimum. That was under count 13. 15 years all suspended under count nine consecutive to count 13 and placed on three years of supervised probation. He was given 161 days credit at that time. So his sentence actually runs from

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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.

May 14th of 2013.

The Court, in consideration of the factors that I'm to consider, which is the State must show giving due regard to the nature of the crime, the history and the character of the Defendant, the Defendant's chances of successful rehabilitation, that retention would not result in substantial injustice to the Defendant and the mandatory minimum sentence was necessary for the protection of the public.

You know, as I've said before, the issue gets to be down that people that have appeared here, as [Defense Counsel] pointed out, all have a criminal history, no question. So part of the contemplation that I have is what's the nature of that criminal history. Do we have violent crimes, do we have opportunity for rehabilitation, do we have violent crimes. I've talked before about issues with law-enforcement. What's the nature of the crimes that have occurred prior to or do we have sort of potentially, for lack of a better way of saying it, the run of the mill street corner distributor who has had three or four offenses, no gun crimes, no violent crimes, no bad interaction. Maybe not opportunities on probation.

Considering all that and considering their prison record, how they performed in prison, have they been engaged, have they been infraction free, what are their chances of successful rehabilitation, and then considering all that whether this results in substantial injustice to the Defendant, the mandatory minimum portion results in substantial injustice and whether it's necessary for the protection of the public.

Some of the issue is whether, in my view, and I have had this before, as [Defense Counsel] knows I think we have probably done 20 some of these over the last several months, is part of whether or not there's a substantial injustice is the nature of what the conviction was, what the plea was, all the other things that were contemplated. I would note I have had another case that part of the contemplation was that the Defendant had, in effect, escaped a federal 40 year mandatory minimum by taking what the State offered as their mandatory minimum so the Court found that there was not a substantial injustice because part of the bargain that was struck at the time was that the Defendant was getting the benefit of the reduced mandatory minimum from the State versus in federal court.

The Court, in contemplation of what's occurred here, in contemplation of the Defendant's prior record, it's not good. It goes beyond, to be honest, what normally I have seen in a lot of these cases. Not just the offense that's brought us here today, but a lot of the offenders we have a period of distribution over time, where we have older offenses; we have a Defendant here who at the

> time of this was on probation. There's some dispute here as to potentially how many cases were ongoing, he was on probation at the time of this offense. At least one case. That there has been some opportunities for rehabilitation, despite that we then have an ongoing wiretap investigation at the time of this, which was very serious, obviously. You're talking about large amounts, large dollar amounts, and as I said before to the State, I don't want to ever minimize the idea that it's not just always necessarily that there are gun crimes because of the nature of the violence drugs bring into the community not just through drug dealers fighting with each other but then also through the impact it has on our community and the way that that affects the public safety.
>
> Further as put on, [the State] put on, the guideline range in this case would have been 12 to 20 years. In effect the plea agreement was 20 suspend all but ten. He also was backing up two years on probation, he got one year and a day versus two years.
>
> The Court finds that at least the first factor, the retention of mandatory minimum, would not result in substantial injustice to the Defendant. Further it results in the protection of the public.
>
> The Court finds that the nature of his criminal history exceeds what normally I've seen and what normally I have been willing to grant and therefore I find it is necessary for the protection of the public, I'm going go to deny the 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) 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 December 14, 2020.

On appeal, appellant claims the circuit court abused its discretion in denying appellant's motion because the court "ignored the significant steps that Appellant had taken towards rehabilitation and the positive indicators that Appellant was not a threat to the public."

The State contends that the circuit court properly exercised its discretion after hearing both parties' presentations during the hearing on appellant's motion for modification of sentence.

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 WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.