Circuit Court for Worcester County
Case No.: 23-K-12-000570

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2461

September Term, 2017

SHAMUS MONTEZ HALL

v.

STATE OF MARYLAND

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

PER CURIAM

Filed: April 1, 2021

On April 10, 2013, the court found Shamus M. Hall, appellant, guilty of one count of distribution of cocaine after he pleaded not guilty to that offense on an agreed statement of facts in the Circuit Court for Worcester County. The court sentenced him, as a subsequent offender, to ten years' imprisonment to be served without the possibility of being released on parole. Appellant's guilty plea in this case also violated the terms of his probation entered on an unrelated earlier distribution of cocaine conviction for which the court sentenced him to five consecutive years' imprisonment.

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 held on his motion for modification of sentence, appellant explained that he was raised in a dysfunctional family and had been addicted to narcotics for decades. He said that his addiction contributed to his prior criminal conduct, including selling drugs to pay for his drug habit. He told the court that he was forty years old and ready to become sober. In requesting that the court modify his sentence, he contended that he was the sort of criminal defendant that the General Assembly had in mind when enacting the JRA and CR § 5-609.1. Appellant also submitted various certificates related to certain programs he had been involved in while incarcerated, letters from two addiction treatment facilities accepting him into their program upon his release from incarceration, positive evaluations from his social work program, and his own four-page affidavit expressing his desire to enter long-term drug treatment.

The State's presentation at the hearing largely focused on appellant's criminal history and prior unrealized opportunities to change his lifestyle. Appellant's criminal record included convictions for use of a firearm in the commission of a felony, robbery, and distribution of cocaine. In addition, the State pointed out that, as part of the guilty plea agreement in this case, the State entered a *nolle prosequi* in a separate distribution of CDS

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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.

case, and that appellant was on parole supervision at the time of his arrest.

During the hearing, the following exchange occurred between appellant's counsel and the court regarding the scope of the court's authority to modify appellant's sentence:

> DEFENSE COUNSEL: [Appellant] wanted me to ask the Court to remove the no parole provision of his sentence and also to consider running the ten years –
>
> THE COURT: Well, I believe that's the only thing I can do.
>
> DEFENSE COUNSEL: I respectfully disagree.
>
> THE COURT: Okay.
>
> DEFENSE COUNSEL: I think that the Court has the authority to modify the sentence to any degree that you would have the authority to under the statute in the Maryland Rules for revising a criminal sentence[.]
>
> THE COURT: As far as this particular case, I can't do anything about the VOP and I can't do anything about the parole retake. So the sum total of what–
>
> DEFENSE COUNSEL: That's true.
>
> THE COURT: – he is serving is not before the Court.
>
> DEFENSE COUNSEL: That is true. I do believe, however, that you could reduce the ten year sentence, for example, to five years or you could order the ten years to be run concurrent to any other sentence that he's currently serving, you do have the authority to do that and that's what I would ask you to do is to run the ten years concurrent to any other sentences that he's currently serving.
>
> THE COURT: All right. All right[.]

At the conclusion of the hearing, the circuit court denied appellant's motion for modification of sentence. In pertinent part, the court stated as follows:

> Well, this is the way I see this case and I don't think Mr. Hall is the prototypical candidate that the legislature had in mind. Other than . . . the one conviction back in '95 I agree there were several minor citations/violations, but then in 2007 he gets a sentence that is a sentence that should be a wake-

> up call for him. Obviously, it wasn't because while he's still on supervised probation for that event, he's again selling, not once, but twice and at least three times because there's another entire case that was *nolle prossed* as part of that plea agreement. … [A]s indicated by the State, even without the [no] parole sentence, if the State had asked for a doubling then the guidelines would have been instead of 7 to 14, it would have been 14 to 28. So at the time of sentencing I obviously viewed Mr. Hall as a serious violator of the criminal laws … based on the fact that I made the sentence consecutive to the violation of probation. So even without the mandatory minimum without parole [sentence] I would have taken into account – so therefore I find that the sentence imposed and continued would not result in substantial injustice because of his continued violation and the extent of his record I don't find – and I do find it's necessary for the protection of the public to maintain that sentence. So I'll deny your request.

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 9, 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 him; and (2) that the mandatory minimum sentence is necessary for the protection of the public. Appellant also contends that the court abused its discretion, by failing to exercise its discretion, when it erroneously believed that it only had the authority to modify the no-parole provision of his sentence.

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. As for appellant's contention that the court failed to exercise

discretion it erroneously believed it did not have, the State argues that it is presumed that the court knew and correctly applied the law. *Dickens v State*, 175 Md. App. 231, 241 (2007).[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.

We are persuaded that the circuit court recognized that it had the authority to modify or reduce the sentence beyond just the no-parole term when the court explained its rationale for denying the motion based on its conclusion that the sentence was appropriate and expressly addressed the statutory criteria. Moreover, on this record, we are not

[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. Consequently, we shall deny the State's motion.

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.

APPELLEE'S MOTION TO DISMISS THIS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.