Circuit Court for Montgomery County
Case Nos.: 125504C; 125994C; 126873C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2554

September Term, 2018

JOSEPH EUGENE SMITH

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: July 8, 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 June 8, 2015, Joseph Eugene Smith, appellant, pleaded guilty, pursuant to a binding guilty plea agreement, in the Circuit Court for Montgomery County to three counts of possession of heroin with the intent to distribute it.[1] In accordance with the plea agreement, the court sentenced him, as a subsequent offender, to three concurrent 25-year terms of imprisonment to be served without the possibility of being released on parole.

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]

[1] The offenses arose from separate cases.

[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:

> (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:

(continued)

In August 2018, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. In his motion and during a hearing on it, appellant explained that, among other things, while incarcerated he had participated in various educational and self-help programs. He also emphasized the lack of disciplinary infractions in his Institutional Progress Report. Moreover, he presented the court with information about his long history of substance abuse. Appellant asked the court to consider suspending his sentence so that he could take advantage of the substance abuse treatment options afforded under Sections 8-505 through 8-507 of the Health General Article of the Maryland Code.

The State presented evidence of the facts of the offenses for which appellant was incarcerated as well as his criminal history which, according to the State, demonstrated that he had a 20-year history as a drug dealer. Appellant's criminal history included a vandalism arrest, three arrests for violating probation, a robbery charge, two assault charges, ten arrests for drug charges, twenty-five drug charges, and eight convictions for drug charges. At the time of the hearing on the motion for modification of sentence, appellant had been incarcerated for a total of fourteen years for various charges.

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:

> (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.

We're here on the defendant's motion for reconsideration of the sentence which was imposed pursuant to a plea agreement that was entered into between the defendant and the State which resulted in the imposition of a 25 year mandatory sentence and that was as to the three cases that have been called on a motion for reconsideration.

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Defendant is asking that this mandatory minimum sentenced [sic] be reduced and has presented testimony from family members and himself referring also to a health general report and evaluation which was done, asserting that he needs treatment for the disease of addiction and he is ready to change and he has demonstrated based upon his behavior at the Department of Corrections [sic] that he has turned his life around.

The State has argued based upon the defendant's history that he is someone that is a danger to the community, he is a drug dealer specifically dealing in heroin and that his past history reflects an individual who is not an addict but who is instead a dealer.

In reviewing what has been submitted and again reviewing the history in this case and the documents that have been filed, I'm impressed with the support that the defendant has with his father, his sisters, his niece, the family members who are here today, and I have no doubt that they would very much like to have Mr. Smith back in their lives as opposed to having him remain locked up.

I'm very familiar with the destruction that is caused by the addiction to drugs including alcohol and the difficult road to rehabilitation and recovery, and Mr. Smith has talked about how the state's attorney is focused on his past and what he would like to talk about is his future.

As counsel knows, I've been doing this a long time and I have found that a person's past is the best indicator of who that individual is. The state's attorney focused on Mr. Smith's criminal history, his past convictions of possession, possession with intent to distribute drugs.

The state's attorney also focused on the three cases that led to his guilty plea and sentence in this case, and frankly, the underlying facts in those cases are significant. In less than a year, the defendant was arrested and charged with three separate counts of possession with intent to distribute heroin. He was on bond in two of those cases when the third arrest took place.

There was nothing about any of the evidence or the underlying facts in any

> of those three cases that indicated Mr. Smith was using heroin. The statement by the passenger in one of the cases was that he had bought drugs from Mr. Smith. The statement by the two women in the last case reflect that they were with him to buy heroin. Mr. Smith's own statement in that case was that he was not a user.
>
> He's now asserting today that he is a user and in need of treatment. There is nothing in those three cases that would reflect that Mr. Smith is a user. The only thing I have today is Mr. Smith's statement she's asking me to accept at face value given the relief that he's seeking here today.
>
> I have to tell you, Mr. Smith, I don't believe you. I think you're a dealer, I think you were a dealer and I think you were somebody who was a purveyor of death to the community. If I were to grant the relief that you're seeking here today, it would be a substantial injustice to you because it would allow you to be released to the community to continue to deal drugs.
>
> It is without any hesitation, without any doubt in my mind that the mandatory minimum sentence that was originally imposed in this case is absolutely critical for the protection of the public. Accordingly, your motion for reconsideration is denied. The Court's in recess.

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 September 29, 2020.

On appeal, appellant claims the circuit court abused its discretion in denying his motion because the court gave too much weight to appellant's criminal history, and not enough weight to appellant's progress while incarcerated. In addition, appellant claims that, the court did not consider the information presented to it regarding appellant's substance abuse problem.

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.[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, 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.

[5] The State also contends that this appeal is moot because appellant has been granted substance abuse treatment under the provisions of Health General Article §§ 8-505 through 8-507, which, according to the State gave appellant "the entirety of the relief he sought" in his motion for modification of sentence and, therefore, there is "no longer a controversy for this Court to remedy." We disagree. So long as appellant could be returned to confinement in this case, he is the analytical equivalent of a probationer who is unquestionably still serving a sentence.

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

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