Circuit Court for Baltimore County
Case No.: 03-K-14-006865

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2907

September Term, 2018

RICHARD CHILES

v.

STATE OF MARYLAND

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

PER CURIAM

Filed: April 1, 2021

On February 1, 2016, Richard Chiles, appellant, pleaded guilty in the Circuit Court for Baltimore County to possession of cocaine with the intent to distribute. The court sentenced him, as a subsequent offender, to ten years' 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").[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 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

(continued)

In September 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 programs, social work programs, and chemical dependency treatment programs. He also presented a letter from a non-profit job readiness and placement program willing to assist him find work once released from prison.

The State presented evidence of the facts of the offense for which he is currently incarcerated as well as appellant's criminal history. According to the State, in this case, the police recovered a kilogram of cocaine worth approximately $100,000. Previously, appellant had been convicted of attempted murder, two counts of possession with intent to distribute narcotics, theft, and resisting arrest. The State also explained that appellant had been cited for a disciplinary infraction while incarcerated related to an ice cream scoop, and that appellant had acted threateningly with the sergeant who arrested him.

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:

> The sentence that Mr. Chiles ends up with in this case is going to be about eight years, which is entirely, completely and entirely appropriate.
>
> I don't think Mr. Chiles is the person that Justice Reinvestment is meant to assist. I would like for him to be eligible for more programs in the jail, but if I do as [defense counsel] suggests, then Mr. Chiles wouldn't be there long enough to take advantage of those programs, and he will end up with a sentence that is, in fact, unfair, that will not take into account Public Safety,

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> (2) the mandatory minimum sentence is necessary for the protection of the public.

> rehabilitation, and punishment.
>
> I, I don't have any qualms about the fact that the State has met its burden with respect to [CR § 5-609.1] (b)(l). I don't believe for a second that retention of the mandatory minimum sentence would result in any substantial injustice. I just don't. You just do the math in your head, and it's a fair, proper, appropriate, reasonable sentence.
>
> Part Two is whether the mandatory minimum is necessary for the protection of the public. You know, I confess I have a harder time with that. I can imagine the ice scoop incident going as Mr. Chiles said it did. But the idea that he would say to me now he caught a murder charge as though he caught a cold, as though he didn't have any participation in that, that they were playing with guns and someone got shot, that is – that's chilling. It took – it – it's, it's very, very long time ago. If I were able to, in fact, increase the time and make it without parole, I will do that. And I would fashion something that would get me to a sentence of about eight years, which is where I am right now. So ultimately, I believe I've got discretion, and I choose not to grant Mr. Chiles' Motion to Modify.
>
> Having said that, I will stick to my word, which is I will consider an 8-505 evaluation. You were supposed to be infraction-free for five years regarding – messed that up. So, I guess I would say three years infraction free, I'll consider it. But, no, if you're not infraction-free, I'm not going to reward that.

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 January 6, 2021.

On appeal, appellant claims the circuit court abused its discretion in denying his motion because the court gave too much weight to appellant's 28-year old attempted murder conviction and misinterpreted his comments about it as cavalier. In addition, appellant claims that, if the court took into consideration his alleged misbehavior with the

sergeant who arrested him, then the court erred because that was an unsubstantiated allegation.

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 BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.