Circuit Court for Cecil County
Case No.: 07-K-13-001518

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0012

September Term, 2024

GEORGE COLIN MURRAY

v.

STATE OF MARYLAND

Berger,
Ripken,
Hotten, Michele D.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Ripken, J.

Filed: January 31, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

George Colin Murray ("Appellant") filed a petition ("the Petition") for commitment for drug or alcohol dependency treatment which was denied by the Circuit Court for Cecil County. Appellant noted this timely appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant's criminal convictions arise from events that occurred in August of 2013. In February of 2014, Appellant was found guilty by a jury of one count of attempted first-degree murder, three counts of attempted second-degree murder, and one count of possession of a firearm by a prohibited person. In May of 2014, the circuit court sentenced Appellant, in the aggregate, to life incarceration with all but 100 years suspended.[1] Appellant's convictions were affirmed in *Murray v. State*, No. 844, Sept. Term 2014, slip op. at 11 (Md. App. Feb. 26, 2016), *cert. denied*, 448 Md. 31 (2016).

In February of 2024, Appellant filed the Petition at issue here, seeking evaluation and commitment for drug or alcohol treatment under Maryland Code, (1982, 2019 Repl. Vol.), sections 8-505 and 8-507 of the Health General Article ("HG"). The State opposed the Petition, arguing that "[p]ursuant to Maryland General Health, § 8-505(a)(2), a Defendant . . . who is serving a sentence for a crime of violence may not be evaluated for an § 8-505 commitment until he is eligible for parole[,]" and that Appellant's "conviction is for a crime of violence" for which he had "only served ten years and five month[s.]" The

[1] Appellant was sentenced to life incarceration, with all but thirty years suspended for the attempted first-degree murder; consecutive twenty-year terms for each of the three attempted second-degree murder convictions; and a consecutive ten-year term for the firearm offense, for an aggregate of life with all but 100 years suspended. Appellant does not dispute that he is not yet eligible for parole.

circuit court denied Appellant's Petition the same day on the grounds put forth by the State. Appellant presents the following issue for our review:[2]

> Whether, based on a 2018 statutory amendment, the circuit court erred in denying Appellant's Petition for commitment under HG sections 8-505 and 8-507 when Appellant was convicted prior to such amendment of the statute.

For reasons that follow, and in agreement with both Appellant and the State, we shall reverse and remand.

DISCUSSION

The denial of a petition for an HG section 8-507 commitment ordinarily "is not an appealable order." *Fuller v. State*, 397 Md. 372, 380 (2007). However, there is an exception which permits appellate review when the denial of the petition was based on a ruling that the "legal principles . . . prevent[ed] the court from exercising its discretion[.]" *Hill v. State*, 247 Md. App. 377, 389 (2020). When the circuit court is prevented from exercising its discretion, the "court's denial effectively constitutes a final judgment[,]" and therefore we may review the circuit court's denial of Appellant's Petition. *Id.*

Appellant and the State agree that the circuit court erred in denying Appellant's Petition for drug and alcohol treatment pursuant to HG sections 8-505 and 8-507. Invoking *Hill v. State*, Appellant contends that this Court must vacate the circuit court's order denying his Petition because the circuit court wrongly held that Appellant was not eligible

[2] Rephrased from:

> Did the circuit court violate the constitutional prohibitions against ex post facto laws when it concluded that the State's reasons [were] justified in denying [Appellant] consideration for substance[] abuse commitment pursuant to the 2018 amendments to H.G. §[]8-507[?]

for treatment under the statutes since he was not yet eligible for parole. Appellant asserts that we should remand his Petition for reconsideration because the circuit court's application of the eligibility restrictions in HG sections 8-505(a)(2)(i) and 8-507(a)(2)(i) violated constitutional protections against *ex post facto* laws.

The State concedes that the denial of a petition seeking evaluation and treatment for substance abuse under HG sections 8-505 and 8-507 is appealable when, as here, it is predicated on the circuit court's application of an *ex post facto* amendment. The State also agrees that we must vacate the circuit court's order and remand this matter so that the circuit court may reconsider the Petition.

There are two applicable statutes which authorize a circuit court to order that a criminal defendant be evaluated and committed for treatment of drug and/or alcohol dependency. *See* HG § 8-505 (governing when a court may order an evaluation of "a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment.") and HG § 8-507 (providing the requirements for commitment for treatment, should the evaluation under § 8-505 determine that treatment is necessary). Effective October 1, 2018, the General Assembly amended the statutes (the "2018 Amendments") to add certain restrictions. *See* 2018 Md. Laws, ch. 143 (S.B. 101) ("restricting a court from ordering a certain substance abuse evaluation and commitment for certain defendants serving a sentence for a crime of violence under certain circumstances"). One such restriction prevents individuals who are serving sentences for crimes of violence from obtaining evaluation and/or commitment before they become

eligible for parole. *Id.* Regarding HG section 8-505, at issue in this appeal are the restrictions on the eligibility of those serving sentences for crimes of violence below:

> (a)(1)(i) *Except as provided in paragraph (2) of this subsection*, . . . before or after sentencing, or before or during a term of probation, the court may order the Department to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment if:
>
> > 1. It appears to the court that the defendant has an alcohol or drug abuse problem; or
> >
> > 2. The defendant alleges an alcohol or drug dependency.
>
> ****
>
> (2)(i) *If a defendant is serving a sentence for a crime of violence, as defined in § 14-101 of the Criminal Law Article, a court may not order the Department to evaluate a defendant under this section until the defendant is eligible for parole.*

(emphasis added). Regarding HG section 8-507, the pertinent portions of the statute are:

> (a)(1) *Except as provided in paragraph (2) of this subsection* and subject to the limitations in this section, a court that finds in a criminal case or during a term of probation that a defendant has an alcohol or drug dependency may commit the defendant as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment, to the Department for treatment that the Department recommends[.]
>
> ****
>
> (2)(i) *If a defendant is serving a sentence for a crime of violence, as defined in § 14-101 of the Criminal Law Article, a court may not order the Department to treat a defendant under this section until the defendant is eligible for parole*[.]

(emphasis added).

We considered these 2018 Amendments in *Hill v. State*, 247 Md. App. 377 (2020). In *Hill*, we held that, based on precedent from the Supreme Court of the United States and

the Supreme Court of Maryland, retroactively applying the 2018 Amendments to a person serving a sentence imposed in 2011, before the eligibility standards were changed, "violate[d] the U.S. Constitution's proscription of *ex post facto* laws[.]" *Hill*, 247 Md. App. at 390–00. We reasoned that "the amendments create[d] a 'significant risk' of increasing Hill's punishment by prolonging his term of incarceration." *Id.* at 390; *see* U.S. Const. Art. I, § 10, cl. 1 ("No State shall . . . pass any . . . ex post facto Law").[3] Indeed, we concluded that these "circumstances present the quintessential *ex post facto* violation—[Hill's] prison term has *actually* been prolonged by the 2018 change in law that prohibits violent offenders from being committed pursuant to HG [section] 8-507 until they reach parole eligibility." *Hill*, 247 Md. App. at 402 (emphasis in original).

Here, as the State concedes, the same *ex post facto* scenario exists. On May 23, 2014, Appellant was sentenced to an aggregated, partially suspended term of 100 years, for multiple crimes of violence—including one count of attempted first-degree murder and three counts of attempted second-degree murder. *See infra* footnote 2; *see also* Md. Code, § 14-101(a)(19) of the Criminal Law Article (defining "crime of violence" to include "an attempt to commit" murder). On February 8, 2024, Appellant petitioned for evaluation and commitment under HG sections 8-505 and 8-507, submitting a diagnostic evaluation performed on September 25, 2023, which reported Appellant's belief that long-term opiate

[3] Given the federal constitutional violation in *Hill*, this Court did not decide whether applying the 2018 Amendments to Hill also violated Maryland Declaration of Rights, Article 17, which states that "no ex post facto Law ought to be made." *See Hill*, 247 Md. App. at 390 n.3 ("Because we conclude that the 2018 [A]mendments violate the federal prohibition on *ex post facto* laws, it is unnecessary to consider Hill's Article 17 claims.").

addiction led to his current incarceration.[4] On February 13, 2024, the State opposed the petition, arguing that "[p]ursuant to Maryland General Health, [section] 8-505(a)(2), a Defendant . . . who is serving a sentence for a crime of violence may not be evaluated for an § 8-505 commitment until he is eligible for parole[.]" The State's opposition also noted that Appellant's "conviction is for a crime of violence" for which he had "only served ten years and five month[s.]" The circuit court promptly denied Appellant's Petition based on its "full consideration of the foregoing State's Response[.]"

As the State acknowledges, the circuit court denied Appellant's Petition on the basis that "the 2018 amendments prohibited [the circuit court] from granting [Appellant's] commitment" request until after Appellant "reache[d] parole eligibility[.]" *See Hill*, 247 Md. App. at 389. The State also concedes "Appellant is similarly situated to Hill[,]" and that the circuit court erred in denying Appellant's Petition based on the eligibility restrictions added in the 2018 Amendments, after he was sentenced. Further, the State acknowledges that Appellant "is entitled to the [circuit] court's discretionary consideration of his § 8-507 petition, unencumbered by the eligibility restriction created by the 2018 [A]mendment[s]."

Although appellate courts generally presume that circuit courts "correctly and faithfully apply the law[,]" *see Rainey v. State*, 480 Md. 230, 267 (2022), we agree with

[4] We note that Appellant previously, on July 11, 2016, requested evaluation and commitment under HG sections 8-505 and 8-507, but was denied on July 13, 2016. *See generally Fuller v. State*, 397 Md. 372, 394 (2007) (recognizing that such "petitions may be filed repeatedly and the denial of a single petition does not preclude [a criminal defendant] from filing another").

Appellant and the State that this presumption does not "suffice[] to defend the circuit court's ruling here." Because Appellant was convicted and sentenced in 2014, the 2018 Amendments regarding the "crime of violence" eligibility standards cannot be applied to him. *See Hill*, 247 Md. App. at 389–90, 400–02. Just as in *Hill*, where we held that "application of the 2018 [A]mendments to Hill offend[ed] one of the principal interests that the *Ex Post Facto* Clause was designed to serve, fundamental justice[,]" here too did the application of the 2018 Amendments to Appellant's Petition. *Id.* at 402 (internal citation and quotation marks omitted). In turn, because the circuit court erred in denying Appellant's Petition based on *ex post facto* laws enacted after he was sentenced, we must vacate that order and remand for further proceedings. On remand, the circuit court should not consider the 2018 Amendments in evaluating Appellant's requests under HG sections 8-505 and 8-507.

ORDER OF FEBRUARY 13, 2024, BY THE CIRCUIT COURT FOR CECIL COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY CECIL COUNTY.