

Circuit Court for Montgomery County
Case No. 85201C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 501

September Term, 2020

AZAD A. BAIG, JR.

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick, L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 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.

Azad A. Baig is currently serving a sentence of incarceration in the Maryland Correctional Institution – Jessup. Concerned about his health during the current COVID-19 pandemic, Baig filed a motion to modify his sentence to permit his immediate release. That motion was denied by the circuit court. Baig has appealed from the denial of his motion. The State has moved to dismiss his appeal arguing that Baig’s motion was not timely and that its denial is not appealable.

Maryland Rule 4-345 governs motions for modification of sentence. Subsection (e)(1) of that Rule provides the timing rules:

Upon a motion filed within 90 days after imposition of a sentence ... the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

MD. RULE 4-345(e)(1). We hold that Baig’s motion to modify sentence was not timely as it was not filed within 90 days, nor decided within 5 years, of the date of imposition of sentence.¹ Moreover, denials of motions for modification of sentence are not appealable

¹ We note, however, that non-compliance with Md. Rule 4-345(e)(1) does not, itself, place an appeal outside of our appellate jurisdiction. The 90-day deadline is likely a claim processing rule that does not limit our jurisdiction and is likely subject to waiver or forfeiture. *See Rosales v. State*, 463 Md. 552, 583 (2019). Here, the State has not waived or forfeited its objection to Baig’s late filing, nor has Baig argued that it has. Similarly, the 5-year deadline does not remove a court’s power to consider a motion to modify sentence, because courts have fundamental jurisdiction to hear such motions. *Schlick v. State*, 238 Md. App. 681, 693-94 (2018). While Baig’s failure to comply with either of 4-345(e)(1)’s deadlines does not divest us of our jurisdiction, we nevertheless conclude that his motion was untimely.

orders. *Hoile v. State*, 404 Md. 591, 617-18 (2008). We hold that the denial of Baig’s motion for modification of sentence is not an appealable order.²

We are, therefore, constrained to dismiss Baig’s appeal. We note, however, that nothing in this opinion is intended to diminish Baig’s real and justifiable fears for his health and safety during the present COVID-19 pandemic. Those concerns, however, must be addressed through other legal avenues.³

² We have also considered whether the Chief Judge of the Court of Appeals’ “Administrative Order Guiding the Response of the Trial Courts of Maryland to the COVID-19 Emergency as it Relates to Those Persons Who are Incarcerated or Imprisoned” (issued Apr. 14, 2020) (available at <https://perma.cc/57YG-HY6T>) operated to modify the timelines set forth in Rule 4-345(e)(1). We have little doubt that it could have. The Chief Judge’s authority to issue administrative orders flows directly from her role as the administrative head of the judicial branch of government, MD. CONST., art. IV, § 18(b)(1), the Court’s power to issue rules of practice and procedure, *id.* at § 18(a), and through the newly added emergency authority. *See* MD. RULE 16-1003(a)(2) (“Upon a determination by the Chief Judge of the Court of Appeals that an emergency ... significantly affects ... the ability of the Maryland Judiciary to operate effectively, the Chief Judge, by Administrative Order, may, to the extent necessary ... suspend the operation of Rules that cannot be implemented as intended because of the emergency or event”). *See also* MD. RULE 16-1003(a)(7) (power to suspend timelines). That said, we observe that the Chief Judge’s Administrative Order is explicit in identifying the Rules that it modifies, but about motions for modification of sentence only directs trial courts to “continue to act expeditiously.” Administrative Order, ¶(i). Thus, although it could have, we hold that the Chief Judge’s Administrative Order did not modify the timelines set forth in Rule 4-345.

³ We have held that a motion for modification of sentence was the wrong procedural method for Baig to use in this instance. We note that a similarly situated individual might instead file an administrative complaint in the Inmate Grievance Office about the conditions of their confinement, *see* MD. CODE, CORR. SERVS. (“CS”) §§ 10-201 *et seq.*; COMAR 12.07.01, or seek early release alternatives, including release on mandatory supervision, *see* CS § 7-501; *Carter v. State*, 461 Md. 295, 319 n.10 (2018) (differentiating mandatory supervision from parole); release on home detention, *see* CS §§ 3-401 *et seq.*; medical parole, *see* CS § 7-309; or parole for those 60 years or older, *see* MD. CODE, CRIM. LAW § 14-101; *Carter*, 461 Md. at 355 (2018) (discussing eligibility for parole after age

**APPEAL DISMISSED. COSTS
ASSESSED TO APPELLANT.**

60). Governor Lawrence J. Hogan’s “Order of the Governor of the State of Maryland No. 20-11-17-03 Implementing Alternative Correctional Detention and Supervision” (issued Nov. 17, 2020) (available at <https://perma.cc/U56M-YWPU>) has accelerated the process for obtaining some of these alternatives during the COVID-19 pandemic. A similarly situated individual might also consider filing a petition for writ of habeas corpus alleging unlawful detention, *see* MD. CODE, CTS. & JUD. PROC. § 3-702; MD. R. 15-301 *et seq.*; *but see State v. McCray*, 267 Md. 111, 129-30 (1972) (discussing inapplicability of habeas corpus when incarcerated person’s complaint is sickness).