Circuit Court for Montgomery County
Case No.: 117024C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1504

September Term, 2023

TRAVIS C. MASON

v.

STATE OF MARYLAND

Berger,
Beachley,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: October 29, 2024

In this appeal, Travis C. Mason, appellant, appeals the August 28, 2023 decision of the Circuit Court for Montgomery County denying his "Motion for Appropriate Relief." Through the motion, he sought an order directing the Division of Correction to amend its records to reflect that the court imposed the sentence in this case concurrently, rather than consecutively, to a sentence imposed in a separate criminal case in the Circuit Court for Prince George's County.

On appeal, he presents us with the following question: Did the circuit court err in denying the motion for appropriate relief? We answer that question in the negative and we shall therefore affirm the judgment of the circuit court.

BACKGROUND

Appellant is sentenced to a period of incarceration imposed in three separate cases. Two of those cases are from the Circuit Court for Montgomery County, and one is from the Circuit Court for Prince George's County. While we will set forth the procedural background of each case in some detail, the procedural event that is most significant to this case occurred on June 22, 2018, when the trial court modified the sentences in one of appellant's Montgomery County cases.

Montgomery County Convictions

On March 24, 2011, in Montgomery County case 117024C, appellant pled guilty to attempted second-degree murder and use of a handgun in the commission of a felony or crime of violence. On that same date, in Montgomery County case 117259C, appellant pled guilty to three counts of first-degree assault and one count of use of a handgun in the commission of a felony or crime of violence.

As to those two cases, on May 18, 2011, in case 117024C, the court sentenced appellant to 30 years' incarceration for attempted second-degree murder plus a consecutive 20 years with all but 5 years suspended and 5 years of probation for the handgun offense. On that same date, in case 117259C, the court imposed a sentence of three consecutive 25-year terms of incarceration for each of the three counts of first-degree assault. The three 25-year terms were suspended. Further, in that case, the court imposed a concurrent 20 years, with all but 5 years suspended for the handgun offense. The total aggregate sentence imposed that day was 145 years, with all but 35 years suspended, followed by 5 years' probation. Appellant filed timely motions for modification of sentence in both cases, which the court agreed to hold *sub curia*.

Prince George's County Conviction

Approximately a year later, on May 8, 2012, following a bench trial in Prince George's County case CT110046A, the court found appellant guilty of armed robbery and first-degree burglary. On August 3, 2012, the court imposed a sentence of 14 years' incarceration for armed robbery, plus a concurrent 14 years for first-degree burglary. Those sentences were ordered to run consecutive to any sentence appellant was serving. Appellant filed a timely motion for modification in the Prince George's County case which the court agreed to hold *sub curia*.

First Montgomery County Sentence Modification

On August 26, 2014, in Montgomery County case 117024C, the court granted appellant's motion for modification of sentence. The court modified the sentence for the handgun offense from a sentence to run consecutive to the attempted murder sentence to a

sentence to run concurrent with that charge. Hence, the 20-year sentence, with all but 5 years suspended, was to run concurrent with the 30-year sentence. Appellant filed another timely motion for modification of sentence which the court again agreed to hold *sub curia*.

Prince George's County Sentence Modification

Approximately three years later, on August 8, 2017, in Prince George's County case CT110046A, the court granted appellant's motion for modification of that sentence. The court reduced each 14-year sentence to terms of 10 years each. As before, the court ordered that the sentences were concurrent to each other, but consecutive to any other sentence that appellant was then serving. Appellant filed another timely motion for modification of sentence which the court again agreed to hold *sub curia*.

Second Montgomery County Sentence Modification

On June 22, 2018, in Montgomery County case 117024C, the court granted a second modification of appellant's sentence. The court modified the 30-year sentence for attempted second degree murder to 20 years. Appellant filed another timely motion for modification of sentence which the court again agreed to hold *sub curia*.[1]

Montgomery County Motion for Appropriate Relief

On March 14, 2023, appellant filed a motion for appropriate relief, the denial of which is the subject of this appeal. In that motion, appellant contended the June 22, 2018 modified sentence in case 117024C became, by operation of law, concurrent to the sentence

[1] On December 18, 2020, the court summarily denied the motion for modification of sentence without holding any further hearings.

in Prince George's County case CT110046A. That was so, according to appellant, because the grant of appellant's motion for modification was tantamount to the imposition of a "new" sentence which the court did not specify to be consecutive or concurrent. Given those facts, appellant asserted, the relevant case law indicates that when a court does not specify whether a sentence is consecutive or concurrent, the Rule of Lenity requires the sentence to be concurrent. *Nelson v. State*, 66 Md. App. 304, 313 (1986). On August 28, 2023, the trial court signed an order denying appellant's motion. Appellant noted a timely appeal from the trial court's decision to deny his motion for appropriate relief.

DISCUSSION

Party Contentions

Appellant contends the circuit court erred in denying his motion for appropriate relief because, he argues, the modification of his sentence in June of 2018 also changed the relationship between this Montgomery County sentence and the Prince George's County sentence. He asserts that the modification of his sentence in June of 2018 constituted the imposition of a new sentence, and because the sentencing judge did not state whether the sentence was concurrent with or consecutive to the Prince George's County sentence, it was automatically deemed concurrent. Therefore, he contends that the circuit court erred in the denial of his motion for appropriate relief, effectively ruling that the Prince George's County sentence was consecutive to the Montgomery County sentence.

The State contends that the circuit court correctly denied the motion for appropriate relief. The State argues that the record is clear that at the sentence modification in June of 2018, the circuit court intended the sentences to retain their existing relationship with each

other, with the Prince George's County sentence remaining consecutive to the Montgomery County sentence. The State asserts that the modification of a sentence does not constitute the imposition of a new sentence for purpose of changing the relationship between sentences, and the circuit court's denial of the motion for appropriate relief was correct.

Standard of Review

Although appellant labeled the pleading he filed in the circuit court as a "Motion for Appropriate Relief," in our view it is the functional equivalent of a motion seeking to correct his commitment record filed pursuant to Maryland Rule 4-351(b). The Rule provides that a "commitment record may be corrected at any time upon motion, or, after notice to the parties and an opportunity to object, on the Court's own initiative." Correct application of the Maryland Rules is a question of law, and thus denial of such a motion is reviewed de novo. *Bratt v. State*, 468 Md. 481, 494 (2020).

Analysis

Appellant's argument is premised on the contention that, when the court modified his sentence on June 22, 2018, it imposed a "new" sentence. For that proposition, appellant relies on our holdings in *McRoy v. State*, 54 Md. App. 516 (1983) and *DiPietrantonio v. State*, 61 Md. App. 528 (1985).

In *McRoy*, at sentencing the court merged two lesser included sentences into the greater offense of first-degree rape. 54 Md. App. at 516. On appeal, however, we vacated the first-degree rape conviction and remanded the case for re-sentencing on one of the lesser included offenses. *Id.* at 516–17. Prior to the re-sentencing hearing, McRoy was sentenced by a different court in an unrelated case to three consecutive life sentences. When

the court re-sentenced McRoy upon remand, it imposed a 20-year sentence consecutive to the three life sentences. McRoy appealed and disputed the court's authority to impose the sentence consecutively. *Id.* We affirmed, noting that the 20-year consecutive sentence "stood last in the batting order." *Id.* at 519.

In *DiPietrantonio*, the court initially sentenced DiPietrantonio to 10 years' incarceration with all but 18 months suspended to be followed by three years' probation. *DiPietrantonio*, 61 Md. App. at 529. Upon a later determination that DiPietrantonio had violated his probation (VOP), the court sentenced DiPietrantonio to serve five years of the previously suspended portion of his sentence and made that sentence consecutive to a sentence that had been imposed as a result of a guilty plea entered while DiPietrantonio was on probation. *Id.* at 530. DiPietrantonio appealed to this court, and like McRoy, he disputed the court's authority to impose the VOP sentence consecutively. We held that, following a revocation of probation, a reimposed sentence of confinement, which had earlier been suspended, may be made consecutive with another sentence of confinement that had been imposed during the interim between the earlier suspension and the later reimposition. *Id*. at 535.

Neither *McRoy* nor *DiPietrantonio* involved the modification of a sentence pursuant to Maryland Rule 4-345(e).[2] Notably, in *McRoy*, we expressly contrasted the situation

[2] In pertinent part, Maryland Rule 4-345(e) provides:

> (1) *Generally*. 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

where a court modified a sentence "pursuant to a motion for reduction of sentence" with the situation in *McRoy*, where "a sentence had not been previously imposed[.]" 54 Md. App. at 518 n.2. Moreover, in *Scott v. State*, 454 Md. 146 (2017), Scott had originally been sentenced to consecutive sentences. On appeal, we vacated one of Scott's sentences to which a sentence for another conviction had been made consecutive and remanded the case for re-sentencing. *Id.* at 154. On remand, when the court imposed a new sentence, Scott asked the court to run the new sentence concurrently with the previously imposed consecutive sentences. *Id.* The court declined to do so, believing that it lacked the authority to change the consecutive nature of the non-vacated sentences. *Id.* Maryland's Supreme Court agreed with the sentencing court and held that:

> [W]here an appellate court vacates a sentence to which another sentence is ordered to be served consecutively and remands for resentencing without vacating the consecutive sentence, the non-vacated consecutive sentence remains consecutive to the newly imposed sentence – *i.e.*, the trial court cannot make the new sentence concurrent with the non-vacated consecutive sentence."

Id. at 197.

In our view, the situation in *Scott* is more akin to this case as opposed to either *DiPietrantonio* or *McRoy*. As in *Scott*, this case deals with an existing sentence to which another sentence has already been consecutively imposed. That is different from *DiPietrantonio*, which made previously suspended time active for the first time as the result of a violation of probation. It is also distinguishable from *McRoy*, where the sentencing

> sentence originally was imposed on the defendant and it may not increase the sentence.

court imposed, for the first time on remand, a sentence for an offense for which no previous sentence had been imposed. As a result, the sentence modified on June 22, 2018 does not stand "last in the batting order" within the contemplation of *DiPietrantonio* or *McRoy*.[3]

Appellant also argues that, because the record of the modification hearing is ambiguous concerning whether the court intended to impose the modified sentence consecutively or concurrently, the law requires the sentence to be imposed concurrently. He directs our attention to *Nelson v. State*, 66 Md. App. 304, 313 (1986) and *Gatewood v. State*, 158 Md. App. 458, 482 (2004) in support of his argument.

In *Nelson*, we held that "[w]here, as here, the record does not reflect whether the sentences, when imposed, were meant to run concurrently or consecutively with each other, we hold the sentences should be construed to be concurrent with each other." 66 Md. App. at 314. However, a more nuanced read of the relevant cases shows that even where the court does not use the words "consecutive" or "concurrent," a sentence will not automatically be deemed as concurrently imposed. Rather, "if the court does not specify that a subsequently imposed sentence is to be consecutive to an earlier imposed sentence," a *presumption of leniency* arises. *Gatewood*, 158 Md. App. at 482. In *Collins v. State*, 69 Md. App. 173, 197 (1986), we held that, "where the duration of a sentence is otherwise

[3] Although it is true that a modified sentence is a "new" sentence in the sense that, once a court modifies a sentence, the defendant becomes entitled to file a subsequent motion for modification of sentence pursuant to Maryland Rule 4-345(e), *see Greco v. State*, 347 Md. 423, 429 (1997), we are unaware of any authority suggesting that a modified sentence is a "new" sentence for all purposes.

discernable from the record, it will be upheld without resort to the presumption of leniency."

In *Collins* we found that the record of the sentencing hearing was not "sufficiently ambiguous to impose the presumption of leniency expressed in *Nelson*." *Id.* at 196. In that case, the court sentenced the defendant to, *inter alia*, "life plus 50 years." *Id.* Collins asserted on appeal that because the court did not say that the 50-year portion of the sentence was imposed consecutive to, or concurrent with, the life sentence, that it should be construed as being imposed concurrently. *Id.* We determined that when the court used the word "plus" it was clear that the court intended to impose the 50-year sentence consecutive to the life sentence. *Id.* at 197.

Here, as in *Collins*, the record of the sentence modification proceeding was not "sufficiently ambiguous to impose the presumption of leniency expressed in *Nelson*." *Id.* at 196. During the June 22, 2018, modification of sentence hearing, the court recognized appellant's consecutive sentence in Prince George's County case CT110046A when it observed: "The fact that [appellant] has a 10-year consecutive sentence in Prince George's County, there is really nothing I can do about that one way or the other. That's up to some other judge. I'm really only looking at this case." Moreover, when modifying appellant's sentence, the court made it clear that, aside from modifying the sentence on Count 1 from 30 years' incarceration to 20 years' incarceration, it intended no other changes to appellant's sentences.

> THE COURT: Okay. All right. So, what I'm going to do is this. I'm not doing anything with Count 6 [the handgun count]. So, that's just going to stay the same. On Count 1 [the attempted murder count], I am going to reduce the

> sentence from 30 years to 20 years. So, I'm reducing the sentence on Count 1 from 30 years, commencing September 8th, 2010, to 20 years commencing on September 8th, 2010. Again, I've weighed all the circumstances. I've taken into account, some may agree, some may disagree, but that's what I feel is an appropriate sentence.
>
> So, this is a new sentence. *Like I said, everything else is the same*. The bottom line is, the executed time is being reduced by 10 years, right?
>
> [DEFENSE COUNSEL]: Yes, Your Honor.

(Emphasis added.) The record reflects the court's unambiguous intent to leave appellant's consecutive sentence unchanged.

We therefore affirm the judgment of the circuit court.

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