Circuit Court for Baltimore City
Case No.: 100144020

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1648

September Term, 2022

CHALMERS EFRAM SMITH

v.

STATE OF MARYLAND

Berger,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 8, 2024

*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 Rule 1-104(a)(2)(B).

On March 25, 2022, Chalmers Efram Smith, appellant, filed a motion in the Circuit Court for Baltimore City seeking modification of his sentence pursuant to section 8-110 of the Criminal Procedure Article ("CP") of the Maryland Code, which authorizes a person who committed an offense as a minor prior to October 1, 2021, to file such a motion, once the person has served at least 20 years imprisonment for that offense.[1] After holding a hearing, the court issued a written opinion and order denying the motion. Appellant timely appealed and presents the following question for our review:

> Did the circuit court apply the wrong legal standard in denying Mr. Smith's motion for reduction of sentence pursuant to the Juvenile Restoration Act?

We answer that question in the negative and shall affirm the judgment of the circuit court. In addition, the State has filed a motion to dismiss this appeal which we shall deny.

BACKGROUND

The Underlying Offenses

Appellant's convictions stem from the shooting death of Darryl Butler, Sr. ("Butler") on January 15, 2000. Appellant was 16 years old at the time of that shooting. On direct appeal, this Court summarized the evidence adduced at trial as follows:

> Darryl Butler, Sr., died of gunshot wounds on January 15, 2000. In April 2000, Corinthia Clark, the principal witness in the instant case, was arrested by the Baltimore City Housing Authority Police on unrelated charges. According to Clark, on the evening of January 14, 2000[,] while selling illegal drugs, she heard appellant complain that he had been robbed.
>
> Clark spent January 15, 2000[,] using illegal drugs. She was approached near the corner of Westwood and Mount Streets by two men seeking crack cocaine. After she directed them to Mountmor Court, one of

[1] CP § 8-110 was created in 2021 as part of the Juvenile Restoration Act. 2021 Md. Laws, ch. 61, § 1.

> the men, who was later identified as Butler, proceeded toward Mountmor Court. Appellant arrived shortly thereafter and indicated that one of the men who had approached Clark was the man who had robbed him the night before. He stated that he was ". . . going to get that bitch" and, after disappearing briefly, he proceeded in the direction of Mountmor Court. Subsequently, Clark heard shots, saw appellant running with a silver-handled gun, and observed him enter Tammy Rodgers's house, then emerging wearing a different jacket.
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> Melvin Dodd was also arrested on unrelated charges. Dodd testified that, on January 15, 2000, he was in the area of the crime. He was attempting to purchase illegal drugs when he saw appellant running toward the scene of the crime. Dodd then heard gunshots and saw appellant running from the scene of the crime with his right hand in his jacket pocket. According to Dodd, appellant had his hand in his pocket in a position consistent with one in which a person would be concealing a handgun.
>
> Officer Thomas arrested appellant on May 2, 2000. Following Officer Thomas's indication that he had a warrant for appellant's arrest, appellant struggled and fled. Appellant sought refuge in a nearby abandoned house, but was discovered and forcefully apprehended. The weapon that was used to kill Butler was never recovered. Detective Parker was unable to procure the testimony of Rodgers, despite repeated attempts.

Smith v. State, No. 701, Sept. Term, 2001, slip op. at 1-2 (filed unreported January 23, 2002).

On February 23, 2001, a jury found appellant guilty of first-degree premeditated murder, use of a handgun in the commission of a felony or crime of violence, and wearing, carrying, or transporting a handgun. The court sentenced him to life imprisonment for first-degree murder and to a consecutive 20 years' imprisonment for using a handgun. In the ensuing decades, appellant mounted numerous unsuccessful attacks on his convictions.[2]

[2] Some of that procedural history is recited in *Smith v. State*, No. 953, Sept. Term, 2018 (filed unreported June 3, 2019) in which this Court affirmed the circuit court's denial of appellant's second petition for a writ of actual innocence.

The JUVRA Motion for Modification of Sentence

As indicated earlier, on March 25, 2022, appellant filed a motion for modification of sentence pursuant to the provisions of CP § 8-110 and the Juvenile Restoration Act ("JUVRA").[3] On September 1, 2022, the circuit court held a hearing on the motion, and on October 28, 2022, it denied it by way of a written opinion and order which, as required by the statute, addressed each of the factors listed in CP § 8-110(d), as follows:[4]

> **(1) the individual's age at the time of the offense**: "At the time of the offense, Defendant was 16 years old, 5-6 weeks shy of his 17th birthday."
>
> **(2) the nature of the offense and the history and characteristics of the individual**: "Defendant was convicted of First-Degree Murder and use of a handgun [in] the commission of a crime of violence."
>
> **(3) whether the individual has substantially complied with the rules of the institution in which the individual has been confined**: "Other than 2 infractions during 20 plus years of imprisonment, the Court infers that Defendant has substantially complied with the rules of the Division of Correction."
>
> **(4) whether the individual has completed an educational, vocational, or other program**: "Defendant has successfully completed programs that furthers his personal development."
>
> **(5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction**: "Having completed various programs of rehabilitation, the Court infers a measure of maturity in the Defendants' personal development."
>
> **(6) any statement offered by a victim or a victim's representative:** "Pursuant to the Victim Impact Statement presented during the hearing of September 1, 2022, and the devastating and longstanding impact of the

[3] We have appended the text of CP § 8-110 to the end of this Opinion.

[4] We have added the statutory factors in bold type. They precede the circuit court's analysis of each factor.

murder of Mr. Butler, the family of the victim is against any reduction of sentence."

(7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional: "There have been no reports submitted in evidence of a physical, menta[l] or behavioral examination conducted by a health professional."

(8) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system: "Defendants' family and community circumstances at the time of the offense included:

> - A largely absent, drug addicted father who died when Defendant was fourteen years old;
>
> - A Mother who worked multiple jobs and who relied on Defendant to help care for his siblings;
>
> - An Uncle, who was also a father figure to the Defendant, who died as the result of a motorcycle accident, when Defendant was eleven years old;
>
> - The Defendant suffered a gun shot wound at the age of 15; [and]
>
> - The Defendant is a 10th grade, high school dropout, who is an admitted drug dealer to help support his family[.]"

(9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense: "The Defendant maintains his innocence. The jury found the Defendant guilty of First-Degree Murder through the use of a handgun. In a nutshell, Defendant was heard complaining of being robbed the day before the murder, saw Mr. Butler the next day and believing that Mr. Butler was one of the persons who robbed him the day before, shot and killed Mr. Butler. 'As it turned out the victim was not the person who allegedly robbed the Defendant previously, but an innocent bystander that Defendant mistook as the perpetrator.' (States Response to Defendants Motion, p. 3). And there is no evidence that other persons were involved in the murder and no evidence that he was influenced by other people."

(10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences: "An examination of Defendant's diminished culpability as a juvenile, as

> compared to the culpability of adults, is a continuing exercise in the Courts' recognition that minors are considered to have less culpability for their actions, that minors are more capable of change, the appreciation of science regarding the development of the brain from infancy to age 25, and the 'aging out' process of criminal behavior that reportedly leads to diminished recidivism. Essentially, for minors, there is a greater capacity for redemption, and the capacity to transform into a law-abiding citizen."
>
> **(11) any other factor the court deems relevant**. "The Defendant has support from his family and a plan of action upon release pursuant to his statement at the hearing. The Defendant shows no remorse for a crime for which he maintains his innocence. The Court notes that some people surmise that the Defendant 'took the fall' for the case. The Court also notes the legislation discussion on the issue of a lack of remorse from those who maintain their innocence."

The circuit court concluded its decision by stating the following when denying appellant's motion for modification:

> The J[UV]RA allows the permissive consideration for sentence reduction for "an individual for an offense committed when the individual was a minor." Such consideration is based upon the Courts' determination that the individual is not a danger to the public and a reduced sentence would be in the interest of justice.
> (underline added).
>
> In the case at [b]ar, the sentencing judge foreshadowed the judiciary's recognition of the lessened culpability of a minors' actions, "how badly young people think and process information, and how young people have no sense of the consequences of their conduct." (Transcript, Sentencing Hearing, part of the Courts' file). The sentencing judge commented on the dichotomy between kindness and fairness, and commented upon the Courts' confidence in the verdict. Defendant was sentenced to the Division of Corrections [sic] to serve a term of imprisonment of life for murder in the first degree, and a consecutive sentence of 20 years, first five years without parole consecutive to the term of life. The Defendant was not sentenced to life without the possibility of parole.
>
> Counsels' Motion mentions that Defendants' "case is a little unusual. And so although he is a much better person today than he once was, although he feels sincere remorse for some things he did when he was an adolescent, and although he feels sympathy for Mr. Butler and those affected by his death,

> he cannot with integrity claim to feel remorse for a crime for which he has steadfastly maintained his innocence." (Defendants' Motion, p.24). The sentencing judge also contemplated the right of the Defendant to maintain his innocence. "He has every right to do that[."] (Sentencing Transcript, p.11). Some of the core factors as mandated by the J[UV]RA have previously been considered by the Court and have now been reconsidered by the sentencing judge, through consideration of the present Motion. Furthermore, Defendants' minor record as a juvenile was previously considered. Whether Defendant was on juvenile probation, or had completed juvenile probation at the time of the offense, defendant received services and resources under the jurisdiction of the Department of Juvenile Services that had little to no effect on his conduct. After full consideration, the sentence remains fair and just.

DISCUSSION

Appellant generally contends that the circuit court applied the wrong legal standard and, thereby, abused its discretion in denying his motion for reduction of sentence filed pursuant to CP § 8-110. Specifically, appellant contends that, in ruling on his motion, the circuit court erred by failing to "treat rehabilitation as the primary determinant[.]"

Standard of Review

We recently had occasion to address a circuit court ruling on a motion for modification of sentence filed under the JUVRA. *Sexton v. State*, 258 Md. App. 525 (2023). In that case, we explained that, although the decision to modify a sentence under the JUVRA rests in the discretion of the circuit court, a court abuses that discretion if it applies the wrong legal standards when doing so:

> Under JUVRA, the decision to grant or deny a motion for reduction of sentence under CP § 8-110 generally rests in the discretion of the circuit court upon consideration of the required factors. Yet even under that deferential standard of review, the circuit court's discretion is tempered by the requirement that the court apply the "correct legal standards[.]" *Faulkner v. State*, 468 Md. 418, 460-61 (2020) (citing *Jackson v. Sollie*, 449 Md. 165, 196 (2016)); *Schisler v. State*, 394 Md. 519, 535 (2006) (quoting *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004)). When a court fails to do so,

> it abuses its discretion. *See, e.g., Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 675 (2008) ("[T]rial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature."); *Matter of Dory*, 244 Md. App. 177, 203 (2019) ("[T]rial courts do not have discretion to apply incorrect legal standards."). Whether the circuit court properly construed and applied CP § 8-110 is a question of law that we review *de novo*. *Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (citing *Schisler*, 394 Md. at 535); *Davis v. State*, 474 Md. 439, 451 (2021) (With issues of law, "[w]e are not looking at whether the trial court abused its discretion in its ultimate determination, but whether it applied the proper legal standard[] in exercising its discretion.").

Sexton, 258 Md. App. at 541-42.

Appellant's Contention

According to appellant, all of the factors that a court is required to consider when ruling on a motion for modification filed pursuant to the provisions of the JUVRA must be viewed through the lens of the intent of the legislature in creating the JUVRA. Although appellant goes to some length to show how he derives what he believes was the intent of the legislature in enacting the JUVRA, in summary, appellant asserts that the core concern of the General Assembly, and its reason for enacting CP § 8-110, is "to give rehabilitated and non-dangerous individuals who have served at least 20 years for a crime that occurred when they were children an opportunity to be released and rejoin society."

Appellant relies heavily on the reasoning of *Davis v. State*, 474 Md. 439 (2021) in arriving at his conclusion that all of the factors need to be viewed through the lens of the legislature's intent when enacting the JUVRA. In *Davis*, the Supreme Court of Maryland interpreted the statutory factors that a court is required to consider when deciding whether to transfer a case of a child charged as an adult to juvenile court. In so doing, the Court

found that one of the factors in the statute at issue in that case, the "amenability to treatment" factor, is "the ultimate determinative factor that takes into account each of the other four factors[.]" *Id*. at 466.

Appellant asserts the following four ways the aforementioned intent of the legislature in enacting the JUVRA should impact a circuit court's analysis when ruling on a motion for modification of sentence filed pursuant to its provisions:

First, appellant claims that "a reduction of sentence that facilitates the release of the individual is in 'the interests of justice' if the individual has demonstrated maturity and rehabilitation[.]"

Second, although the JUVRA contains eleven factors for a court to consider when ruling on a motion for modification of sentence, appellant claims that, because the fifth factor ("whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction[,]" CP § 8-110(d)(5)) embodies the core purpose of the JUVRA, that factor is the most important one and the one through which all other factors must be viewed.

Third, the legislature's concern with public safety found in CP § 8-110(c), expressed in its requirement that a court find that "the individual is not a danger to the public" should, according to appellant, be read in harmony with the legislative intent such that it is implicit that persons who have matured and rehabilitated "will not pose a danger to the public."

Fourth, according to appellant, the nature of a "decades-old" offense is of lesser importance because, in the JUVRA context, it "tells us relatively little about the core

concerns of JUVRA: who a defendant is today, whether they have reformed, and whether they pose a risk to public safety now."

With all of that in mind, appellant asserts that the circuit court erred by "failing to treat rehabilitation as the primary determinant" in ruling on his JUVRA motion for modification of sentence. Appellant specifically points to the court's comments that came after the court's discussion of the statutory factors it was required to address. Appellant argues that the circuit court denied appellant's motion for modification of sentence, to some extent, on the basis of its belief that the sentencing court already took into account some of the statutory factors in the JUVRA. Appellant posits the circuit court erred because the original sentencing court did not, and could not have, taken into account "the information that was the core concern of the General Assembly and its reason for enacting CP § 8-110: the extent to which [appellant] would demonstrate maturity and rehabilitation through his future conduct over the next 20+ years."

Appellant also argues that, although the circuit court recounted many facts militating in favor of appellant's rehabilitation when addressing the eleven statutory factors in CP § 8-110(d), the court failed to mention any of them in the paragraphs that followed. From all of that, appellant argues that the court's "explanation reveals that the evidence of rehabilitation played little or no role in its decision." According to appellant, this was error because in his view, whether appellant had demonstrated his rehabilitation was the single most important factor to consider when ruling on a motion filed under the JUVRA.

Analysis

Assuming, without deciding, that whether an inmate has demonstrated maturity and rehabilitation is the most important factor to be considered, we are persuaded that, in this case, the circuit court did not abuse its discretion in denying appellant's motion for modification of sentence. The circuit court's analysis shows that it separately considered each statutory factor and noted salient facts associated with each one. The circuit court also recognized that the JUVRA permitted the court to reduce a sentence imposed on a minor only if the court determines that the "individual is not a danger to the public and a reduced sentence would be in the interest of justice."

With reference to whether the court was persuaded that appellant had demonstrated maturity and rehabilitation, the court, found only "a measure of maturity in [appellant's] personal development." To us, that concise statement adequately conveyed the court's belief that appellant had not demonstrated "maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction[.]" CP § 8-110(d)(5).

We believe that it is obvious from the record that the circuit court was well aware of all that is required by CP § 8-110 and the JUVRA when it ruled on appellant's motion. Moreover, we believe the circuit court's written decision evidences an exercise of discretion based on everything it had before it, including information pertinent to the relevant statutory factors which included evidence of appellant's rehabilitation, *vel non*. When taken as a whole and when read in context, we are not persuaded that the circuit court gave less weight to appellant's rehabilitation than the JUVRA forbids. We therefore discern no error or abuse of discretion.

MOTION TO DISMISS APPEAL

The State has filed a motion to dismiss this appeal on the basis that the court's denial of appellant's motion for modification of sentence is not an appealable order.

The JUVRA does not include any provision specifically authorizing or foreclosing an appeal of a denial of a motion for modification filed pursuant to CP § 8-110. While CP § 8-110 does not specifically refer to a motion for modification of sentence filed pursuant to Maryland Rule 4-345(e),[5] functionally, the statute extends the opportunity to file such a motion to inmates who were previously ineligible to file one. The statute also requires, *inter alia*, that the court hold a hearing and issue a written decision addressing the eleven factors outlined earlier. As such, we address the appealability of the denial of a motion under the JUVRA in the same way we address the appealability of the denial of a motion filed pursuant to Md. Rule 4-345(e).

In general, a final order of a circuit court is appealable under section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code, which codifies the final judgment rule:

> Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court.

[5] Rule 4-345 titled "**Sentencing – Revisory power of court**," contains subsection (e), titled "**Modification upon motion**," which provides:

> (1) **Generally. –** Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, 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.

> The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. In a civil case, a plaintiff who has accepted a remittitur may cross-appeal from the final judgment.

However, the Supreme Court of Maryland has held that a "discretionary denial" of a motion for modification of sentence, under Md. Rule 4-345(e), generally is not appealable. *Hoile v. State*, 404 Md. 591, 617 (2008). In *Hoile*, the Court distinguished "motions to correct a sentence based upon an error of law and motions to reconsider sentence that are entirely committed to a court's discretion[.]" *Id*. The Court observed that "[t]here is much caselaw holding that the denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable." *Id*. at 615. The Court determined that only an appeal from the denial of a motion "entirely" within a sentencing court's discretion is barred. *Id*. at 617-18.

In this case, appellant alleges that the circuit court's denial of his motion for modification filed pursuant to the JUVRA was premised on an error of law. As a result, in our view, under the existing case law, that makes the denial of his motion an appealable final order. *Sexton*, 258 Md. App at 541-42. We therefore deny the State's motion to dismiss this appeal.[6]

[6] Appellant argues in the alternative that the denial of his motion under the JUVRA is appealable because (1) a motion under the JUVRA is similar to a motion filed under section 5-609.1 of the Criminal Law Article and the Justice Reinvestment Act which is appealable under *Brown v. State*, 470 Md. 503, 552 (2020), and/or (2) *Hoile*, *supra*, its ancestors, and its progeny, were all wrongly decided. Given our resolution of this case, we need not reach these issues.

MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

APPENDIX

CP § 8-110, titled "Sentencing of adult convicted of offense committed while minor – Reduction of sentence – Factors considered – Written decision" provides as follows:

(a) This section applies only to an individual who:

(1) was convicted as an adult for an offense committed when the individual was a minor;

(2) was sentenced for the offense before October 1, 2021; and

(3) has been imprisoned for at least 20 years for the offense.

(b) (1) An individual described in subsection (a) of this section may file a motion with the court to reduce the duration of the sentence.

(2) A court shall conduct a hearing on a motion to reduce the duration of a sentence.

(3) (i) The individual shall be present at the hearing, unless the individual waives the right to be present.

(ii) The requirement that the individual be present at the hearing is satisfied if the hearing is conducted by video conference.

(4) (i) The individual may introduce evidence in support of the motion at the hearing.

(ii) The State may introduce evidence in support of or in opposition to the motion at the hearing.

(5) Notice of the hearing under this subsection shall be given to the victim or the victim's representative as provided in §§ 11-104 and 11-503 of this article.

(c) Notwithstanding any other provision of law, after a hearing under subsection (b) of this section, the court may reduce the duration of a sentence imposed on an individual for an offense committed when the individual was a minor if the court determines that:

(1) the individual is not a danger to the public; and

(2) the interests of justice will be better served by a reduced sentence.

(d) A court shall consider the following factors when determining whether to reduce the duration of a sentence under this section:

(1) the individual's age at the time of the offense;

(2) the nature of the offense and the history and characteristics of the individual;

(3) whether the individual has substantially complied with the rules of the institution in which the individual has been confined;

(4) whether the individual has completed an educational, vocational, or other program;

(5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction;

(6) any statement offered by a victim or a victim's representative;

(7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional;

(8) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system;

(9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense;

(10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences; and

(11) any other factor the court deems relevant.

(e) (1) The court shall issue its decision to grant or deny a motion to reduce the duration of a sentence in writing.

(2) The decision shall address the factors listed in subsection (d) of this section.

(f) (1) If the court denies or grants, in part, a motion to reduce the duration of a sentence under this section, the individual may not file a second motion to reduce the duration of that sentence for at least 3 years.

(2) If the court denies or grants, in part, a second motion to reduce the duration of a sentence, the individual may not file a third motion to reduce the duration of that sentence for at least 3 years.

(3) With regard to any specific sentence, an individual may not file a fourth motion to reduce the duration of the sentence.