

Circuit Court for Baltimore County  
Case No. 03-K-05-004275

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1719

September Term, 2022

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HAKIM SHIHED JORDAN-EL

v.

STATE OF MARYLAND

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Berger,  
Zic,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: July 17, 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 with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This appeal arises from a denial of a motion for appropriate relief filed by Hakim Shihed Jordan-El (“Jordan-El”), appellant, in the Circuit Court for Baltimore County. Jordan-El’s motion sought relief in the form of leave to file a second motion to modify his sentence. The circuit court denied Jordan-El’s motion on October 19, 2022 and this timely appeal followed. On February 1, 2024, the State filed a motion to dismiss this appeal, arguing that the circuit court’s denial of Jordan-El’s motion for appropriate relief is not a final appealable order. Jordan-El filed an opposition to the State’s motion to dismiss and a motion for summary reversal. This Court denied Jordan-El’s motion for summary reversal and deferred consideration of the State’s motion to dismiss. Accordingly, we now consider the following issues:<sup>1</sup>

- I. Whether the circuit court’s denial of Jordan-El’s motion for appropriate relief constitutes a final appealable order.

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<sup>1</sup> Jordan-El’s original questions presented read as follows:

1. Does preemptively denying a motion for modification of sentence violate due process and the Maryland Rules, warranting a new motion with a different judge?
2. Would continuing to disregard the court’s presumptive denial of Mr. Jordan-El’s motion for modification promote the preemptive denial of every legal action?
3. Does overlooking a judge’s violation of a defendant’s rights merely because ineffective assistance of counsel was alleged eviscerate judicial accountability?

- II. If the circuit court's denial of Jordan-El's motion for appropriate relief is an appealable order, whether the circuit court erred in denying Jordan-El's motion.

For the reasons explained herein, we conclude that the circuit court's denial of Jordan-El's motion for appropriate relief is an appealable order and affirm the judgment of the Circuit Court for Baltimore County.

### **FACTS AND PROCEDURAL HISTORY**

On November 14, 2005, Jordan-El was indicted by a grand jury in the Circuit Court for Baltimore County on the following counts: two counts of first-degree murder, two counts of robbery with a dangerous weapon, four counts of use of a handgun in the commission of a crime, one count of burglary, one count of conspiracy to commit robbery, and one count of conspiracy to commit robbery with a dangerous weapon. On March 13, 2007, Jordan-El pled guilty to one count of first-degree murder. On June 26, 2007, pursuant to his plea agreement, the circuit court sentenced him to life in prison, with all but fifty years suspended, on June 26, 2007. At sentencing, the trial court made the following remarks:

He admits to starting to sell drugs at the age of 15. He decreased the selling of drugs, according to the doctor's report, by the age of 16. Instead of selling drugs, at that time he decided he was going to rob people with a group of his friends. And that's how he supported himself. He attempted working several jobs. But after [he] got his first pay check, he got high and he quit.

You're the scourge of society, sir. You don't belong on the streets. Your actions that evening triggered the death of a man that was perfectly innocent. You fired the first shot. And that resulted in a man that was already handcuffed being shot in the head.

Mr. Polen's done an outstanding job for you.<sup>2</sup> I'd love to give you two life without parole consecutive sentences, but I can't because of your plea bargain. You'd waste everybody's time and money and resources to even recommend you for Patuxent. You're not worth the paper.

\* \* \*

You do have a right to file a motion to modify with me. I can tell you right now, I'll deny it. Go ahead and file the paper, but I'm not even going to consider it.

On November 20, 2008, this Court denied Jordan-El's application for leave to appeal his sentence.<sup>3</sup> Jordan-El also filed a "Motion for Reconsideration to Amend Modification Appeal Petition of Defendant's Ineffective Assistance of Trial Counsel's Failure to Challenge Court Comments" with the circuit court on December 13, 2007. The circuit court denied this motion without a hearing. Jordan-El later filed a petition for post-conviction relief in February 2015 arguing that trial counsel rendered ineffective assistance by failing to properly advise Jordan-El of the consequences of his guilty plea. His petition further alleged that his trial counsel was ineffective by failing to withdraw Jordan-El's guilty plea and failing to file a motion for modification of sentence. The circuit court held

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<sup>2</sup> Mr. Polen served as Jordan-El's counsel at the time of Jordan-El's plea and sentencing.

<sup>3</sup> Jordan-El also filed a request for *en banc* review of his sentence on July 24, 2007, but later withdrew this request.

a hearing on September 30, 2016 and ultimately granted, in part, and denied, in part, Jordan-El's petition. The circuit court granted Jordan-El leave to file a motion for modification of his sentence within 90 days of the court's order dated October 7, 2016. The court denied the remainder of his petition with prejudice.

Jordan-El filed a motion for modification of his sentence on December 29, 2016. The circuit court denied this motion without a hearing on June 30, 2017. Jordan-El subsequently filed and the circuit court denied his "Motion for Reconsideration of Denial of Motion for Modification of Sentence or, in the Alternative, Motion to Vacate Denial of Motion for Modification." Jordan-El then filed two motions on August 24, 2022: a motion to reopen his post-conviction proceedings and a motion for appropriate relief,<sup>4</sup> the latter of which sought leave from the circuit court to file a second motion for modification of sentence.<sup>5</sup> Both motions argued that the trial court's remarks at Jordan-El's sentencing hearing constituted a preemptive denial of a motion for modification of sentence which violated Jordan-El's due process rights and his rights under Maryland Rule 4-345(e).

The circuit court issued a memorandum opinion and order denying Jordan-El's motion to reopen on September 13, 2022. On October 7, 2022, Jordan-El filed a motion to

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<sup>4</sup> Jordan-El also filed a motion to consolidate these motions on August 26, 2022. The circuit court did not address this motion until after it had disposed of the two underlying motions and, therefore, denied his motion to consolidate as moot.

<sup>5</sup> Jordan-El filed nearly identical motions on September 4, 2022. These motions merely corrected errors in the original motions concerning the date Jordan-El was initially incarcerated.

reconsider his motion to reopen. He also filed with this Court an application for leave to appeal the circuit court’s denial of his motion to reopen. The circuit court denied his motion to reconsider on November 3, 2022, and we subsequently denied his application for leave to appeal.

The circuit court also denied Jordan-El’s motion for appropriate relief on October 19, 2022.<sup>6</sup> This timely appeal followed.

### **MOTION TO DISMISS**

The State asserts that the circuit court order denying Jordan-El’s motion for appropriate relief is not an appealable final judgment under Md. Code (1974, 2020 Repl. Vol.) § 12-301 of the Courts and Judicial Proceedings Article (“CJP”). A “final judgment” is defined as a “judgment, decree, sentence, order, determination, decision, or other action by a court, including an orphans’ court, from which an appeal, application for leave to appeal, or petition for certiorari may be taken.” CJP § 12-101(f). The Supreme Court of Maryland has recognized:

A final judgment is one that either determines and concludes the rights of the parties involved or denies a party the means to prosecute or defend his or her rights and interests in the subject matter of the proceeding. Important is whether any further order is to be issued or whether any further action is to be taken in the case.

*Douglas v. State*, 423 Md. 156, 171 (2011) (internal citations and quotation marks omitted).

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<sup>6</sup> The circuit court issued two orders on October 19, 2022, one denying the motion for appropriate relief dated August 24, 2022, and one denying the motion dated September 4, 2022.

Although a circuit court’s order denying a motion for modification is generally not appealable, *see State v. Strickland*, 42 Md. App. 357, 359 (1979), a denial of a motion for modification alleging “that the procedure in the determination of the sentence, in the light of the circumstances involved, violated [a defendant’s] constitutional right to due process of law” is reviewable. *Costello v. State*, 237 Md. 464, 469 (1965). *See also Hoile v. State*, 404 Md. 591, 615 (2008) (recognizing that “the denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable”).

As we explain below, Jordan-El’s motion for appropriate relief contends that the remarks of the sentencing judge constituted a preemptive denial of a motion for modification that violated his due process rights. He further contends that the circuit court’s denial of the motion constituted legal error. We exercise our discretion to consider the merits of Jordan-El’s appeal and deny the State’s motion to dismiss. Nevertheless, for the reasons that follow, we affirm the judgment of the Circuit Court for Baltimore County.

### **DISCUSSION**

On appeal, Jordan-El contends that the circuit court erred in denying his motion for appropriate relief. As discussed above, Jordan-El asserts that the trial court’s remarks at the sentencing hearing constituted a preemptive denial of a motion for modification of sentence that violated his due process rights and the Maryland Rules. Accordingly, he contends that the trial court should have granted his motion for appropriate relief in the form of permission to file a second motion to modify his sentence. The matter at issue on appeal is a purely legal issue, which we review *de novo*. *See State v. Robertson*, 463 Md.

342, 351 (2019) (“[P]urely legal questions are reviewed *de novo* and this Court affords no deference to the decision of the court below.”).

This Court has recognized that “[t]he sole authority for modifying a sentence imposed is Maryland Rule 4-345(e), a product of the [Supreme Court of Maryland’s] rule-making authority.” *Tolson v. State*, 201 Md. App. 512, 517 (2011). Maryland Rule 4-345(e) allows an individual seeking to modify their sentence to file a motion within ninety days after the imposition of their sentence. Md. Rule 4-345(e)(1). The trial 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.” *Id.* As we explained in *Tolson v. State*:

If a court denies [a motion to modify pursuant to Maryland Rule 4-345(e)], and more than ninety days have elapsed since the imposition of sentence, the defendant is finished – he or she may not file another such motion for consideration, or, as we have referred to it, a “motion to modify,” unless he can show fraud, mistake, or irregularity . . . . On the other hand, if the motion is granted and a new sentence imposed, the ninety-day period for filing a motion to modify begins again, from the date the new sentence was imposed, and a second motion to modify, filed within that period, would be timely.

*Tolson, supra*, 201 Md. App. at 517–18 (internal citations and quotation marks omitted).

Our decision in *State v. Karmand*, 183 Md. App. 480 (2008), is also instructive. The appellee, Karmand, was convicted of one count of distribution of cocaine and sentenced to three years’ imprisonment, with all but nine months suspended. *Karmand, supra*, 183 Md. App. at 482. He filed a timely motion for modification within ninety days of the imposition of his sentence. *Id.* at 483. The circuit court held a hearing and denied Karmand’s motion.



*Id.* at 483–85. Karmand then filed a second motion for modification in which he acknowledged that the court had denied his previous motion. *Id.* at 485. The court granted the appellant’s second motion, struck his conviction, and granted him probation before judgment. *Id.* at 486. The State then appealed the circuit court’s order. *Id.* On appeal, we vacated the circuit court’s order granting the appellant’s second motion for modification of sentence. We concluded:

Because the court’s ruling on the First Motion did not result in a new sentence, a new 90-day period did not start to run. And, because the denial of the appellee’s First Motion did not result in a new sentence, the Second Motion filed more than 90 days after the original imposition of sentence was untimely under Rule 4-345(e).

*Id.* at 494.

Turning back to the extant appeal, the circuit court granted, in part, and denied, in part, Jordan-El’s petition for post-conviction relief in 2016, authorizing him to file a motion to modify his sentence despite it being outside of the ninety-day timeframe required under Maryland Rule 4-345(e). Instead, the circuit court in essence re-started that clock and allowed Jordan-El to file a motion to modify within ninety days of the date the court’s order partially granting his petition for post-conviction relief. Accordingly, Jordan-El filed a motion to modify sentence within that time frame. The circuit court ultimately denied his motion and his subsequent motion for reconsideration, leading Jordan-El to file his motion for appropriate relief requesting leave of court to file a second motion for modification. In *Tolson*, we concluded that “no logical distinction can be drawn between reconsideration of a previously denied motion to modify and consideration of a second

motion to modify under Rule 4-345.” *Id.* at 518. Similarly, we conclude that a motion for appropriate relief seeking leave from the circuit court to file a second motion to modify is the equivalent of a second motion to modify.

When the circuit court denied Jordan-El’s first motion for reconsideration, “a new 90-day period did not start to run.” *Karmand, supra*, 183 Md. App. at 494. Therefore, like the appellee’s second motion for reconsideration in *Karmand*, Jordan-El’s second motion for reconsideration -- filed in the form of a motion for appropriate relief -- was untimely under Maryland Rule 4-345(e). Indeed, Jordan-El’s motion for appropriate relief was filed more than ninety days after the imposition of his sentence, and more than ninety days after the circuit court’s order granting, in part, his petition for post-conviction relief. Furthermore, more than five years has passed since the imposition of Jordan-El’s sentence and since the circuit court partially granted Jordan-El’s petition for post-conviction relief. Accordingly, the circuit court lacked authority under Maryland Rule 4-345(e) to modify Jordan-El’s sentence and, therefore, could not have legally granted his motion for appropriate relief even if it found it meritorious. Therefore, the circuit court properly denied Jordan-El’s motion seeking leave to file a second motion for modification of his sentence.

We, therefore, affirm the judgment of the circuit court.

**APPELLEE’S MOTION TO DISMISS  
DENIED. JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**