

Circuit Court for Montgomery County
Case No. 125475C

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2008

September Term, 2023

PAVEL S. IVANOV

v.

STATE OF MARYLAND

Berger,
Shaw,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 5, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a 2015 jury trial in the Circuit Court for Montgomery County, Pavel S. Ivanov, appellant, was convicted of one count of first-degree murder. He was initially sentenced to a term of life imprisonment. However, following a review by a three-judge panel, his sentence was modified to a term of life, suspend all but 50 years, followed by five years’ supervised probation. Thereafter, appellant filed a timely motion for modification of sentence, but requested that consideration of the motion be held *sub curia*.

In April 2023, appellant, who at the time was represented by counsel, filed a motion requesting a hearing on the motion for sentence modification. The court denied that motion on May 4, 2023. Appellant then filed a “Motion to Reconsider the Denial of a Sentence Modification Hearing,” wherein he requested the court to reconsider the denial of a hearing on his motion. The court subsequently granted the motion for reconsideration and set a hearing date. Following a November 21, 2023, hearing, the court denied appellant’s motion for modification of sentence.¹ This appeal followed.

Appellant, now representing himself, raises eight issues on appeal: (1) whether there was insufficient evidence to sustain his conviction; (2) whether he was constructively denied the right to assistance of counsel at trial; (3) whether the trial court erred in allowing the State to use his custodial silence against him; (4) whether his right to be physically present in the court room was denied at trial; (5) whether the trial court asked an improper self-assessing question during voir dire; (6) whether the State presented false evidence at

¹ Although the court’s final order states that it is denying appellant’s motion to reconsider the denial of a sentence modification hearing, that motion had previously been granted and a hearing was held. Although appellant has not provided a transcript of that hearing, we assume that the court, in fact, denied his motion for modification of sentence.

trial; (7) whether he was informed of his right to object to jurisdiction at his initial appearance in the circuit court; and (8) whether the Judge who denied his motion for modification of sentence had subject matter jurisdiction to decide that motion. For the reasons that follow, we shall affirm the judgment of the circuit court.²

Appellant’s first seven claims were not raised in appellant’s motion for modification of sentence. And in any event, they could not be raised in such a motion. Rather, those claims were required to be raised either on direct appeal or in post-conviction. Consequently, we will not consider them in this appeal.

As to appellant’s eighth claim, he first contends that the denial of his motion for modification of sentence was a “nullity” because there is no evidence that the motions judge had been assigned by the County Administrative Judge to rule on the motion, as required by Maryland Rule 16-108(d).³ However, the Maryland Electronic Courts case

² The State has filed a motion to dismiss, claiming that this Court does not have the authority to review a decision on a motion to modify a sentence under Rule 4-345(e) that is addressed to the court’s discretion. However, in *Hoile v. State*, 404 Md. 591, 617 (2008), 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” and 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 light of the fact that a defendant may appeal when the court determines that it lacks authority to consider a motion to modify sentence, we are persuaded that we may consider the inverse claim now raised by appellant, specifically that the court committed an error of law when it considered his motion without the authority to do so.

³ We note that even if appellant were correct, the order would not have been entered without subject matter jurisdiction. Rather, it would constitute an “erroneous exercise of jurisdiction[.]” See *Tshiwala v. State*, 424 Md. 612, 622 (2012) (holding that even assuming that a motion for modification of sentence was assigned to the wrong judge, the denial of that motion did not constitute an “illegal sentence” because the assigned judge still had subject matter jurisdiction to consider the motion).

management system, of which we can take judicial notice, indicates that the County Administrative Judge for Montgomery County assigned appellant’s case to the motions judge on April 20, 2023, which was prior to any order on appeal being issued.

Appellant alternatively asserts that even if the motions judge was, in fact, assigned to decide his motion for modification of sentence, the assignment was improper because it should have been assigned to the sentencing judge in his case. Because the judge who originally sentenced him is retired, appellant contends that the motion should have been assigned to one of the judges on the three-judge panel who imposed his new sentence. However, in *Strickland v. State*, 407 Md. 344, 358 (2009), the Supreme Court of Maryland recognized that “the assignment of Circuit Judges for trials or hearings is entirely within the province of Circuit and County Administrative Judges, subject only to the supervisory authority of the Chief Judge of the [Supreme Court of Maryland] and the administrative rules adopted by the [Supreme Court of Maryland].” Moreover, the Court specifically noted that although a motion for modification of sentence is required to be heard by the court which imposed the sentence, that means the sentencing court and not the sentencing judge. *Id.* at 361. Because the judge who ruled on his motion for modification of sentence was serving as an associate circuit court judge in Montgomery County, the Montgomery County Administrative Judge had the absolute authority to assign him the motion.

Consequently, we hold that the motions judge had the authority to deny appellant’s motion for modification of sentence.

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