Circuit Court for Howard County
Case No. 13-K-92-027164

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2293

September Term, 2022

BERNARD ERIC MILLER

v.

STATE OF MARYLAND

Arthur,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.
Dissenting Opinion by Raker, J.

Filed: September 18, 2024

On September 8, 1992, 16-year-old Bernard Miller and 26-year-old Rodney Solomon attempted to steal cars from two victims before stealing a car from a third victim, Dr. Pamela Basu. As they drove away in the stolen car, they dragged Dr. Basu along the road for nearly two miles. Dr. Basu died from the resulting injuries.

Miller was tried as an adult in the Circuit Court for Howard County and found guilty of robbery, first-degree felony murder, and other offenses.[1] The court sentenced him to imprisonment for life plus a consecutive term of 10 years.

After nearly 30 years of imprisonment, Miller moved to reduce the duration of his sentence under Md. Code (2001, 2018 Repl. Vol., 2022 Supp.), § 8-110 of the Criminal Procedure Article. That provision, enacted in 2021 as part of the Juvenile Restoration Act, allows a person convicted for offenses committed as a minor to seek a sentence reduction after serving at least 20 years of the sentence. The circuit court denied Miller's motion.

Miller has appealed, contending that the circuit court applied incorrect legal standards when it denied his motion. The State has moved to dismiss the appeal, contending that the order denying the motion to reduce sentence is not appealable. The State further contends that the court did not err or abuse its discretion when it denied the motion.

[1] The type of theft committed by Miller and Solomon is commonly described as a carjacking. *E.g.*, *Solomon v. State*, 101 Md. App. 331, 333-34 (1994). At the time of the offenses, Maryland had not yet enacted a statute defining the offense of carjacking. The killing of Dr. Basu was the primary event that prompted the General Assembly to enact this State's anti-carjacking statute in 1993. *See generally Harris v. State*, 353 Md. 596, 607-08 (1999).

For the reasons discussed in this opinion, we deny the State's motion to dismiss the appeal. In our review of the circuit court's ruling, we conclude that the court made a legal error as part of its consideration of Miller's age at the time of the offenses. Consequently, we vacate the order denying his motion to reduce the duration of sentence and remand the case for further proceedings so that the court may reevaluate the motion under the correct legal standards.

FACTUAL AND PROCEDURAL BACKGROUND

A. Miller's Convictions and Sentences

On the morning of September 8, 1992, 16-year-old Bernard Miller was one of three passengers in a car driven by 26-year-old Rodney Solomon. Miller, who was a co-owner of the car but who did not have a driver's license, allowed Solomon to use the car to take a friend to a job-training program. The car ran out of gas on Interstate 95 in Howard County. Solomon and Miller walked to a nearby rest area, while the other two passengers stayed in the car.

In the parking lot, Solomon and Miller encountered Grace Lagana as she was arriving for work at the rest area. Solomon demanded her car keys, threatened to shoot her, and forcibly took her keys. Miller grabbed her wrist and forced her to the ground so that he could enter the car. A bystander heard Ms. Lagana call for help and started to run toward the car. Unable to start the engine, Solomon and Miller fled on foot through a wooded area between the rest area and a residential neighborhood.

Moments later, Solomon and Miller encountered Laura Becraft in the driveway of her home as she was preparing to drive her son to kindergarten. Solomon asked to use

the phone at her house, and Ms. Becraft told him that she did not have time to help. Ms. Becraft drove a short distance to pick up a neighbor's child at another house on the same street. Solomon and Miller then rushed toward the car. Solomon demanded her car keys, claimed that he had a gun, and grabbed her while trying to take her keys. When Ms. Becraft screamed for someone to call the police, Solomon stopped the attack and walked away, with Miller next to him.[2]

A few blocks away from Ms. Becraft's home, Dr. Pamela Basu was driving her two-year-old daughter Sarina to her first day of preschool. Solomon and Miller approached Dr. Basu's car while it was stopped at an intersection. They began punching Dr. Basu and trying to pull her out of the driver's side window. Miller entered the car from the passenger side. Miller pushed and kicked Dr. Basu to force her out of her car. Dr. Basu screamed, "My baby, my baby!" as she tried to reach her daughter in a car seat attached to one of the rear seats. As Solomon forced his way into the car and closed the door, Dr. Basu's arm became entangled in her seat belt. Solomon drove the car away, dragging Dr. Basu along the road. Dr. Basu died from countless injuries inflicted over her entire body.

In reaction to crying noises from the back seat, Miller made striking motions toward the car seat where Sarina Basu was secured. After Solomon stopped the car, Miller removed the car seat and threw it onto the road with Sarina still inside it. Bystanders rescued Sarina from the road.

[2] As they walked away from Ms. Becraft's car, Miller asked, "[W]hat do we do now?" Solomon responded, "[S]tay calm, don't worry, we'll get one."

Solomon and Miller left Dr. Basu's body in the middle of a road, approximately 1.7 miles from where they had stolen the car. They drove to a car wash to remove her blood from the outside of the car. After they left the car wash, a police officer spotted the stolen car and chased it until it reached a police roadblock. Solomon crashed the car while trying to evade the roadblock. Police apprehended Miller climbing out of the car and apprehended Solomon after a foot chase.

By indictment in the Circuit Court for Howard County, the State charged Miller with first-degree murder of Pamela Basu, kidnapping of Sarina Basu, and other offenses related to the robbery of Pamela Basu and the attempted robberies of Grace Lagana and Laura Becraft. The circuit court denied Miller's motion to transfer his case to juvenile court. The State prosecuted Miller separately from his accomplice, Rodney Solomon.[3]

After a multi-week trial in April 1993, the jury found Miller guilty of robbery and first-degree felony murder of Pamela Basu. The jury found Miller guilty of kidnapping Sarina Basu. With respect to the first victim, Grace Lagana, the jury found Miller guilty of assault, battery, and attempted theft. The jury found Miller guilty of assault with intent to rob the second victim, Laura Becraft.

On June 29, 1993, the circuit court sentenced Miller to life imprisonment for the murder of Pamela Basu and a consecutive term of 10 years for the kidnapping of Sarina

[3] Solomon's case was removed to Baltimore County, where a jury found him guilty of first-degree murder of Pamela Basu, robbery of Pamela Basu, kidnapping of Pamela Basu, kidnapping of Sarina Basu, robbery of Grace Lagana, and assault with intent to rob Laura Becraft. *Solomon v. State*, 101 Md. App. 331, 334 (1994). The court sentenced Solomon to life imprisonment without the possibility of parole. *Id.*

Basu. The court sentenced him to seven years for the attempted theft against Grace Lagana, one year for the battery of Grace Lagana, and three years for assault with intent to rob Laura Becraft. The court ordered that these three sentences would be consecutive to each other (for a total of 11 years) and concurrent with the life sentence for the murder of Pamela Basu.

Miller noted an appeal, but his appeal eventually was dismissed because of the failure to produce transcripts of the trial.[4] In 1998, the circuit court denied Miller's motion for modification of sentence under Md. Rule 4-345(e). In 2010, the circuit court partially granted Miller's petition for post-conviction relief and permitted him to pursue a belated appeal. Ultimately, this Court affirmed the judgments in an unreported opinion. *Miller v. State*, No. 2180, Sept. Term 2010 (Md. Ct. Spec. App. Apr. 25, 2013), *cert. denied*, 433 Md. 514 (2013).

The Maryland Parole Commission refused to grant parole to Miller in 2006 and again in 2017. After two amended decisions, the Commission granted Miller the opportunity for a new parole hearing in 2027, under a policy requiring the Commission to allow parole hearings at least once every 10 years for juvenile offenders.

[4] In a related appeal, the Court held that Miller, who had chosen to be represented by private counsel on a pro bono basis for his direct appeal, was not entitled to free trial transcripts because he had neither requested representation nor been refused representation by the public defender's office. *State v. Miller*, 337 Md. 71, 73-74 (1994). Reviewing the denial of a habeas corpus petition, the United States Court of Appeals for the Fourth Circuit determined that the Maryland courts did not violate Miller's constitutional rights by denying his request for trial transcripts. *Miller v. Smith*, 115 F.3d 1136, 1138 (4th Cir.) (en banc), *cert. denied*, 522 U.S. 884 (1997).

B. The Juvenile Restoration Act

In 2021, the General Assembly enacted the Juvenile Restoration Act, which took effect on October 1, 2021. 2021 Md. Laws ch. 61, § 2. The Act made "three significant changes" to sentencing practices in Maryland for offenders convicted as an adult for offenses committed as a minor. *Jedlicka v. State*, 481 Md. 178, 189 (2022).

First, the Juvenile Restoration Act authorizes trial courts, when sentencing a minor convicted as an adult, to impose a sentence less than the minimum term required by law. Md. Code (2001, 2018 Repl. Vol., 2022 Supp.), § 6-235(1) of the Criminal Procedure Article ("CP"). Second, the Act prohibits trial courts from imposing a sentence of life imprisonment without the possibility of parole or release when sentencing a minor convicted as an adult. CP § 6-235(2). Third, the Act permits certain juvenile offenders sentenced before the effective date of the Act to seek a reduction of sentence after serving 20 years of the sentence. CP § 8-110.

The sentence-reduction provisions of the Juvenile Restoration Act are available only to a person who was convicted as an adult for an offense committed when the person was a minor;[5] who was sentenced before the effective date of the Act; and who has been imprisoned for at least 20 years for the offense. CP § 8-110(a). An offender who satisfies the eligibility criteria may file a motion to reduce the duration of the sentence. CP § 8-110(b)(1). The circuit court must hold a hearing before deciding to grant or deny

[5] Generally, "as it pertains to legal age and capacity," the term "'minor' means an individual under the age of 18 years." Md. Code (2014, 2019 Repl. Vol.), § 1-103(b) of the General Provisions Article.

the motion. CP § 8-110(b)(2). The offender has the right to be present at the hearing (CP § 8-110(b)(3)) and to introduce evidence in support of the motion. CP § 8-110(b)(4)(i). The State may introduce evidence either in opposition to or in support of the motion. CP § 8-110(b)(4)(ii). Notice of the hearing must be provided to the victim or to the victim's representative. CP § 8-110(b)(5).

CP § 8-110(d) sets forth the factors that the court must consider when deciding whether to reduce the duration of a sentence. Those factors are:

> (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.

CP § 8-110(d)(1)-(11).

"Notwithstanding any other provision of law," after conducting a hearing in accordance with the statute, the court may reduce the duration of the sentence "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." CP § 8-110(c). The court must issue its decision in writing, and its decision must address the factors enumerated in the statute. CP § 8-110(e).

If the court denies the motion to reduce the duration of a sentence, or if the court grants the motion in part, the offender may not file a second motion for at least three years. CP § 8-110(f)(1). If the court denies or grants in part a second motion to reduce the duration of the sentence, the offender may not file a third motion for at least three years. CP § 8-110(f)(2). The offender may not file a fourth motion to reduce the duration of the sentence. CP § 8-110(f)(3). Relief sought under CP § 8-110 "is distinct from and does not affect other terms of the sentence, such as the offender's opportunity to seek parole." *Jedlicka v. State*, 481 Md. at 189.

C. Motion to Reduce Duration of Sentence

In February 2022, after more than 29 years of imprisonment, Miller filed a motion to reduce the duration of his sentence pursuant to CP § 8-110. Miller asked the court to suspend his sentence except for the time he had already served.

In support of the motion, Miller argued that the crimes that he committed in September 1992 were the product of his transient immaturity at the age of 16. Miller

pointed to his disadvantaged childhood and the influence of his adult accomplice as factors that influenced his participation in the robbery and felony murder of Pamela Basu. Miller asserted that he had demonstrated remorse and maturity during his three decades of imprisonment.

Along with his request for a sentence reduction, Miller asked the court to commit him to the Department of Health for substance abuse treatment under Md. Code (1982, 2019 Repl. Vol.), § 8-507 of the Health-General Article. Miller submitted a report from Thomas Mee, Licensed Certified Social Worker-Clinical (LCSW-C),[6] concerning Miller's need for substance abuse treatment. According to the report, Miller reported heavy alcohol use and daily marijuana use from the age of 12 or 13 until the time of his incarceration. Miller reported that he "was high on marijuana and PCP at the time of the offense[s]." Miller reported that he had started using heroin and other opiates regularly while in prison but stated that he stopped using opiates in 2019.

Mr. Mee diagnosed Miller with severe opioid use disorder, severe alcohol use disorder, severe cannabis use disorder, and moderate PCP use disorder, with each disorder in sustained remission in a controlled environment. Mr. Mee concluded that Miller had "develop[ed] a psychological and physical dependency" on marijuana and alcohol at a young age and had "developed a dependency on opiates after his

[6] "LCSW-C or Licensed Certified Social Worker-Clinical is the highest level of licensure for a Social Worker." *Haines v. Vogel*, 250 Md. App. 209, 214 n.3 (2021). Among other things, an LCSW-C is authorized to "[e]valuate, diagnose and treat biopsychosocial conditions, mental and emotional conditions and impairments, and mental disorders[.]" Code of Maryland Regulations 10.42.02.03(D)(3).

incarceration in an apparent attempt to self medicate and escape from his problems." Mr. Mee also opined that Miller "has a history of depression and anxiety, which went untreated for most of his life."

In the conclusion of his report, Mr. Mee wrote: "If [Miller] is referred for and successfully completes intensive residential substance abuse treatment with appropriate step down and follow up services, his chances for successful community readjustment would be greatly enhanced." In Mr. Mee's opinion, those services "would reduce [Miller's] risk of recidivism." Mr. Mee opined that Miller is "amenable to community based residential substance abuse treatment[,]" "is positively motivated for treatment[,] and appears to be at the contemplation stage of change."

The State opposed the motion for sentence reduction. The State disputed many of Miller's assertions about his life before the offenses, arguing that his assertions contradicted information from the 1993 presentence investigation report, which included summaries of interviews with Miller and his mother. The State argued that Miller grew up with adequate "family support" and had denied that he was "actually impaired" at the time of the offenses. The State argued that Miller "played a role in both" of the attempted robberies and "had an active role" in the murder of Pamela Basu. The State also argued that the evidence did not show that Miller had been "subjected to peer pressure" or "any undue influence" from his adult accomplice, Rodney Solomon. The State concluded that Miller "remains a danger to the public" and that "the interests of justice would not be better served by a reduced sentence."

D. Hearing on Motion to Reduce Duration of Sentence

The circuit court held an evidentiary hearing over three days in December 2022 and January 2023. The court took notice of the case file, including the transcripts from Miller's trial and sentencing hearings. Miller introduced records from his correctional institutions, certificates of his participation in educational programs during his incarceration, and letters from family members and friends in support of his release. The State introduced victim impact statements, the presentence investigation report, and other disciplinary records from Miller's correctional institutions.

During the hearing, Miller testified about his life before the offenses, his actions during the offenses, and his experiences during 30 years of incarceration. Miller testified that, during his childhood in the District of Columbia, his family had little money, and he witnessed frequent drug use by his mother and other adults in his household. Miller earned passing grades until high school, when he needed to repeat the tenth grade because of failing grades caused by poor attendance. Miller testified that, around the age of 13, he began selling cocaine because he was drawn to the lifestyle that some of the older men in his neighborhood could afford by selling drugs. Miller used money that he made from selling drugs to buy part ownership of a Cadillac, along with "Tim," one of his older friends from the neighborhood.

Miller recalled that, in September 1992, Tim introduced Miller to Rodney Solomon as "his friend, a good man[,]" who had just been released from prison. Miller spent the next two days "partying, drinking, [and] smoking" with Solomon and friends from Miller's home neighborhood in the District of Columbia. Miller testified that he

and his friends had been smoking a combination of marijuana and PCP just before they left in the Cadillac to drive one of the friends to a job-training program. Miller claimed that, when he joined Solomon in the two attempted robberies and the robbery that resulted in the death of Pamela Basu, he "just wanted to get home." Miller said that he "really wasn't thinking" but was just "following somebody that [he] felt like was going to get [him] home." Miller stated that he "made a bad, bad mistake." Miller expressed sorrow and regret for the "pain" and "trauma" that he caused when "[he] took a wife away from her husband" and "took a mother away from her daughter."

At a series of correctional facilities, Miller accumulated many disciplinary infractions from 1993 until 2012, including repeated infractions for disobeying orders from correctional officers. He accumulated no infractions during a seven-year period from June 2012 to May 2019. Since that time, however, he accumulated infractions for possession of opioids, use of opioids, and possession of a cell phone.

During the early years of his incarceration, Miller took classes and earned a General Education Diploma (GED). He worked in food service or sanitation jobs throughout most of his incarceration. Beginning in 2005, he regularly attended group meetings for Narcotics Anonymous. Since 2009, he participated in various counseling and self-help programs offered to prisoners: Taking a Chance on Change; Inside Out Dad;[7] Thinking, Deciding, Changing; and the Alternatives to Violence Project.

Antonio Wilkinson, a lifelong friend of Miller, testified in support of the motion.

[7] Miller fathered one child before his incarceration at the age of 16.

Mr. Wilkinson, who was about six or seven years older than Miller, had been Miller's neighbor in a subsidized housing community in the District of Columbia. According to Mr. Wilkinson, all of the adults in Miller's household were addicted to crack cocaine. Acting as a self-described "big brother," Mr. Wilkinson sometimes bought shoes or clothing when Miller needed them. Mr. Wilkinson had maintained contact with Miller throughout his incarceration. In Mr. Wilkinson's opinion, Miller was "very remorseful" and had "matured and held himself accountable."

Miller offered testimony from Joseph Murtha, a former Assistant State's Attorney who had served on a team of attorneys that prosecuted Miller and Solomon in 1993. About 20 years after the trial, while Mr. Murtha was visiting a correctional facility to speak with a client, Miller recognized Mr. Murtha in a waiting room and started a conversation. According to Mr. Murtha, Miller "expressed remorse" during the conversation and appeared to be "a much different individual" than the defendant he had prosecuted many years earlier.

Miller introduced testimony from Commissioner John Smack of the Maryland Parole Commission, who discussed the Commission's two previous decisions to refuse parole. When the Commission refused parole in 2006, the Commission cited factors including the "institutional adjustment" of Miller, which the Commission described as "horrible." When the Commission refused parole in 2017, the Commission stated that that Miller had "made good progress and was remorseful."

Katina Pierce, an assistant director for the Damascus House RISTORe[8] program, testified about Miller's application to that program. Ms. Pierce explained that this program operates a transitional housing community in Suitland, Maryland, for persons in their first year of release from incarceration. This program provides services that include individual therapy, behavioral health groups, substance abuse treatment, and psychoeducational classes. Ms. Pierce and the program's executive director had "decided that [Miller] would be a good fit" for the program "based on the answers that he gave during his interview."

Miller also offered testimony from Lateisha Miller, one of his family members, who works as an assistant manager for a chain of grocery stores. She testified that, if released, Miller would have the opportunity to work at a grocery store located within walking distance from the Damascus House housing community.

Thomas Mee, LCSW-C, testified about his evaluation of Miller's need for substance abuse treatment. The court accepted Mr. Mee "as an expert social worker with expertise in corrections." In his testimony, Mr. Mee stated: "My recommendation is that [Miller] be potentially released to drug treatment to this program that he's been accepted into[.]" Mr. Mee opined that this program "would be an ideal type of program to provide the services that he needs on a longer-term basis, . . . providing not only residential treatment for whatever period of time is needed, but also step-down services where he

[8] According to the organization's website, "RISTORe" is an acronym for "Rehabilitating Individuals So They Overcome Recidivism." https://dh-ristore.org/ (archived at https://perma.cc/3DUZ-U9GX).

would be gradually reintegrated into the community," including "mental health treatment[.]" Mr. Mee also opined that "GPS monitoring," "regular urinalysis," and "an environment where people are not engaging in substance abuse" would reduce Miller's risk of recidivism. Mr. Mee believed that, if these measures were taken, Miler would be "suitable" for release.

In addition to victim impact statements, the State introduced testimony from Biswanath Basu, the husband of the deceased victim, Pamela Basu. Mr. Basu described the immeasurable loss of his beloved wife and the mother of his daughter, as well as the suffering that they had endured for "every day" of the previous 30 years. Mr. Basu expressed his opinion that Miller had "never expressed regret, sorrow, or remorse" for his crimes and that he "should never be released from his confinement."

E. Denial of Motion to Reduce Duration of Sentence

On January 27, 2023, the circuit court entered an order denying Miller's motion to reduce the duration of his sentence. The court explained its decision in a memorandum opinion discussing the factors listed in CP § 8-110(d)(1) to (d)(11).

The first statutory factor is "the individual's age at the time of the offense[.]" CP § 8-110(d)(1). In this regard, the court stated that Miller was "two months shy of his 17th birthday" at the time of his offenses. The court expressed disagreement with some of defense counsel's descriptions of Miller as "a mere boy" at that time. The court said that it was "aware of the scientific evidence" establishing "that a person's brain continues to develop until approximately age 25." The court acknowledged: "From these studies it can be inferred that at the time of the offense[s] [Miller's] brain had not yet fully

developed." "However," the court continued, "there has been no demonstrable evidence as to the stage of development of [Miller's] brain at that time, nor has science advanced to a point to enable such a determination." The court noted that Miller's age was "a factor to be considered," but stated that "counsel's depiction of him as a boy belies the facts of his life preceding the criminal event, and the event itself."

In its discussion of "the nature of the offense" (CP § 8-110(d)(2)), the court described the two attempted robberies and the robbery that caused the death of Pamela Basu. The court mentioned that Miller's actions included: grabbing Ms. Lagana and forcing her onto the ground while attempting to enter her car; standing with Solomon as Solomon threatened Ms. Becraft; punching Dr. Basu and attempting to pull her from her car; entering Dr. Basu's car from the passenger side; pushing and kicking Dr. Basu out of her car as she screamed for her child; riding in the car as it dragged Dr. Basu to her death; and throwing the car seat containing Sarina Basu onto the roadway. The court quoted remarks in which the sentencing judge had described these incidents as "'horrific'" and "'abominable'" crimes, "'as significant [and] as serious in nature'" as any crimes ever tried in that court.

Later in its opinion, the court discussed "the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense[.]" CP § 8-110(d)(9). The court recognized that Rodney Solomon, "an adult male age 26," was "the primary perpetrator" of the offenses. The court said that, although Miller's "overall role in these incidents was less than Mr. Solomon's, his actions were not passive." The court observed that Miller had "no prior relationship" with Solomon, but had first met Solomon

just "two days before the incidents." "Because of [the] lack of a prior relationship" between them, such as a relationship with a "family member or a family friend," the court said that it could not "accept[]" that Solomon had "exerted undue influence" over Miller. The court concluded that Miller "may have been influenced" by Solomon, "but he was not controlled by him."

In discussing the "history and characteristics of the individual" (CP § 8-110(d)(2)), the court addressed Miller's claim that he "was high on PCP" and marijuana on the morning of the offenses. A toxicology report confirmed that Miller had both substances in his system on that date. The State nevertheless pointed to the presentence investigation report, which stated that Miller admitted that he "smoked a PCP cigarette" on the night before the offenses, but "denied that he was under the influence of drugs, alcohol or narcotics during the offenses." The court accepted that Miller "sometimes abused alcohol and drugs" before the offenses, but said that it could not find, "based on the evidence presented, that [he] had any significant impairment at the time the offenses were perpetrated."

Within its analysis of CP § 8-110(d)(2), the court discussed Miller's "family history." The court observed that Miller "grew up in a troubled neighborhood in D.C.[,]" that his family's "financial circumstances were poor," and that his family members abused drugs. The court stated that Miller's father, a United States Marine, had moved away during Miller's childhood, but maintained "weekly contact" with Miller until he relocated to New York during the year before the offenses. The court acknowledged that "[Miller's] family circumstances were poor, and guidance had its limitations."

"However," the court said, "he was not without positive male role models in his father and Antonio Wilkinson[,]" his neighbor. The court noted that, during his interview with the presentence investigator, Miller had "described his childhood as good," had "denied any physical or sexual abuse," and had stated "that he was raised to know the difference between right and wrong." The court wrote: "Despite the evident problems in his family, effort was made to provide guidance to [Miller] during his upbringing."[9]

In a related discussion, the court considered "the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences[.]" CP § 8-110(d)(10). The court said that it was familiar with "studies regarding the continuing of brain development up to age 25" and that it was "aware that culpability is usually less for a juvenile than an adult." The court nevertheless concluded: "Based on his history, [Miller] was street wise in ways many juveniles growing up under more advantageous conditions are not." Based on "the total length of time it took for these incidents to unfold,"[10] the court reasoned that Miller "had the time and ability to appreciate the risks involved even if he did not consider that his actions would help cause Dr. Basu's death."

The third statutory factor is "whether the individual has substantially complied

[9] The court discussed Miller's "family history" within its consideration of "the history and characteristics of the individual" under CP § 8-110(d)(2). The court did not expressly mention the eighth factor, which is "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[.]" CP § 8-110(d)(8).

[10] All three incidents occurred within a period of approximately 15 to 25 minutes.

with the rules of the institution in which the individual has been confined[.]" CP § 8-110(d)(3). Addressing this factor, the court stated that Miller "had difficulty adjusting to incarceration as evidenced by the numerous violations over his first 10 years" of imprisonment, which the court considered to be "evidence of [Miller's] defiance[.]" The court stated that, "[a]fter numerous disciplinary measures," Miller "seemed to have settled" and accumulated no infractions from June 2012 to May 2019. Beginning in 2019 and continuing into 2020, Miller accumulated four infractions for possession and use of opioids. The court described these infractions as "a downward deviation" and "evidence of a lack of maturity[.]"[11] "Based upon all the evidence," the court said that it could not "find [Miller] to be in substantial compliance with the prison rules."

The fourth factor is "whether the individual has completed an educational, vocational, or other program[.]" CP § 8-110(d)(4). In its discussion of this factor, the court said that it gave Miller "much credit" for earning his GED while in prison. The court noted that Miller had not completed any vocational program during his incarceration. The court "credit[ed] him for working" throughout his incarceration in "unskilled positions," such as food service and sanitation, but said that this credit was "limited" because Miller had "attained no employable skills."

The court observed that Miller had introduced "numerous certificates" of his participation in various educational and counseling programs, including one for 14 years of active participation in Narcotics Anonymous. The court said that it "g[ave] [Miller]

[11] The court noted that Miller also committed two violations for possessing a cell phone but said that it "d[id] not weigh" those violations "heavily against him."

credit for attempting to better himself." The court nevertheless concluded, based on Miller's testimony about his participation in Narcotics Anonymous, that he had "never committed himself" to that program. The court acknowledged Miller's "attendance" in other programs, but said that it could not determine whether he achieved "any positive results . . . other than the receipt of a certificate."

Under CP § 8-110(d)(5), the court must consider "whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction[.]" In this regard, the court focused on a letter Miller had written to the court a few months after he filed his motion to reduce his sentence. The court stated that, in the letter, Miller stated "the exact words necessary to evidence heartfelt contrition as well as sorrow for the extreme harm he has caused." The court wrote: "Unfortunately, the sentiments expressed in the letter have not been replicated anywhere else in the record." The court found that Miller "ha[d] not provided evidence of the insight necessary to reflect rehabilitation." "Based on the totality of the evidence," the court said that it could not "conclude that [Miller] has shown a fitness to reenter society."

Under CP § 8-110(d)(6), the court must consider "any statement offered by a victim or a victim's representative[.]" With respect to this factor, the court said that "[t]he effect" of the testimony from Biswanath Basu, the husband of Pamela Basu and father of Sarina Basu, "was very compelling." The court noted that the other victim impact statements "were also heartfelt and moving."

Under CP § 8-110(d)(7), the court must consider "any report of a physical, mental, or behavioral examination of the individual conducted by a health professional[.]"

Addressing this factor, the court considered the testimony and report from Thomas Mee, LCSW-C. The court stated: "Neither in his report, nor in his testimony did Mr. Mee make a recommendation." The court continued: "The closest Mr. Mee comes to making a recommendation is by stating that intensive residential substance abuse treatment with appropriate step downs and follow-up services would reduce [Miller's] risk of recidivism."

The court expressed concern about Mr. Mee's "admitted lack of information." The court stated that Mr. Mee "was not able to meet in person" with Miller, "did not know the full extent of the crimes committed" by Miller, and "had not reviewed" the presentence investigation report "wherein [Miller] and his family contradicted some of the information upon which [Mr. Mee] relied." The court noted that, although Mr. Mee had credited Miller's claim that he "stopped his drug use in 2019," this claim was shown to be "incorrect" by positive drug test results from 2020. Because of the "lack of information" available to Mr. Mee, the court said that it could not "place great weight on the recommendations given."

Finally, CP § 8-110(d)(11) states that the court should consider "any other factor the court deems relevant." The court deemed no additional factors to be relevant to its determination.

Based on its consideration of the statutory factors, the court concluded that Miller "is still a danger to the public" and that "the interests of justice will not be better served by [a] reduction of sentence[.]" The court denied Miller's motion to reduce the duration of his sentence.

Within 30 days after the circuit court entered its order denying the motion to reduce the duration of sentence, Miller noted this appeal.

DISCUSSION

In this appeal, Miller asks this Court to vacate the order denying his motion to reduce sentence and to remand this case for further proceedings. First, Miller contends that the circuit court erred in interpreting and applying the legal standards governing its decision. Second, Miller contends that the court made incorrect factual findings as part of its consideration of the statutory factors. In his brief, Miller presents two questions:

> 1. Did the court below err as a matter of law in denying appellant the benefit of the age-related presumptions regarding juvenile offenders that informed the enactment of and are embodied in CP § 8-110?
>
> 2. Do the clearly-erroneous findings of fact reflected in the trial court's decision with respect to certain of the factors required to be considered under CP § 8-110(d) require that the decision be vacated and the case remanded for further proceedings?

As an initial matter, the State has moved to dismiss this appeal. The State contends that the order denying the motion to reduce sentence is not an appealable order. The State argues that, if this Court does review the merits of the circuit court's decision, then the decision should be upheld. The State contends that the court made no errors of law or fact when it declined to reduce Miller's sentence.

This discussion will begin by addressing the State's motion to dismiss. We conclude that, under our precedent, this Court has appellate jurisdiction and the authority to review Miller's contention that the circuit court evaluated his motion under an incorrect legal standard. Accordingly, the motion to dismiss is denied.

In our review of the circuit court's order, we conclude that the court made an error of law when interpreting and applying CP § 8-110. Consequently, we will vacate the order denying Miller's motion and remand the matter so that the court may reevaluate the motion under the correct legal standards.

Because the order will be vacated on those grounds, it is unnecessary to resolve Miller's additional challenges to the court's factual findings. When the court reevaluates the motion, the court will have the opportunity to clarify the disputed factual statements.

A. Motion to Dismiss Appeal

The State has moved to dismiss this appeal, contending that Miller has no right to appeal from the order denying his motion to reduce the duration of sentence. According to the State, an order denying a motion under CP § 8-110 is appealable only if the court determines that the defendant is ineligible for a sentence reduction or that the court lacks authority to consider the motion.

"Any analysis of a right to appeal" in Maryland ordinarily begins with the principle "that 'appellate jurisdiction is entirely statutory[.]'" *Brown v. State*, 470 Md. 503, 549 (2020) (quoting *State v. Brookman*, 460 Md. 291, 310 (2018)). The primary statute governing the right of appeal provides that a party may appeal from a "final judgment entered in a civil or criminal case by a circuit court." Md. Code (1974, 2020 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article. "To be a final judgment, the decision 'must be so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending [the appellant's] rights and interests in the subject matter of the proceeding.'" *Fuller v. State*, 397 Md. 372, 383

(2007) (quoting *Sigma Reproductive Health Ctr. v. State*, 297 Md. 660, 665 (1983)).

In criminal cases, a final judgment is rendered when a sentence is announced or imposed. *Brown v. State*, 470 Md. at 550 (citing *Hoile v. State*, 404 Md. 591, 611-12 (2008)). In addition, some "rulings on matters arising after sentencing" may satisfy the definition of a final judgment. *See Douglas v. State*, 423 Md. 156, 172 (2011). For instance, the denial of a petition for writ of actual innocence is a final judgment because the ruling "concludes a petitioner's rights as to all claims based on newly discovered evidence alleged in the petition." *Id.* at 171. On the other hand, the denial of a motion to commit the defendant to the Department of Health for substance abuse treatment under section 8-507 of the Health-General Article ordinarily is not a final judgment, "because a motion brought under that statute 'may be filed repeatedly and the denial of a single petition does not preclude [the defendant] from filing another.'" *Douglas v. State*, 423 Md. at 174 (quoting *Fuller v. State*, 397 Md. at 394).

Under the express provisions of the Juvenile Restoration Act, an order denying a motion to reduce sentence conclusively settles the defendant's rights for a minimum of three years. The Act specifies that, if the court denies a defendant's motion, the defendant "may not file a second motion . . . for at least 3 years." CP § 8-110(f)(1). If the court denies a second motion, the defendant "may not file a third motion . . . for at least 3 years." CP § 8-110(f)(2). Finally, "[w]ith regard to any specific sentence," a defendant "may not file a fourth motion to reduce the duration of the sentence." CP § 8-110(f)(3).

In the present case, therefore, the order denying Miller's motion to reduce

sentence precludes him from making another motion for at least three years and further limits him to making just two more motions during the rest of his lifetime. To that extent, the order "denies [Miller] the means to prosecut[e] or defend[] his . . . rights and interest in the subject matter of the proceeding[.]" *Douglas v. State*, 423 Md. at 171 (citations and quotation marks omitted). The denial of his motion to reduce sentence is "not analogous" to the denial of a motion for commitment to the Department of Health for substance abuse treatment, which "does not affect the length of a sentence" and which "may be filed repeatedly" at any time. *Fuller v. State*, 397 Md. at 389.

The State has not argued that the order denying Miller's motion is anything other than a conclusive determination of his rights or that the order leaves anything left to be adjudicated in the case. The State, in other words, has not argued that the order lacks finality. Instead, the State invokes a different principle under which, ordinarily, "no direct appeal lies from the circuit court's denial of a motion for modification or reduction of a sentence that the defendant concedes to be a *legal* sentence." *Fuller v. State*, 169 Md. App. 303, 309-10 (2006) (emphasis in original), *aff'd*, 397 Md. 372 (2007).

Historically, this principle has two justifications. The first justification is based on a statute, the Uniform Postconviction Procedure Act, which denies the right of appeal in certain proceedings. CP § 7-107(b)(1) provides that defendants have no right to appeal "[i]n a case in which a person challenges the validity of confinement under a sentence of imprisonment by seeking the writ of habeas corpus or the writ of coram nobis or by invoking a common law or statutory remedy other than [the Uniform Postconviction Procedure Act]." The second justification comes from case law. Maryland courts have

held that a decision declining to modify a sentence under Md. Rule 4-345(e) is left entirely to the discretion of the trial judge and therefore is unreviewable. *See generally Hoile v. State*, 404 Md. at 617.

It is doubtful that either justification offers a sound reason to prohibit an appeal from the denial of a motion to reduce sentence under the Juvenile Restoration Act. By its terms, the Uniform Postconviction Procedure Act eliminates the right to appeal only where a person "challenges the validity of confinement under a sentence of imprisonment[.]" CP § 7-107(b)(1). A motion to reduce sentence under the Juvenile Restoration Act, however, does not in any sense challenge the *validity* of confinement. Rather, this type of motion asks the court to reduce the duration of a prison sentence based on findings that the person "is not a danger to the public" and that "the interests of justice will be better served by a reduced sentence." CP § 8-110(c).[12]

The second justification—that "a decision left to the discretion of the trial court judge is not reviewable on appeal"—has been called into serious doubt. *Fuller v. State*, 397 Md. at 388. Maryland's highest court has explained that this "justification was obviated" (*id.*) by its opinion in *Merritt v. State*, 367 Md. 17 (2001). In that case, the Court emphatically rejected the continued recognition of a "general rule, adhered to by appellate courts at an earlier time, that any trial court ruling on a discretionary matter was

[12] Moreover, the appeal-stripping language of CP § 7-107(b)(1) "refers to separate common law or statutory causes of action, such as habeas corpus or coram nobis actions which are separate civil actions." *State v. Kanaras*, 357 Md. 170, 183 (1999). A motion to reduce sentence made under the Juvenile Restoration Act "is part of the same criminal proceeding and not a wholly independent action." *Id.* (discussing motion to correct illegal sentence).

insulated from appellate review." *Merritt v. State*, 367 Md. at 25. The Court has indicated that the prior holdings prohibiting appellate review of rulings on motions to modify a sentence "'appear[ ] to have been simply an application of th[is] more general rule,'" which has since been repudiated. *Fuller v. State*, 397 Md. at 388 (emphasis omitted) (quoting *Merritt v. State*, 367 Md. at 25).

These statements from the *Fuller* opinion "could be read to call into question the clearly articulated earlier rule prohibiting appeal of a discretionary denial" of a motion for modification of sentence. *Hoile v. State*, 404 Md. at 617. Nevertheless, the Court has explained that these statements did not overrule its prior holdings that rulings on "motions to reconsider sentence that are entirely committed to a court's discretion" are not appealable. *Id.* Those prior holdings "remain[] good law." *Id.* The Court has acknowledged that "[t]here may be merit in revisiting the general issue of the appealability of orders denying motions [to modify sentence] brought under Rule 4-345(e)[,]" but, in the interest of "standing by things already decided (*i.e.*, *stare decisis*)," the Court has declined to do so. *Brown v. State*, 470 Md. at 548. In the present case, therefore, the issue is whether Miller's appeal is prohibited by the principle that rulings on "motions to reconsider sentence that are entirely committed to a court's discretion" generally are not reviewable. *Hoile v. State*, 404 Md. at 617.

Maryland courts have not squarely addressed whether defendants have a right to appeal generally from any order denying a motion to reduce sentence under the Juvenile Restoration Act. In two reported opinions, this Court held that the defendant had the right to appeal from an order denying a motion to reduce sentence under CP § 8-110,

where the defendant contended that the court made an error of law when it denied the motion: *Johnson v. State*, 258 Md. App. 71, 86-87 (2023), and *Sexton v. State*, 258 Md. App. 525, 540-41 (2023). In its motion to dismiss this appeal, the State relies chiefly on the *Johnson* and *Sexton* opinions.

The defendant in *Johnson v. State*, 258 Md. App. at 76, had been sentenced to a total of 50 years of imprisonment in four separate criminal cases for offenses committed in four different incidents when he was a minor. After more than 20 years of imprisonment, Johnson filed motions in each of his cases seeking a sentence reduction under the Juvenile Restoration Act. *Id.* at 84-85. The circuit court denied the motions without a hearing, concluding that Johnson "'d[id] not qualify for relief'" under the Act because he not been imprisoned for at least 20 years for any individual offense. *Id.* at 85.

In the ensuing appeal, neither party questioned whether Johnson had the right to appeal from the orders denying the motions for sentence reduction. *Johnson v. State*, 258 Md. App. at 86. This Court nevertheless raised the issue of appealability on its own initiative. *Id.* This Court remarked that a motion to reduce the duration of sentence under CP § 8-110 "bears at least a superficial similarity" to a motion for modification of sentence under Md. Rule 4-345(e). *Johnson v. State*, 258 Md. App. at 87. This Court observed that Maryland's highest court "has held that a 'discretionary denial' of a motion for modification of sentence, under Maryland Rule 4-345(e), . . . generally is not appealable." *Id.* at 87 (citing *Hoile v. State*, 404 Md. at 617). This Court explained, however, that in *Hoile* the Court had "distinguished 'motions to correct a sentence based upon an error of law and motions to reconsider a sentence that are entirely committed to

the court's discretion'" and "concluded that only an appeal from the denial of a motion 'entirely' within a sentencing court's discretion is barred." *Johnson v. State*, 258 Md. App. at 87 (quoting *Hoile v. State*, 404 Md. at 617).

In Johnson's cases, this Court wrote, the circuit court "did not exercise discretion," but instead "ruled in each case that Mr. Johnson was ineligible to seek relief" under CP § 8-110. *Johnson v. State*, 258 Md. App. at 87. The Court reasoned: "Those rulings were legal determinations that were 'unqualified' and conclusively settled Mr. Johnson's rights in the subject matter and were, therefore, final judgments." *Id.* (citing *Hill v. State*, 247 Md. App. 377, 387 (2020)). The Court added that, under the circumstances, it was unnecessary to decide "whether a circuit court's denial of a motion for modification of sentence, following a hearing that addresses the merits of that motion, is appealable." *Johnson v. State*, 258 Md. App. at 87 n.16.

The defendant in *Sexton v. State*, 258 Md. App. at 528, had been sentenced to life imprisonment and two consecutive 20-year terms for offenses committed as a minor. When Sexton moved for a sentence reduction, there was "no dispute that Mr. Sexton was eligible" to seek relief under CP § 8-110, "but the State opposed any reduction of his sentence." *Id.* at 531. At the conclusion of the merits hearing, the circuit court issued an oral decision addressing the factors set forth in CP § 8-110(d)(1)-(11). *Id.* at 537-39. In its discussion of "any other factor the court deems relevant" under CP § 8-110(d)(11), the court stated that the original sentencing judge "'took into consideration Mr. Sexton's youth in rejecting a life without parole sentence.'" *Id.* at 539. The court denied the motion, stating that it "'d[id] not find that [Sexton] ha[d] met the requirements under the

statute to justify a reduction in sentence[.]'" *Id*. at 540. Explaining its conclusion, the court stated that it was "'not convinced'" that the original sentence was "'inappropriate[.]'" *Id*. at 539. The court concluded: "'[W]hether or not Mr. Sexton has exhibited behavior that entitles him to a release from incarceration is, in this Court's mind, a parole board decision and not this Court's decision.'" *Id.* at 540 (emphasis omitted).

On appeal, Sexton contended, and the State agreed, that the circuit court had "applied the wrong legal standard and, thereby, abused its discretion" when it denied his motion for reduction of sentence under CP § 8-110. *Sexton v. State*, 258 Md. App. at 540. Before addressing the merits, this Court addressed whether the order was appealable. *Id.* at 540-41.[13] This Court stated that it "need not resolve" the issue of "[w]hether there is a right to appeal the denial of a motion to reduce a sentence under [the Juvenile Restoration Act] generally[.]" *Id.* at 540. This Court observed that the *Johnson* opinion held that the circuit court's decisions "constituted 'legal determinations that were "unqualified" and conclusively settled [the defendant's] rights in the subject matter and were, therefore,' appealable, final judgments." *Sexton v. State*, 258 Md. App. at 541

[13] In its appellate brief in the *Sexton* case, the State affirmatively argued that the order was appealable. The State wrote: "Regardless of whether the denial of a [Juvenile Restoration Act] motion is appealable generally, it is appealable at a minimum where, as here, the circuit court applied the wrong legal standard or failed to recognize or exercise its discretion." In another previous case, the State conceded that a defendant has the right to appeal from an order denying a motion to reduce sentence under the Juvenile Restoration Act. *Farmer v. State*, 481 Md. 203, 231 n.25 (2022).

(quoting *Johnson v. State*, 258 Md. App. at 87). This Court concluded: "That is the situation here as well." *Sexton v. State*, 258 Md. App. at 541.

The Court proceeded to review Sexton's contention that "the circuit court applied the wrong legal standard, failed to recognize its authority to rule on his motion, and thereby abused its discretion" when it denied his motion. *Sexton v. State*, 258 Md. App. at 541. The Court recognized that, although "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[,]" the court does not have discretion to apply an incorrect legal standard. *Id.* at 541-42. The Court found fault with the circuit court's rationale, explaining that "the appropriateness of the original sentence, and the facts considered by the original sentencing judge, were not at issue before the court." *Id.* at 545. The Court concluded that the circuit court "committed an error of law" when it reasoned that the decision of whether Sexton was entitled to release was a decision for the parole board rather than the court. *Id.* In light of that error, the Court vacated the order denying Sexton's motion and directed the circuit court to reevaluate the motion in accordance with the standards set forth in the statute. *Id.*

In the present case, the State contends that Miller's appeal should be dismissed under the principle that a defendant has no right to appeal from the denial of a motion to modify a sentence if the decision is "entirely within the sentencing court's discretion." The State argues that, under *Johnson* and *Sexton*, an order denying a motion to reduce the duration of sentence may not be appealed "unless the circuit court denied the motion on the grounds that it lacked authority" to grant the motion. The State asserts that, in both

Johnson and *Sexton*, the circuit courts "found that the movant was legally ineligible for relief." The State asserts that, in the present case, the circuit court "did not make a legal ruling that Miller was ineligible for relief."

In response, Miller argues that a "careful review" of the *Sexton* opinion shows that the opinion "*contradicts*, rather than supports," the State's theory. Miller asserts that, contrary to the State's assertions, the circuit court in *Sexton* never ruled that the defendant was legally ineligible for relief or that the court lacked authority to consider the motion.

We agree that the State's description of *Sexton* is inaccurate. It is true that, in *Johnson v. State*, 258 Md. App. at 87, the circuit court determined that the defendant "was ineligible to seek relief" under CP § 8-110. That statement, however, is not true for the defendant in *Sexton*. In that case, there was "no dispute that Mr. Sexton was eligible" under the statutory criteria, but only a dispute about whether the court should exercise its discretion to reduce the sentence. *Sexton v. State*, 258 Md. App. at 531. The court held a full hearing on Sexton's motion (*id.* at 531-36), issued a decision addressing all statutory factors (*id.* at 537-39), and concluded that Sexton failed to show that he "'met the requirements under the statute to *justify* a reduction in sentence[.]'" *Id.* at 540 (emphasis added). The purported legal errors in *Sexton* did not concern the defendant's "eligibility" to seek a sentence reduction.

The rule suggested by the State—that a defendant may appeal from the denial of a CP § 8-110 motion *only* if the court concludes that the defendant is legally ineligible for relief or that the court lacks authority to consider the motion—is not stated anywhere in the *Sexton* or *Johnson* opinions. Rather, those opinions recite a different rule: "'only an

appeal from the denial of a motion "entirely" within a sentencing court's discretion is barred.'" *Sexton v. State*, 258 Md. App. at 540-41 (quoting *Johnson v. State*, 258 Md. App. at 87 (quoting *Hoile v. State*, 404 Md. at 617)); *accord Johnson v. State*, 223 Md. App. 582, 591 (2015) (stating that, "according to *Hoile*, it is only an appeal from the denial of a motion 'entirely' within a sentencing court's discretion that is barred"). When making the discretionary determination required by CP § 8-110, the circuit court does not have discretion to employ an incorrect interpretation of the statute. *See Sexton v. State*, 258 Md. App. at 541-42.

In the present case, Miller, much like the appellant in *Sexton*, contends that the circuit court made an error of law when it evaluated his motion for sentence reduction. Miller seeks the same type of review employed in *Sexton*: to determine whether the circuit court applied the correct legal standards governing its exercise of discretion under CP § 8-110. In fact, one of Miller's main arguments is that the circuit court made an error analogous to an error committed in the *Sexton* case, by abdicating some of its authority to the original sentencing judge.[14]

We are unconvinced that the appealability issue here should be resolved any differently from how it was resolved in *Sexton*. We conclude that this appeal is not

[14] In its motion to dismiss, the State argues that the circuit court did not, in fact, abdicate its authority to the original sentencing judge. That argument concerns the merits of Miller's appeal, not whether he has the right to appeal at all. It would be unreasonable to require a defendant to demonstrate that his contentions of legal error are correct as a precondition for reviewing whether those contentions are correct.

barred under the principles stated and applied in *Sexton*. Accordingly, the State's motion to dismiss the appeal is denied.[15]

B. Purported Legal Errors in Denial of Motion to Reduce Sentence

As his primary argument in this appeal, Miller contends that the circuit court misapprehended and misapplied the standards governing its decision under the Juvenile Restoration Act. Miller argues that the circuit court "erred as a matter of law by denying [him] the benefit" of what he calls "the age-related presumptions regarding juvenile offenders that informed the enactment and are embodied in CP § 8-110[.]"

The Juvenile Restoration Act "was introduced and supported under the theory that juveniles have diminished culpability at the time of their [offenses] and are likely to have been rehabilitated during their incarceration, and, thus, the public interest may be best served by their release." *Johnson v. State*, 258 Md. App. 71, 89 (2023). When introducing the legislation, one of its sponsors stated: "'Any human being who reaches his 37th birthday is a different person than he was at the age of 17. . . . A person's brain doesn't fully mature until he's 25 years old, and with maturity comes different thinking, different attitudes, and a different approach to life.'" *Id.* at 89 n.17 (quoting Hearing in

[15] Our ruling here is consistent with another reported opinion published while this appeal was pending. *Trimble v. State*, ___ Md. App. ___, ___, 2024 WL 3616379 (Aug. 1, 2024). In that case, the State moved to dismiss Trimble's appeal from the denial of his motion to reduce sentence under CP § 8-110. *Id.* at ___, 2024 WL 3616379, at *9. Denying the motion to dismiss, this Court explained: "Trimble's primary allegations are that the circuit court improperly interpreted and applied CP Section 8-110." *Id*. The Court held that, "under our precedent," Trimble had the right to appeal where he contended that the order denying his motion was "based upon an alleged error of law." *Id.* The State's motion to dismiss Miller's appeal here raises substantially the same arguments that this Court rejected in *Trimble*.

Judicial Proceedings Committee (Feb. 17, 2021) (statement of Senator Chris West)). According to the same legislator, the Act offers juvenile offenders serving lengthy sentences "an opportunity to be released from prison by proving they have reformed their lives[.]" *Farmer v. State*, 481 Md. 203, 231 n.24 (2022) (citing written testimony of Senator Chris West (Mar. 26, 2021) concerning Senate Bill 494 (2021)). The Act creates "another avenue for release[,]" outside the parole system, for juvenile offenders "who can demonstrate maturity and rehabilitation following a substantial period of incarceration." *Jedlicka v. State*, 481 Md. 178, 183 (2022).

The General Assembly enacted the Juvenile Restoration Act following a series of decisions establishing that the Eighth Amendment to the United States Constitution, which prohibits cruel and unusual punishments, "places limits on the sentencing of juvenile offenders[.]" *Carter v. State*, 461 Md. 295, 308 (2018). In this line of decisions, the United States Supreme Court held that the Eighth Amendment prohibits states from imposing the death penalty on juvenile offenders (*Roper v. Simmons*, 543 U.S. 551, 578 (2005)), prohibits states from imposing the sentence of life without the possibility of parole for juvenile offenders not convicted of homicide (*Graham v. Florida*, 560 U.S. 48, 74-75 (2010)), and prohibits mandatory sentences of life without the possibility of parole for juvenile offenders convicted of homicide (*Miller v. Alabama*, 567 U.S. 460, 465 (2012); *see also Montgomery v. Louisiana*, 577 U.S. 190, 193-94 (2016)).

As the foundation of these decisions, the Court identified "[t]hree general differences between juveniles under 18 and adults[.]" *Roper v. Simmons*, 543 U.S. at 569. First, juveniles have "[a] lack of maturity and an underdeveloped sense of

responsibility[,]" qualities which "often result in impetuous and ill-considered actions and decisions." *Id.* (citations and quotation marks omitted). Second, relative to adults, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure[,]" in part because "juveniles have less control, or less experience with control, over their own environment." *Id*. Third, "the character of a juvenile is not as well formed as that of an adult[;] [t]he personality traits of juveniles are more transitory, less fixed." *Id*. at 570. Together, these characteristics establish "the diminished culpability of juveniles" (*id.* at 571), as well as a "greater possibility" for rehabilitation. *Id.* at 570. Although states are "not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime," states must provide those offenders with "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham v. Florida*, 560 U.S. at 75. Even when sentencing a juvenile convicted of homicide, courts must give due consideration to "a juvenile's 'lessened culpability' and greater 'capacity for change[.]'" *Miller v. Alabama*, 567 U.S. at 465 (quoting *Graham v. Florida*, 560 U.S. at 68, 74).

In Maryland, advocates for the adoption of the Juvenile Restoration Act claimed that this legislation would embody principles established by the United States Supreme Court for the sentencing of juvenile offenders. *Farmer v. State*, 481 Md. at 231 n.24. The Act provides that the court may reduce the duration of a prison sentence imposed on an eligible offender "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." CP § 8-110(c). In making that determination, the court must consider the factors set forth in

CP § 8-110(d)(1) to (d)(11). Many of these factors relate to the diminished culpability of juvenile offenders and to their capacity for rehabilitation. "The statute is silent as to the weight to be given to each factor[.]" *Sexton v. State*, 258 Md. App. 525, 530 (2023). Rather, the statute creates "a balancing test" that requires courts to consider the enumerated factors "without any one factor receiving special weight." *Trimble v. State*, ___ Md. App. ___, ___, 2024 WL 3616379, at *5 (Aug. 1, 2024). In general, the court should consider the factors "both in light of the purpose of [the statute] and the Eighth Amendment jurisprudence from which the statute derives." *Sexton v. State*, 258 Md. App. at 545.

"[T]he 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." *Sexton v. State*, 258 Md. App. at 541. The deferential abuse-of-discretion standard "generally applies in the review of a sentencing decision because of the broad discretion that a court usually has in fashioning an appropriate sentence." *Brown v. State*, 470 Md. 503, 553 (2020) (citing *Sharp v. State*, 446 Md. 669, 687 (2016)). But "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[.]'" *Sexton v. State*, 258 Md. App. at 541 (quoting *Faulkner v. State*, 468 Md. 418, 460-61 (2020)). "Whether the circuit court properly construed and applied CP § 8-110 is a question of law that we review *de novo*." *Sexton v. State*, 258 Md. App. at 542.

As the State points out, trial judges have no obligation "to spell out in words every thought and step of logic[]" when announcing the reasons for a decision. *Beales v. State*,

329 Md. 263, 273 (1993). Absent an indication that the trial judge misstated or misapplied the applicable legal principles, this Court presumes that trial judges know the law and apply it properly. *See, e.g.*, *State v. Chaney*, 375 Md. 168, 184 (2003). Appellate courts "are reluctant to find error, opining that the judge misperceives the law, unless persuaded from the record that a judge made a misstatement of the law or acted in a manner inconsistent with the law." *Medley v. State*, 386 Md. 3, 8 (2005). This presumption of correctness, however, can be overcome where the trial judge's statements, "taken at face value, evince[] an incorrect understanding of the relevant law." *Id.* at 10. "Typically," an appellate court "will not attribute to the words of a [trial] court's opinion or order a sense beyond the plain meaning of language appearing in the record, unless the context supports a different reading." *Id.*

In this appeal, Miller argues that the circuit court's written decision "reflects a misapprehension and misapplication of the legal standards" governing its exercise of discretion under CP § 8-110. Miller asserts that an essential purpose of the Juvenile Restoration Act is to give effect to the jurisprudence that requires courts to consider a juvenile offender's "youth and attendant characteristics" when making sentencing decisions. *Miller v. Alabama*, 567 U.S. at 483. Those characteristics include "transient rashness, proclivity for risk, and inability to assess consequences[,]" as well as "'vulnerab[ility] to negative influences and outside pressure[.]'" *Id.* at 471-72 (quoting *Roper v. Simmons*, 543 U.S. at 569).

In his brief, Miller contends that the court erred when considering his "age at the time of the offense[.]" CP § 8-110(d)(1). Analyzing that factor, the court wrote:

> Defendant's age at the time of the offense was 16, two months shy of his 17th birthday. Throughout the hearing, defense counsel referred to him as a mere boy. The Court is aware of the scientific evidence that a person's brain continues to develop until approximately age 25. From these studies it can be inferred that at the time of the offense Defendant's brain had not yet fully developed. However, there has been no demonstrable evidence as to the stage of development of Defendant's brain at that time, nor has science advanced to a point to enable such a determination. Defendant's age is a factor to be considered, but counsel's depiction of him as a boy belies the facts of his life preceding the criminal event, and the event itself. These facts will be developed more fully in discussion of other factors herein.

Miller also takes issue with the court's discussion of "the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences[.]" CP § 8-110(d)(10). In its analysis of that factor, the court wrote:

> The Court has read studies regarding the continuing of brain development up to age 25. Further the Court commends both the spirit and implementation of this relatively new statute. The Court is aware that culpability is usually less for a juvenile than an adult. [The sentencing judge] recognized this as well when he rejected the State's request to sentence Defendant to life without parole. Given the facts of this case, and the community reaction to it, it took great courage for [the sentencing judge] to apply the sentence he did and not succumb to outside pressures.
>
> Defendant was two months shy of his 17th birthday. Based on his history, he was street wise in ways many juveniles growing up under more advantageous conditions are not. The attack on Dr. Basu was not a spur of the moment decision but came after two prior failed attempts to steal a car. Although Defendant may have given the adult some deference, he was not blindly following his influence. Lastly, because of the total length of time it took for these incidents to unfold, Defendant had the time and ability to appreciate the risks involved even if he did not consider that his actions would help cause Dr. Basu's death.

Citing these comments, Miller argues that the circuit court "gave only lip service," at most, to his "youth and its 'attendant characteristics' of immaturity, impetuosity, greater susceptibility to the influence of others[,] and lack of capacity to appreciate risks

and consequences." According to Miller, the Act required the court to "presume[]" that his "youth, at age 16, and its 'attendant characteristics' . . . played a role in the poor judgments and choices" that he made in September 1992. Miller argues that the court "essentially repudiated those presumptions" by "minimizing the significance" of his age at the time of the offenses.

In its brief, the State argues that the circuit court "properly rendered an individualized consideration of Miller's age at the time of the offenses." The State argues that, when considering "the individual's age at the time of the offense[]" (CP § 8-110(d)(1)), the court is not required to treat this factor "as categorically mitigating." The State argues that the statute permits the court to consider this factor "on a sliding scale[:] [t]he younger the movant at the time of the offense, the more this factor weighs in the movant's favor." The State also argues that the court was not required to "assign Miller's age a predetermined relative weight."[16]

Generally speaking, we have no issue with the State's basic description of CP § 8-110(d). *Accord Trimble v. State*, ___ Md. App. ___, ___, 2024 WL 3616379, at *7-8 (Aug. 1, 2024) (holding that circuit court was not required to consider age as a mitigating factor under CP § 8-110(d)(1) where the offender was around 17 years and 8 months old

[16] The State likens the age factor of CP § 8-110(d)(1) to the age factor in the statute governing decisions to transfer a criminal case to juvenile court. That statute requires the court to consider "(1) the age of the child; (2) the mental and physical condition of the child; (3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children; (4) the nature of the alleged crime; and (5) the public safety." CP § 4-202(d). These factors "are necessarily interrelated and, analytically, they all converge on amenability to treatment." *Davis v. State*, 474 Md. 439, 464 (2021).

at time of offenses). It is implicit in the requirement that the court consider the offender's age at the time of the offense that this factor should weigh most heavily in favor of offenders who were youngest at the time of their offenses. The court, for example, may assign greater mitigating weight to this factor if the offender was 14 years old at the time of the offenses as opposed to 17 years and 11 months old. The statutory scheme also makes it apparent that the court should not consider the offender's age in isolation but in relation to other individualized characteristics. Among other things, the statute requires the court to consider "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[.]" CP § 8-110(d)(8) (emphasis added). Accordingly, even if two offenders were the same age, the court might reach different conclusions about them based on their individual circumstances. Moreover, all factors should be considered in relation to the questions of whether the offender "is not a danger to the public" and whether "the interests of justice will be better served by a reduced sentence." CP § 8-110(c)(1)-(2).

Missing from the State's argument, however, is any defense of the circuit court's stated rationale for how it evaluated the factor of Miller's age at the time of the offenses. The court wrote that it was "aware of the scientific evidence that a person's brain continues to develop until approximately age 25." The court acknowledged: "From these studies it can be inferred that at the time of the offense[s] [Miller's] brain had not yet fully developed." "*However*," the court said, "there has been no demonstrable evidence as to the stage of development of [Miller's] brain at that time, nor has science advanced to a point to enable such a determination." (Emphasis added.)

Under a straightforward reading of these sentences, the court discounted the "infer[ence] that at the time of the offense[s] [Miller's] brain had not yet fully developed" because of his failure to adduce "demonstrable evidence as to the stage of development of [Miller's] brain at that time[.]" These statements reflect a belief that, in order to establish that the age factor should weigh in his favor, Miller bore some burden to offer proof of the stage of his brain development at the time of the offenses. The court also suggested that this burden might be impossible to satisfy, because "science" has not "advanced to a point to enable" the type of determination suggested by the court. The State has not attempted to defend the court's focus on Miller's failure to present evidence of the stage of development of his brain in September 1992.[17]

We can find nothing in the statute's language, structure, or purpose that might justify a conclusion that the court should discount age as a mitigating factor unless the offender produces proof of the stage of the offender's brain development at the time of the offenses. The statute relies on the foundational premise that decisions about the sentencing of juvenile offenders must account for the basic differences between juveniles and adults. Thus, along with the consideration of "the individual's age at the time of the offense[]" (CP § 8-110(d)(1)), the statute requires the court to consider "the *diminished culpability* of a juvenile as compared to an adult, including an *inability to fully appreciate risks and consequences*[.]" CP § 8-110(d)(10) (emphasis added). This statutory

[17] The State tells us that the circuit court "concluded *only* that Miller's counsel's depiction of his maturity was inaccurate and that Miller's age was a factor to consider." (Emphasis added.) In our assessment, this description is not a complete account of what the opinion actually said.

recognition of the diminished culpability of juveniles is grounded in the legal principles that govern sentencing of juvenile offenders. *See Farmer v. State*, 481 Md. at 231 n.24; *Johnson v. State*, 258 Md. App. at 89 n.17; *see also Sexton v. State*, 258 Md. App. at 545. Those principles, in turn, are informed by "developments in psychology and brain science" that "continue to show fundamental differences between juvenile and adult minds[,]" and, in particular, show that "parts of the brain involved in behavior control continue to mature through late adolescence." *Graham v. Florida*, 560 U.S. at 68; *see also Miller v. Alabama*, 567 U.S. at 471-72 & n.5.

We agree with Miller that CP § 8-110 should not be construed to require offenders moving for a sentence reduction to produce "brain-development evidence specific to each juvenile offender." To be sure, nothing in the statute would prohibit the introduction of evidence of the juvenile offender's mental or psychological characteristics at the time of the offenses. Yet it is unnecessary for juvenile offenders to prove and re-prove, in each case, the correctness or applicability of the basic premises inherent in the statutory factors, as well as in the case law governing the sentencing of juvenile offenders.

The statements in which the circuit court relied on the absence of "demonstrable evidence as to the stage of development of [Miller's] brain" at the time of his offenses are sufficient to overcome the presumption that the court understood the law and applied it correctly. These statements, "taken at face value, evince[] an incorrect understanding of the relevant law." *Medley v. State*, 386 Md. at 10. The circuit court here should not have placed any weight on or drawn any adverse inferences based on the absence of evidence about the stage of Miller's brain development in September 1992.

The State has not argued that the court's evaluation of Miller's age at the time of the offenses was inconsequential to the ultimate decision. The statements about Miller's brain development were the centerpiece of the court's discussion of CP § 8-110(d)(1). It is difficult to imagine a fair reading of the opinion that would ignore the court's own explanation of how it evaluated this factor. The court's evaluation of Miller's age was necessarily related to other factors, including "the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences[.]" CP § 8-110(d)(10). Because of the interrelationship between factors, there is a substantial likelihood that the court might have evaluated other factors differently if the court had not rejected or discounted the premise that Miller's brain was not fully mature at the time of the offenses.[18]

In addition to Miller's arguments about the circuit court's overall consideration of his age, Miller makes a secondary argument about the court's comments about the original sentencing decision. The court said that it was "aware that culpability is usually less for a juvenile than an adult" and opined that the sentencing judge "recognized this as

[18] Recognizing the differences between adolescent minds and adult minds is particularly important when assessing culpability for felony murder. "The felony-murder doctrine traditionally attributes death caused in the course of a felony to all participants who intended to commit the felony, regardless of whether they killed or intended to kill." *Miller v. Alabama*, 567 U.S. at 491 (Breyer, J., concurring). "This rule has been based on the idea of 'transferred intent'; the defendant's intent to commit the felony satisfies the intent to kill required for murder." *Id.* "At base, the theory of transferring a defendant's intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate." *Id.* at 492. "Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively." *Id.*

well when he rejected the State's request to sentence [Miller] to life without parole." The court added: "Given the facts of this case, and the community reaction to it, it took great courage for [the sentencing judge] to apply the sentence he did and not succumb to outside pressures."

Miller argues that, "[f]or practical purposes," the circuit court "found that the original trial judge's refusal to sentence Miller to life without the possibility of parole was sufficient" to account for his diminished culpability as a juvenile. According to Miller, the court used the original trial judge's consideration of his youth as a "surrogate" for the independent analysis required by CP § 8-110. Miller acknowledges that the circuit court "did not expressly articulate" any deference to the original sentencing judge. Miller nevertheless argues that it is "implicit" that the circuit court thought that Miller's age "was already adequately taken into account" by the original sentencing decision.

To the extent that Miller is arguing that the circuit court improperly deferred to the trial judge's original sentencing decision, we are unpersuaded. Miller's argument overstates the significance of the comments about the trial judge's original decision to sentence Miller to life with the possibility of parole. The court's statement that the original sentencing judge also "recognized" Miller's relatively diminished culpability as a juvenile was little more than a side comment about part of the history of the case. By its terms, the statement does not suggest that the court deferred any of its decision-making authority to the original sentencing judge. Immediately after that statement, the court proceeded with its own, independent assessment of Miller's culpability. The comment about the original sentencing decision, therefore, does not demonstrate any

misunderstanding of what the statute requires.[19]

Miller attempts to analogize the comments about the original sentencing decision to comments analyzed in *Sexton v. State*, 258 Md. App. 525 (2023). In that case, "[a]t the conclusion of the hearing on Mr. Sexton's motion for reduction of sentence, the court stated that it was 'not convinced' that the sentence imposed by the original sentencing judge 'under all these circumstances is inappropriate[.]'" *Sexton v. State*, 258 Md. App. at 545. This statement, made at the conclusion of the circuit court's ruling, suggested that the court incorrectly believed that, to justify a sentence reduction, Sexton needed to "'convince[]'" the court that the original sentence was "'inappropriate[.]'" *Id.* As this Court explained, however, "the appropriateness of the original sentence, and the facts considered by the original sentencing judge, were not at issue before the court." *Id.*

This attempted analogy is unpersuasive. In the present case, unlike in *Sexton*, the circuit court said nothing to suggest that its decision was based on an evaluation of the appropriateness of the original sentence. As the court explained, its conclusions followed directly from the court's independent analysis of the facts presented to it.

[19] Under the circumstances, it is not surprising that the circuit court offered some remarks about the decision of the original sentencing judge. Miller himself drew attention to certain aspects of the original sentencing decision. In his written motion, Miller argued that the sentencing judge had "declined . . . to impose the sentence of life without parole 'primarily because of the supporting role played by [Miller] and also because of his age[.]'" During the hearing, counsel for Miller again mentioned that the sentencing judge had declined to impose a sentence of life without the possibility of parole, "based on the circumstances of the crime, [Miller's] role in the offense, and his youthfulness, his age[.]" The court's statement that the original sentencing judge "recognized" Miller's youth as a mitigating factor is not materially different from defense counsel's written and oral arguments on that matter.

As explained above, however, the court's own assessment of the statutory factors was affected by a separate legal error. The court should not have placed any weight on the absence of evidence of the stage of Miller's brain development at the time of the offenses. The State does not even acknowledge this error, much less argue that the error should not lead to an order vacating the judgment. Because the court employed an incorrect legal standard when it considered Miller's motion to reduce the duration of his sentence, we must vacate the order denying his motion and remand this case for a reevaluation.

On remand, "the circuit court should again weigh and address the factors set forth in CP § 8-110(d) and make the determinations required by CP § 8-110(c), both in light of the purpose of [the Juvenile Restoration Act] and the Eighth Amendment jurisprudence from which the statute derives." *Sexton v. State*, 258 Md. App. at 545. In view of the amount of time that has passed since the hearing in January 2023 and the nature of the factors that the court is required to consider, the court should allow the parties the opportunity to present additional evidence developed since the last hearing. *See id.* at 546. The court again must comply with CP § 8-110(e), which requires the court to issue a written decision that addresses all statutory factors.

C. Purported Factual Errors

In this appeal, Miller further contends that the circuit court made "clear errors of fact" in its written decision analyzing the factors set forth in CP § 8-110(d).

Miller cites no authority establishing that a defendant may challenge the court's factual findings as part of an appeal from a denial of a motion to reduce sentence. In the

prior opinions in *Johnson v. State*, 258 Md. App. 71, 87 (2023), and *Sexton v. State*, 258 Md. App. 525, 540-41 (2023), this Court reviewed contentions that the circuit courts made errors of law in denying a motion to reduce sentence under CP § 8-110. Those opinions do not address whether, in addition to a challenge to the circuit court's legal determinations, the defendant may seek review of the court's factual findings.

Miller observes that, in other contexts, this Court reviews a trial court's factual findings for clear error. *E.g.*, *State v. Day*, 469 Md. 526, 539 (2020); *Rainey v. State*, 236 Md. App. 368, 374 (2018). Maryland Rule 8-131(c) provides that, in actions tried without a jury, the appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." In applying this standard, the appellate court must view the evidence and the inferences reasonably drawn from the evidence in the light most favorable to the prevailing party. *Small v. State*, 464 Md. 68, 88 (2019). Ordinarily, "[i]f there is any competent material evidence to support the factual findings of the trial court[,]" those findings are not clearly erroneous. *Id.* (citation and quotation marks omitted).

As explained above, we are vacating the order denying Miller's motion and directing the court to reevaluate the motion under the correct legal standards. The new decision may obviate any need to address Miller's challenges to the original factual findings. Under the circumstances, therefore, it is unnecessary for this Court to resolve these challenges to the original factual findings. In the interest of guiding the court and the parties on remand, we will merely highlight the disputed factual findings.

Miller argues that the circuit court made clearly erroneous findings about his expressions of remorse. In pertinent part, the court wrote:

> By letter dated June 25, 2022, addressed to this Court, Defendant says the exact words necessary to evidence heartfelt contrition as well as sorrow for the extreme harm he has caused. . . . The task for the Court is to determine if the 2022 letter represents true maturity. Unfortunately, the sentiments expressed in the letter have not been replicated anywhere else in the record. Defendant has not provided evidence of the insight necessary to reflect rehabilitation. . . . Had Defendant written his letter to the Court prior to obtaining counsel, its sincerity would be difficult to question. Based on the totality of the evidence, the Court cannot conclude that defendant has shown a fitness to reenter society.

Miller disputes the court's statements that "the sentiments expressed" in his June 2022 letter had not been "replicated anywhere else in the record." Miller points out that the record included evidence that he had expressed remorse on other occasions. Mr. Murtha, a former Assistant State's Attorney who had prosecuted Miller, testified that Miller "expressed remorse" during a conversation about 20 years after the trial. Commissioner Smack testified that the Maryland Parole Commission found that Miller "was remorseful" when it refused parole in 2017. Miller points out that, in addition to the June 2022 letter, he expressed remorse through his own testimony at the hearing, which is also part of the record. In light of this evidence, Miller argues that the court "was simply, but obviously, wrong" to conclude that the expressions of remorse from the June 2022 letter lacked support anywhere else in the record.

In its appellate brief, the State does not discuss Miller's contention that the court made factual errors in its statements about his expressions of remorse. The State simply argues that the circuit court was not required to credit the evidence Miller offered in

support of his motion. Although the State is correct in asserting that a factfinder is generally free to reject evidence (*see, e.g.*, *Pryor v. State*, 195 Md. App. 311, 329 (2010)), this general proposition fails to address the substance of Miller's challenge. To our understanding, Miller is not complaining that the court failed to credit the evidence of his expressions of remorse. Miller is complaining that the court appeared to find that the record included no other evidence at all, aside from the June 2022 letter, that Miller had ever expressed remorse. That finding, according to Miller, is plainly incorrect.

Miller's interpretation of the court's statement is not the only possible interpretation. It is possible that, when the court mentioned the "sentiments expressed in the letter," the court was referring to what it had described as "heartfelt contrition" and "sorrow" for the "extreme harm" caused by Miller. This description conveys the tenor and quality of the expression, not simply its existence. The court may have concluded that the hearing testimony failed to replicate certain qualities that the court perceived in the June 2022 letter.

Under the circumstances, we need not resolve this matter of interpretation. On remand, when the circuit court reevaluates Miller's motion and issues a new written decision, the court will have the opportunity to clarify the meaning of any statements about his expressions of remorse.

Miller also contends that the circuit court made factual errors in its discussion of the report and expert testimony from Thomas Mee, LCSW-C. The court wrote: "Neither in his report, nor in his testimony, did Mr. Mee make a recommendation." The court continued: "The closest Mr. Mee comes to making a recommendation is by stating that

intensive residential substance abuse treatment with appropriate step downs and follow-up services would reduce [Miller's] risk of recidivism." Citing Mr. Mee's "lack of information," the court ultimately said that it could not "place great weight on the recommendations given."

Miller contends that the court was incorrect when it stated that Mr. Mee did not "make a recommendation." Miller asserts that, "twice during his hearing testimony . . . , Mr. Mee expressly stated his recommendation that if Miller's motion were granted, he should be released into the drug treatment program into which Miller had been provisionally accepted." Miller cites the transcript of Mr. Mee's testimony in response to questions asking him to state his "recommendation for Mr. Miller in light of [the] drug treatment evaluation[.]" Mr. Mee answered: "My recommendation is that he be potentially released to drug treatment to th[e] program that he's been accepted into[.]" In response to additional questions, Mr. Mee added: "I would recommend that he could be released to the program that he's been accepted into."

Miller's challenge to the circuit court's statements about Mr. Mee's lack of a recommendation might reflect little more than a semantic disagreement. The State theorizes that, when the court stated that Mr. Mee did not "make a recommendation," the court most likely "was referring to 'a recommendation' about Miller's fitness to reenter society." The State argues that the court "actually considered Mr. Mee's drug treatment recommendation," but "explained that it would not place 'great weight' on Mr. Mee's recommendation" because of Mr. Mee's "lack of information."

We need not resolve this matter of interpretation. When the circuit court

reevaluates Miller's motion and issues a new written decision, the court will have the opportunity to clarify the meaning of any statements that Mr. Mee failed to "make a recommendation."

Finally, Miller takes issue with the circuit court's discussion of a certificate that Miller had received for 14 years of "[a]ctive [p]articipation" in Narcotics Anonymous (NA). The court said that it had "two concerns" with Miller's participation in Narcotics Anonymous. First, the court said that Miller did not present evidence that he had undertaken a 12-step recovery program. The court continued:

> The second concern arose when the Court inquired of Defendant during his testimony if he was a friend of Bill Wilson. Defendant was not familiar with the Court's reference. Members of AA [i.e., Alcoholics Anonymous], NA, and related 12 step programs often refer to themselves as friends of Bill Wilson who, now deceased, was a founder of AA. The only conclusion the Court can reach is that despite his attendance at NA, he never committed himself to the program. . . .

In his brief, Miller argues that the court should not have relied on Miller's "failure to grasp [the court's] cryptic reference to Bill Wilson" to support the conclusion that Miller "never committed himself" to Narcotics Anonymous. Miller argues that the court received no evidence "concerning either the identity of Bill Wilson or with respect to how participants in AA or NA 'often refer to themselves.'"

Although Miller criticizes the court's reasoning, he does not appear to dispute the conclusion that, "despite [Miller's] attendance at [Narcotics Anonymous], he never committed himself to the program." As we see it, the parties and the court should not devote any time debating the significance of Miller's lack of familiarity with a "Bill Wilson." The court had more than adequate support for its conclusion that Miller "never

committed himself" to Narcotics Anonymous.[20] If Miller believes that this conclusion is incorrect, then on remand he may offer any reasons why he thinks the court should revisit that conclusion.

CONCLUSION

For the reasons stated in this opinion, we deny the State's motion to dismiss the appeal. We conclude that, under our precedent, this Court has appellate jurisdiction and the authority to review Miller's contention that the circuit court evaluated his motion under an incorrect legal standard.

In our review of the merits, we conclude that the circuit court made a legal error as part of its consideration of Miller's age at the time of the offenses. The court erred by rejecting or discounting the "infer[ence] that at the time of the offense[s] [Miller's] brain had not yet fully developed" at the time of the offenses because of his failure to adduce "demonstrable evidence as to the stage of development of [his] brain at that time[.]" The State does not even acknowledge the court's error, much less argue or explain why the error claimed by Miller should not lead to an order vacating the judgment.

Consequently, we vacate the order denying Miller's motion to reduce the duration of his sentence. This case is remanded to the circuit court for a reevaluation of Miller's

[20] In his testimony, Miller candidly downplayed the significance his participation in Narcotics Anonymous. Miller testified that, when he joined that program, "it was more or less people meeting people." He stated that he "definitely c[ould] recall . . . participating[,]" but there "really wasn't a whole lot going on" at many of the meetings. When the court later inquired later about his participation, Miller said that he was "more or less" a participant, and he described Narcotics Anonymous and other groups were "like meeting grounds" where prisoners could "go talk to somebody" rather than programs "focused on . . . particular problems[.]"

motion under the standards embodied in CP § 8-110. Given the time that has passed since the previous hearing and the factors that the court is required to consider, the court should allow the parties to present additional evidence developed since the last hearing. Finally, the court again must issue a written decision addressing all statutory factors.

MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY HOWARD COUNTY.

Circuit Court for Howard County
Case No. 13-K-92-027164

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2293

September Term, 2022

BERNARD ERIC MILLER

v.

STATE OF MARYLAND

Arthur,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Raker, J.

Filed: September 18, 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).

Raker, J., Dissenting

Respectfully, I dissent. I would affirm the judgment of the Circuit Court for Howard County. The motions court, in my view, applied the proper legal standard when evaluating appellant's request for a sentence reduction under the Juvenile Restoration Act. The majority holds that the motion court inappropriately placed weight on the absence of evidence of appellant's brain development at the time of his offenses when considering the first of the eleven factors. Maj. op. at 47. This view misinterprets the motion court's words. The Juvenile Restoration Act does not require that the motion court view a defendant's youth as an automatic, mitigating factor, but rather requires that the court consider the age of the defendant in conjunction with the ten other factors enumerated in the statute. *See Trimble v. State*, __Md. App. __, __, 2024 WL 3616379, at *5 (Aug. 1, 2024) ("CP Section 8-110 does not have enumerated purposes by which to determine how to weigh its factors. . . . [T]he General Assembly has created a balancing test for JUVRA motions, requiring courts to consider the eleven factors in CP Section 8-110(d) without any one factor receiving special weight.").

I agree that CP § 8-110 "should not be construed to require offenders moving for a sentence reduction to produce 'brain-development evidence specific to each juvenile offender'" as appellant argues, and the majority adopts. The circuit court did not do that here. The court explained each of the required factors under CP § 8-110 that led to its decision to deny appellant's request for a sentence reduction despite no requirement that the court "spell out in words every thought and step of logic" utilized in reaching its decision. *Beales v. State*, 329 Md. 263, 273 (1993).

As the majority explains, CP § 8-110, the Juvenile Restoration Act, "embod[ies] principles established by the United States Supreme Court for the sentencing of juvenile offenders." *See Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding that imposing death penalty on a juvenile offender violates Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 74-75 (2010) (holding that when juvenile not convicted of homicide, states may not impose sentence of life without the possibility of parole); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (prohibiting mandatory sentence of life without the possibility of parole for juveniles convicted of homicide). CP § 8-110 acknowledges the differences between juveniles and adults, recognized by the United States Supreme Court in *Roper v. Simmons*.[1] The Act provides that a court may reduce the sentence of an eligible offender if "(1) the individual is not a danger to the public; and (2) the interests of justice will be better served by a reduced sentence." CP § 8-110(c). When determining whether an eligible offender meets these two criteria, the court considers eleven factors enumerated in CP § 8-110(d)(1) to CP § 8-110(d)(11). These factors are to be evaluated as a balancing test, with no single factor afforded greater weight than any other factor. *See Trimble*, __Md. App. at __, 2024 WL 3616379, at *5.

Whether to grant a motion for reduction of sentence under CP § 8-110 generally lies within the discretion of the circuit court upon consideration of the required factors.

[1]The Court in *Roper* laid out three differences between adults and juveniles to be considered when sentencing juveniles. Those differences lead to the "diminished culpability" of juveniles and can be summarized as a lack of maturity and responsibility that results in poorly considered actions; juveniles have a greater susceptibility to peer pressure and other negative pressures; and, finally, the character of juveniles is not fixed. *Roper*, 543 U.S. at 569-71.

Sexton v. State, 258 Md. App. 525, 541 (2023). We apply an abuse of discretion standard when considering sentencing decisions "because of the broad discretion that a court usually has in fashioning an appropriate sentence." *Brown v. State*, 470 Md. 503, 553 (2020).

Here, the majority holds that the motion judge abused his discretion by applying an improper standard based on the comments used to help explain the court's consideration of appellant's age at the time of the crimes. Generally, we presume that a judge knows the law and applies it properly. *See, e.g.*, *State v. Chaney*, 375 Md. 168, 184 (2003).

In my view, the motion court knew the law and applied it correctly. Reading the judge's extensive explanation of his decision, and the basis for his decision, it is clear the judge considered each factor set out in the statute and gave extensive analysis and thought to each factor, including appellant's youthful age. The motion court clearly considered appellant's age in determining whether his sentence should be reduced. Because the court noted the absence of some evidence, although noting that science could not provide that evidence anyway, does not translate into a misapplication of the law or burden shifting.

CP § 8-110(d)(1) states a court shall consider "the individual's age at the time of the offense." In evaluating this initial factor, the motion court stated as follows:

> "Defendant's age at the time of the offense was 16, two months shy of his 17th birthday. Throughout the hearing, defense counsel referred to him as a mere boy. The Court is aware of the scientific evidence that a person's brain continues to develop until approximately age 25. From these studies it can be inferred that at the time of the offense Defendant's brain had not yet fully developed. However, there was no demonstrable evidence as to the stage of development of Defendant's brain at that time, nor has science advanced to a

> point to enable such a determination. Defendant's age is a factor to be considered, but counsel's depiction of him as a boy belies the facts of his life preceding the criminal event, and the event itself. These facts will be developed more fully in discussion of other factors herein."

Maj. op. at 39. The court's explanation of its consideration of appellant's age at the time of the offense does not suggest that the court imposed an additional burden on the appellant to produce evidence of the stage of his brain development at the time of the crime. The court acknowledged that it read studies indicating that a person's brain does not fully develop until age twenty-five and that from these studies, the court inferred that "[appellant's] brain had not yet fully developed" at the time of the offense. The court stated a fact that "no demonstrable evidence" regarding appellant's development was produced and that there is no way for science to produce anything like it at this time. This statement is simply an acknowledgment of the state of science in the area. The court arrived at its decision by considering the testimony and other evidence that appellant was not a "mere boy" at the time of the crimes despite being two-months shy of his seventeenth birthday.

When considering the second factor, "the history and characteristics of the individual," CP § 8-110(d)(2), the court noted that the State and appellant presented two "diametrically opposed" views of appellant's life circumstances leading to the crimes. At the hearing, appellant described drug addiction and dependence beginning as early as age thirteen and that he was under the influence of substances at the time of the offense, although the court noted that that evidence was not presented at the original trial. The judge noted that there was no indication in any toxicology report that appellant was under the influence at the time of the crimes. Appellant also contended for the first time at his

initial sentencing that he had untreated mental health issues. The judge noted that although appellant brought up issues of depression and anxiety at his motion hearing, he expressed them in the context of having been incarcerated, not because of his childhood. The judge acknowledged that appellant grew up in poor financial circumstances in a "troubled neighborhood in D.C." with family who were addicts and engaged in illegal activities to earn money. Ultimately, the court concluded that despite the difficulties of appellant's upbringing, he had positive role models to guide him. Despite the difficult circumstances of his childhood, the court determined from its evaluation that these circumstances contributed to appellant being more than a boy at the time of the crimes.

As the majority explains, the "statutory scheme . . . makes it apparent that the court should not consider the offender's age in isolation but in relation to other individualized characteristics." Maj. op. at 41. The court considered appellant's youthful age, but not in isolation.

The majority reads too much into the words of the motion court, despite asserting a "straightforward reading" and ignores the court's contextualization of appellant's circumstances at the time of the offenses. The majority states as follows:

> "[T]he court discounted the 'infer[ence] that at the time of the offense[s] [Miller's] brain had not yet fully developed' because of his failure to adduce 'demonstrable evidence as to the stage of development of [Miller's] brain at that time[.]' These statements reflect a belief that, in order to establish that the age factor should weigh in his favor, Miller bore some burden to offer proof of the stage of his brain development at the time of the offenses."

Maj. op. at 42.

The court acknowledges that appellant's brain was not fully developed at the time of the offenses when it stated that "the Court is aware of scientific evidence that a person's brain continues to develop until age 25." While the motion court states there was "no demonstrable evidence as to the stage of [appellant's] brain at that time," it does not indicate that appellant was *required* to produce such evidence. The court continued to explain its assessment of the age factor by indicating its displeasure with the depiction of appellant by his counsel as a "mere boy" and seemingly attempted to disguise the other facts of appellant's life that comprise a truly individualized evaluation of his circumstances as well as the horrific criminal events, and appellant's participation in the crime.

The court supported its decision by taking the various factors into consideration and provided detailed explanations of how it considered each factor. It is clear that the judge did not err as a matter of law and did not impose an inappropriate standard on appellant. While the court's words could have more clearly expressed that it was not holding a lack of evidence of appellant's brain development against him, it is clear from the explanations of the various factors that the court considered each factor and did not "give only lip-service" to the importance of the age factor. In the recent *Trimble* decision, we held that the circuit court is not required to consider age as a mitigating factor when the juvenile is seventeen years and eight months at the time of the offense. 2024 WL 3616379, at *7-8.

Here, appellant was sixteen years and ten months old at the time of the offenses, notably younger than the appellant in *Trimble*. Accordingly, the court considered his age,

the circumstances of his youth, and his upbringing when determining that appellant was less like a child than an adult when he engaged in the horrific illegal acts in a proper evaluation of the required factors. The court took care to consider the details of appellant's upbringing, family situation, involvements with drugs and alcohol, and absence of a consistent father figure when making its assessment of *how much weight* to attribute to appellant's age and the attendant circumstances of youth when it made its determination. The record demonstrates that the motion court carefully considered the factors of the statute and determined, within the court's discretion, that appellant was still a danger to society and that the interests of justice would not be served at this time by reducing his sentence.

Accordingly, I would affirm the decision of the circuit court.

The correction notice(s) for this opinion(s) can be found here:

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