

Circuit Court for Montgomery County
Case No: 73677C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 97

September Term, 2019

PATRICK KEITH HOLMES

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 1, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a 1995 jury trial in the Circuit Court for Montgomery County, Patrick Keith Holmes, appellant, was convicted of first-degree felony murder, use of a handgun in the commission of a felony or crime of violence, and attempted robbery with a deadly weapon. The court sentenced him to a total term of life imprisonment, plus 20 years. On appeal, this Court affirmed the judgments. *Holmes v. State*, No. 1969, Sept. Term, 1995 (Md. App. August 20, 1996).

In 2018, after the post-conviction court had granted him the right to file a belated motion for modification of sentence, Mr. Holmes filed said motion. Following a hearing, the circuit court declined to modify his sentence, and also denied his subsequent motion to alter or amend that judgment, rulings he appeals *pro se*. He claims that the court “used impermissible considerations” when it denied his request to reduce his sentence, asserting that the court felt bound to honor the sentence imposed by the original sentencing judge and subsequently left unchanged by a second judge who had reviewed it. To the “best of [his] recollection,” he maintains that the circuit court judge presiding over the motion for modification stated that he knew “both of these judges” and “if they thought it was warranted, they would have done so” and, therefore, the court stated it was “not inclined to go behind them and change it,” despite recognizing that Mr. Holmes’s rehabilitation was “extraordinary.” He also asserts that the court erred because it failed to take into account his rehabilitation.

The State moves to dismiss the appeal on the grounds that (1) it cannot adequately respond to Mr. Holmes’s allegations absent the transcript from the hearing on the motion for modification, which Mr. Holmes has failed to produce; and (2) a ruling on a motion for

modification is not subject to appellate review. In reply, Mr. Holmes (1) notes that he appealed both the denial of the motion to modify his sentence and the subsequent denial of his motion to alter or modify that decision; (2) requests an extension of time “to allow this appeal to continue on the merits presented until [he] can supplement the record with the transcripts”¹; and (3) requests that this Court stay this appeal pending the Court of Appeals’ decision in *Brown v. State*, *Bottini v. State*, and *Wilson v. State*, Misc. No. 30, Sept. Term, 2018 (argued September 10, 2019).²

We hold that the circuit court’s order denying Mr. Holmes’s motion for modification of sentence is not subject to appellate review. See *Hoile v. State*, 401 Md. 591, 615 (2018) (“There is much caselaw holding that the denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable.”); *Howsare v. State*, 185 Md. App. 369, 380 (2009) (the “denial of a motion to modify a sentence is not appealable.”). And even if the motion to alter or amend the judgment denying the motion to modify sentence is properly before us, no meaningful review is possible without the relevant transcript from the hearing on the modification of sentence, which Mr. Holmes had the burden of

¹ By order filed on September 18, 2019, this Court denied Mr. Holmes’s motion requesting that we compel the circuit court to transcribe the hearing at issue. Since that order, it does not appear from the record before us that Mr. Holmes has made any attempt to date to supplement the record with the needed transcript.

² The Court of Appeals’ decision in these cases will have no bearing on this appeal. The issue before the Court of Appeals in *Brown*, *Bottini*, and *Wilson* is whether there is a right to file an appeal from the circuit court’s denial of a motion to modify a sentence filed pursuant to Md. Code Ann., Crim. Law § 5-609.1. Mr. Holmes’s motion was not filed pursuant to that statute, which gave defendants a limited time period to file a motion for modification of a sentence that had been enhanced pursuant to certain sentencing enhancement provisions. It does not appear that Mr. Holmes’s sentence was enhanced.

producing. *See* Rule 8-411(a) (directing the appellant to order any transcript necessary for the appeal); Rule 8-413(a) (directing that the record on appeal shall include any necessary transcript); and Rule 8-602(c)(4) (authorizing the dismissal of an appeal when the record is incomplete).

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**