Circuit Court for Baltimore County
Case No.: 03-K-97-000262

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 409

September Term, 2023

TONY ANTHONY MONTAGUE

v.

STATE OF MARYLAND

Berger,
Reed,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 29, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On April 7, 2022, Tony Anthony Montague,[1] appellant, filed a motion in the Circuit Court for Baltimore County seeking modification of his sentence pursuant to Section 8-110 of the Criminal Procedure Article ("CP") of the Maryland Code.[2] After holding a hearing, the court issued a written opinion and order denying the motion. Appellant timely appealed and presents the following question for our review, which we rephrase for clarity:

> Whether the circuit court erred in denying Appellant's motion for reduction of sentence pursuant to the Juvenile Restoration Act because he maintained his innocence and therefore did not accept responsibility for committing the underlying offense.

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

BACKGROUND

The Underlying Offenses

Appellant's convictions stem from a shooting that occurred in December 1996 outside of a "sweet sixteen" birthday party after a group of five boys in attendance, appellant among them, were asked to leave. After they were asked to leave, one of the boys, Michael Nichols, left to retrieve a pistol. When he returned, he handed the pistol to appellant who pointed it at Curtis Sanders, the father of the birthday-girl, and attempted to

[1] It appears that appellant's actual first name is "Phillip," and that "Tony" is his nickname.

[2] CP § 8-110 authorizes a person who committed an offense as a minor prior to October 1, 2021, to file such a motion, once the person has served at least 20 years' imprisonment for that offense. CP § 8-110 was enacted in 2021 as part of the Juvenile Restoration Act. 2021 Md. Laws, ch. 61, § 1.

fire it but the gun jammed, and Mr. Sanders was unhurt. After that, everyone rushed back into the building as gunshots rang out.

Steve Cowan, who was working security at the party, was fatally shot in the chest in the doorway. As Mr. Sanders tried to pull Cowan back inside, he saw appellant firing a pistol and emptying its clip. Kumoni Brown, who had been working as a DJ and helping with security at the party, was also shot, but he survived.

Later that evening, four different people identified appellant as the shooter: Mr. Sanders; Jonathan Watts, who was working security at the party; Elliot Simon, who was waiting outside to drive some friends home; and Anthony Moore, Mrs. Sanders's brother. Mr. Sanders and Mr. Moore also identified Michael Nichols as the person who gave appellant the pistol.

Appellant was almost 17 years old at the time of the shooting. Appellant's defense at trial was that, while he was present at the scene, he did not shoot anyone. On November 4, 1997, a jury found appellant guilty of various offenses to include the first-degree murder of Steve Cowan, the attempted first-degree murder of Curtis Sanders, the first-degree assault on Kumoni Brown, and a weapons offense. The court sentenced him to imprisonment for life plus 20 consecutive years. This Court affirmed his convictions on direct appeal. *Montague v. State*, No. 1937, Sept. Term, 1997 (filed unreported on September 8, 1998).

The JUVRA Motion for Modification of Sentence

As indicated earlier, on April 7, 2022, appellant filed a motion for modification of sentence pursuant to the provisions of CP § 8-110 and the Juvenile Restoration Act

("JUVRA").[3] After holding a hearing on appellant's motion, the court denied it by way of a written memorandum opinion filed on April 6, 2023, which, as required by the statute, addressed the factors listed in CP § 8-110(d). In summary, the court found as follows with respect to each factor.

(1) the individual's age at the time of the offense: The court found that appellant was less than two months shy of his 17th birthday at the time of the offense.

(2) the nature of the offense and the history and characteristics of the individual & (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:

The court recounted the facts of the offense as outlined above and noted appellant's lengthy juvenile record prior to his arrest in this case beginning in October of 1990 when appellant was ten years old. The court observed that despite his repeated contacts with the juvenile justice system, to include numerous delinquency adjudications, detentions, electronic monitoring, referrals to probation and treatment programs, including a six-month commitment to The Victor Cullen Center, appellant "chronically reoffended."

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

The court observed that appellant's Institutional Progress Report prepared by the Division of Correction indicated that, although appellant had ten violations of the prison

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

disciplinary rules between 2000 and 2006, he had been infraction free for the past sixteen years.

(4) whether the individual has completed an educational, vocational, or other program: Noting appellant's completion of his G.E.D. and participation in various programs and activities including college coursework, wood working, creative writing, landscaping, computer repair, stress management, mentoring, book groups, and the Lifer's Group, the court gave appellant credit for attempting to better himself.

(5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction: The court noted that appellant testified that he had improved his coping mechanisms and emotional regulation skills and that, after he turned 25 or 26 years old, he began to prioritize good conduct and has remained infraction free since 2006. Also, a former inmate testified that appellant had been a good influence on him while the two were incarcerated together. In addition, appellant's sister testified to appellant's growth while incarcerated. The court also noted that it had been provided a plan for appellant's reentry into society prepared with the assistance of the Office of the Public Defender.

The court then turned to appellant's failure to accept responsibility for his actions in this case which it found "deeply troubling." The court recounted that, during the pre-sentence investigation, appellant denied that he and his friends had any involvement with the shooting in this case. In addition, the court pointed to appellant's 91-page narrative about his life in which there is "little to no mention of the victims in this case or the loss to their loved ones." The court observed that, in the narrative, appellant concluded that:

"'Somebody had to pay, not the person who shot their loved one, but somebody the states [sic] attorney wanted to convict[,] the detective wanted to charge, and the police wanted to arrest, everybody got what they wanted to the detriment of a teenager who had half of his life snatched as a thief snatches a purse, just because he was on that particular street.'"

Moreover, the court noted that appellant had suggested that his deceased brother Scott was responsible for the shooting and included a statement of his co-defendant, Michael Nichols, to that effect which was penned 13 years after the shooting and after Nichols had been acquitted of all charges.

The court recognized that, although appellant expressed sympathy for the victims during the hearing on his JUVRA motion for modification, it did not consider that emotion to be remorse. Rather, the court found that appellant "has failed to accept or acknowledge any responsibility for the crimes for which he has been convicted" despite "the testimony of four (4) eyewitnesses who identified [appellant] as the shooter on the same night of the murder[.]"

Referencing *Jennings v. State*, 339 Md. 675, 685-86 (1995), the court recognized that, while a criminal defendant is entitled to maintain their innocence, "the court is entitled to consider denial of guilt after conviction in assessing the Defendant's maturity and rehabilitation."

The court recognized that appellant, who "is obviously intelligent," has, while incarcerated, taken positive steps toward his education and skill development and made positive behavioral changes. Nonetheless, the court also emphasized that it believed that "the first step on the road to rehabilitation is acceptance of responsibility for his actions *in*

this case." The court also believed that willingness to accept responsibility for the offenses in this case was "critical" in determining whether appellant had been rehabilitated. The court concluded that it could not find that appellant is "no longer a danger to the public," and did not find that the "interests of justice will be served by a reduction of sentence at this time."

(6) any statement offered by a victim or a victim's representative: The court noted that the State was unable to locate the victims or the victims' families prior to the hearing on appellant's motion. The court briefly recounted some of the victim impact testimony that was offered at the time of trial.

(7) any report of a physical, mental, or behavioral examination of the individual conducted by a health professional: The court said that appellant "has never been formally diagnosed with a mental health disorder, nor has he been prescribed psychotropic medication."

(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: The court noted that appellant had told the presentence investigator that his mother attempted to provide a stable home, appropriate guidance, and emotional support. The court also observed that the available record did not show any history of abuse or involvement with the child welfare system. The court again noted appellant's long history with the juvenile justice system and said that, according to appellant, "his brother, Quinton, taught him to skip school and steal cars, and his brother, Scott, engaged him in the sale of drugs to adults in their neighborhood."

The court found that the record did not support appellant's assertion that he was "'abandoned by his mother and father and grew up largely without adult supervision and spent his youth without guidance and without any positive adult figure to model in his daily life.'"

(9) the extent of the individual's role in the offense and whether and to what extent an adult was involved in the offense: The court analyzed this factor by succinctly stating that "[Appellant] was identified by four (4) eyewitnesses as the shooter. Two (2) witnesses identified [co-d]defendant Michael Nichols as the person who handed the gun to [appellant]. [Co-d]efendant Nichols was also a minor at the time of the offense."

(10) the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences: The court explained that it "recognizes and accepts" that the nature of adolescence sets apart "juvenile culpability from that of adult offenders[]" and that "[a]mong the physical, social, behavioral, and cognitive changes that occur during adolescence, juveniles' judgments and decisions may reflect a failure to appreciate a full understanding of future consequences."

(11) any other factor the court deems relevant. The court found no other relevant factors.

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

> I have considered the submissions of the exhibits, testimony, oral argument of counsel, and the required factors under Maryland Criminal Procedure § 8-110. For the reasons discussed herein, I cannot find that the Defendant is no longer a danger to the public, and I do not believe the interests of

> justice could be better served by a reduced sentence. At this time, it may be that the Defendant's sentence and potential for release into the community is best left to the assessment and oversight of the Parole Commission.

Appellant noted an appeal from the court's denial of his JUVRA motion asserting that the court erred by holding appellant's refusal to take responsibility for the offenses in this case against him.

DISCUSSION

Standard of Review

In Maryland, the primary objectives of sentencing are punishment, deterrence, and rehabilitation. *State v. Dopkowski*, 325 Md. 671, 679 (1992). A sentencing court has wide, virtually boundless discretion in imposing a sentence. *Reiger v. State*, 170 Md. App. 693, 697 (2006) (cleaned up). In fashioning a sentence, a trial court should consider, among other things, the facts and circumstances of the crime committed and the background of the defendant, including his or her reputation, prior offenses, health, habits, mental and moral propensities, and social background. *Abdul-Maleek v. State*, 426 Md. 59, 71 (2012) (cleaned up). A trial court is permitted to base its sentence on perceptions derived from the evidence presented at trial, the demeanor and veracity of the defendant gleaned from his various court appearances as well as the data acquired from such other sources as the presentence investigation or any personal knowledge the judge may have gained from living in the same community as the offender. *Jennings*, 339 Md. at 684-85 (cleaned up).

A sentencing court's discretion is subject to three general limitations: (1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional

requirements; (2) whether the trial court was motivated by ill-will, prejudice, or other impermissible considerations; and (3) whether the sentence is within statutory limits. *Jones v. State*, 414 Md. 686, 693 (2010) (cleaned up). It is, however, plainly impermissible for a sentencing court to punish a defendant for invoking his right to plead not guilty and putting the State to its burden of proof for protesting his or her innocence. *Jennings*, 339 Md. at 684.

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

> Under JUVRA, the decision to grant or deny a motion for reduction of sentence under CP § 8-110 generally rests in the discretion of the circuit court upon consideration of the required factors. Yet even under that deferential standard of review, the circuit court's discretion is tempered by the requirement that the court apply the "correct legal standards[.]" *Faulkner v. State*, 468 Md. 418, 460-61 (2020) (citing *Jackson v. Sollie*, 449 Md. 165, 196 (2016)); *Schisler v. State*, 394 Md. 519, 535 (2006) (quoting *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004)). When a court fails to do so, it abuses its discretion. *See, e.g., Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 675 (2008) ("[T]rial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature."); *Matter of Dory*, 244 Md. App. 177, 203 (2019) ("[T]rial courts do not have discretion to apply incorrect legal standards."). Whether the circuit court properly construed and applied CP § 8-110 is a question of law that we review *de novo*. *Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (citing *Schisler*, 394 Md. at 535); *Davis v. State*, 474 Md. 439, 451 (2021) (With issues of law, "[w]e are not

> looking at whether the trial court abused its discretion in its ultimate determination, but whether it applied the proper legal standard[] in exercising its discretion.").

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

Moreover, we accept the lower court's factual findings unless they are shown to be clearly erroneous. *Brown v. State*, 452 Md. 196, 208 (2017).

Appellant's Contention

Appellant contends that the circuit court erred when denying appellant's JUVRA motion for modification on the basis that he maintained his innocence and therefore did not accept responsibility for committing the underlying offense. According to appellant, in doing so, the circuit court imposed "a legal requirement at odds with the plain language and legislative purpose of" the JUVRA.

First, appellant asserts that the court's rationale for denying his JUVRA motion is inconsistent with the intent of the Maryland General Assembly. Appellant divines the intent of the General Assembly, in part, from language contained in two of this Court's cases which arose in the JUVRA context, *Johnson v. State*, 258 Md. App. 71 (2023) and *Sexton v. State*, 258 Md. App. 525 (2023). In those cases, we recognized that, in enacting the JUVRA, the legislature sought to create a mechanism where a juvenile offender serving a lengthy sentence could obtain a meaningful opportunity for release based on demonstrated maturity and rehabilitation. *Johnson*, 258 Md. App. at 89, n.17; *Sexton*, 258 Md. App. at 542-44. That mechanism is predicated on the recognition that the science underpinning

adolescent brain development indicates that, for various reasons, juveniles have diminished culpability.

Appellant also asserts that, if the General Assembly thought that either remorse or acceptance of responsibility was an important consideration, it would have included those concepts in the list of statutory factors that a court is required to consider when ruling on a JUVRA motion for modification. Moreover, appellant directs our attention to a portion of the JUVRA's legislative history where, during a hearing on the bill creating the JUVRA, an advocate for the bill responded to a question from a legislator who asked why remorse was not listed as one of the statutory factors. That witness responded, in part, that, if an expression of remorse were a prerequisite for demonstrating suitability for release, persons who are, in fact, innocent would "never come home." According to appellant, that exchange demonstrates why the legislature considered, and rejected, adding such a requirement to the JUVRA.[4]

Appellant next asserts that Maryland should follow the path of other courts which have accepted the notion that, in the context of an attorney seeking reinstatement after being disciplined for a criminal conviction for which they maintain their innocence, the attorney can become rehabilitated without admitting guilt and expressing remorse for the underlying offense. *In re Sabo*, 49 A.3d 1219, 1226 (D.C. 2012); *In re Wigoda*, 395 N.E.2d 571, 574 (Ill. 1979); *Matter of Reinstatement of Walgren*, 708 P.2d 380, 384 (Wash. 1985);

[4] The State points to a different portion of the testimony where another advocate for the bill assured a legislator that the list of statutory factors was not an exhaustive list and that, if a defendant did not express remorse, a court could draw a negative inference from it when ruling on a JUVRA motion.

In re Reinstatement of Spilman, 104 P.3d 576, 580 (Okla. 2004); and *In re Hiss*, 333 N.E.2d 429, 436-37 (1975).

Appellant urges us also to follow the path of the District of Columbia, which has enacted its own version of a statute resembling Maryland's JUVRA. Appellant directs us to various cases from the D.C. Superior Court which found, in a nutshell, that an inmate who asserted his innocence should not forfeit his rights to seek relief under D.C.'s JUVRA-like statute. *United States v. Wendell Poole*, 1999 FEL 7782 (D.C. Super. Ct.); *United States v. Troy D. Burner*, 1993 FEL 003980 (D.C. Super. Ct.); *United States v. Warren Allen*, 2000 FEL 006780 (D.C. Super. Ct.); and *United States v. Gary Leaks*, 2000 FEL 6595 (D.C. Super. Ct.). Appellant acknowledges the limited precedential value of these cases but asserts that the reasoning of these cases is "consistent with the plain language of [D.C.'s statute] and JUVRA and the underlying legislative purpose of both, and avoids creating an 'innocent prisoner's dilemma' in the context of legislation that is intended to be remedial[.]"

Appellant next contends that treating acceptance of responsibility and a concomitant expression of remorse as a litmus test for granting relief on a JUVRA motion would lead to the "absurd, unconscionable result that an innocent person who had done everything right would never get a sentence reduction simply because they were unwilling to falsely admit guilt." Moreover, according to appellant, applying such a litmus test "also means that whether a defendant who maintains his innocence gets a sentence reduction will depend on which judge happens to be assigned to his case."

Next, appellant argues that the circuit court's finding that appellant remained a danger to the public because he had not admitted his involvement and shown remorse is "arbitrary and capricious, unsupported by any evidence, and irreconcilable with the intent of the General Assembly" as there was no evidence offered to substantiate the circuit court's conclusion that "an assertion of innocence correlated with greater risk of violent recidivism." Appellant cites to various secondary sources which have observed, in a nutshell, that there is little evidence of a link between acceptance of guilt and a decreased likelihood of recidivism.

Appellant argues that the circuit court's reliance on *Jennings v. State*, 339 Md. 675 (1995), which the court cited for the proposition that "[a] Defendant is entitled to maintain his innocence, but the court is entitled to consider denial of guilt after conviction in assessing the Defendant's maturity and rehabilitation," is misplaced because *Jennings* is inapposite. This is so, according to appellant, for four reasons. *First*, appellant claims that *Jennings* spoke in the context of an original sentencing proceeding where the sentencing court's role is dramatically different from the court's role when acting on a JUVRA motion. In the context of an original sentencing, the court's task is to mete out punishment, deterrence, and rehabilitation. By contrast, according to appellant, the court's role when ruling on a JUVRA motion is to provide a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Second, appellant asserts that a court's decision when imposing sentence in the first instance is necessarily more speculative than when ruling on a JUVRA motion because the sentencing court makes educated guesses about how a defendant will act in the future, yet

when ruling on a JUVRA motion, the court has at least 20 years' worth of documentation to rely on.

Third, according to appellant, a court has broader discretion when originally imposing sentence than it does when ruling on a JUVRA motion because the legislature restricted the court's role when ruling on a JUVRA motion "as needed to provide juvenile offenders a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation[.]'" Appellant's Brief at p. 29 (quoting *Carter v. State*, 461, Md. 295, 340 (2018)).

Fourth, according to appellant, "even if *Jennings* is read to allow a judge at a JUVRA hearing to consider a defendant's claim of innocence in evaluating their rehabilitation, it does not justify the wholesale refusal to provide a sentence reduction solely on this basis" because "rehabilitation is different from remorse for the underlying crime."

Finally, appellant asserts that holding a defendant's claim of innocence against him on a JUVRA motion is untenable because it would result in JUVRA proceedings "devolving into mini-trials on actual innocence."

Analysis

In *Jennings*, upon which the sentencing court relied in denying appellant's JUVRA motion, a jury found Jennings guilty of various offenses stemming from an armed robbery. 339 Md. at 678. Jennings consistently maintained his innocence for the offenses. *Id.* During the sentencing proceeding, just prior to when Jennings was about to address the

court, the court cautioned him that "what you are about to tell me is very important, very important." *Id*. The following then occurred:

> THE DEFENDANT: Your Honor, jury found me guilty. You have got to sentence me. But when you do, can you make it as least as possible? I'd like to be there with my kid.
>
> THE COURT: Anything further?
>
> THE DEFENDANT: No.
>
> THE COURT: This court doesn't treat lightly the use of handguns in the commission of crimes and more, especially, the type of handgun that was used in this crime.
>
> I cautioned you just before you spoke, Mr. Jennings, that what you had to say to the court was very important because, according to the PSI, according to the statement from your attorney, the jury found the wrong guy guilty. And until you can face up to your problem of your implication in this little event you haven't learned a thing. For me to give you a minimum sentence just doesn't fit my role.

Id. at 678-79.

The court then sentenced Jennings to a twenty-year sentence with the first five years to be served without the possibility of release on parole.[5] *Id*. at 679. The court said that it declined to suspend any of those sentences because Jennings did "not have any remorse, none whatsoever." *Id*. After that, the following transpired:

> THE DEFENDANT: Incarcerate at the Baltimore County Detention?
>
> THE COURT: I gave you an opportunity. I said what you have to say to me is very important.

[5] That sentence comprised three concurrent twenty-year prison sentences plus a concurrent five years to be served without the possibility of release parole. The maximum possible penalty Jennings faced was 80 years.

> All I wanted to hear from you is, you know, what implication you had this, in this, because you're an innocent. In your mind you're an innocent man.
>
> Well, I'm sorry. But take your appeal and let's see what happens there.

Id.

Jennings took an appeal to this Court which affirmed his convictions in an unreported opinion. *Id*. at 677. We rejected Jennings' argument that the trial court had punished him for not pleading guilty and determined that, while a criminal defendant's not guilty plea or protestations of innocence may not properly be considered throughout the trial, a lack of remorse after a conviction properly may be considered. *Id*. at 679-80.

Thereafter, the Supreme Court of Maryland agreed to hear the case. Before that Court, Jennings asserted that he was improperly sentenced for refusing to admit his guilt during the sentencing proceedings. He claimed that forcing a defendant to admit guilt at a sentencing proceeding violates the defendant's privilege against self-incrimination. *Id*. at 681. The State argued that the sentencing court properly considered Jennings' lack of remorse and/or refusal to accept responsibility for the offenses. According to the State, rather than punishing Jennings for protesting his innocence, the court construed his failure to acknowledge his culpability as evidence of a lack of remorse, a fact germane to Jennings' "prospects for rehabilitation." *Id*.

The Supreme Court started its analysis of the issue with the recognition that it is "absolutely clear that a trial court may not punish a defendant for invoking his right to plead not guilty and putting the State to its burden of proof for protesting his innocence."

Id. at 684 (citations omitted). However, the Court observed that various courts inside and outside Maryland "have held that a lack of remorse is an appropriate sentencing consideration inasmuch as acceptance of responsibility is the first step in rehabilitation." *Id*. at 685 (citations omitted).

In examining what the sentencing court did and said during Jennings' sentencing hearing, the Court determined that, under the circumstances, which included the fact that the court imposed a penalty significantly less than it could have, indeed even less than the guidelines called for, although in excess of what either of the parties asked for, "the trial court withheld the benefit of a lesser sentence, rather than imposed an enhanced one." *Id*. at 688. The Court believed that in searching for the proper sentence, the trial court was looking for a basis to mitigate, rather than enhance, Jennings' sentence. *Id*.

The Court concluded its opinion, stating the following:

> We hold that a sentencing court may consider, on the issue of a defendant's prospects for rehabilitation, the defendant's lack of remorse. The record in this case does not indicate that the trial court was considering the defendant's refusal to plead guilty. Instead, it was the petitioner's present tense refusal to accept responsibility, or show remorse, for his actions on which the court focused. That factor may be considered in deciding to mitigate the defendant's sentence. No error has occurred in this case.

Id.

When the court in the present case ruled on appellant's JUVRA motion, its only option outside of denying the motion was to *mitigate* appellant's sentence. As such, the court lacked the authority to further penalize appellant. We do not find *Jennings* inapposite to proceedings on JUVRA motions, as the Court in *Jennings* declared that a criminal

defendant's present tense refusal to accept responsibility and/or show remorse is a factor that may be considered in deciding to *mitigate* a sentence. Moreover, the final factor the legislature added to the JUVRA factors is the catch-all "any other factor the court deems relevant." CP § 8-110(d)(11).

Appellant raises some potentially interesting policy arguments. Our task, however, is to determine whether the circuit court abused its discretion or made a legal error in denying appellant's JUVRA motion. In light of *Jennings*, we cannot find that the circuit court erred or abused its discretion in declining to grant appellant's JUVRA motion on the basis that he has not expressed any remorse for the crimes he has been convicted of.

Moreover, the circuit court's analysis shows that it otherwise separately considered each statutory factor and noted salient facts associated with each one. The circuit court also recognized that the JUVRA permitted the court to reduce a sentence imposed on a minor only if the court determines that the individual "is not a danger to the public[ ]and the interests of justice will be better served by a reduced sentence." CP § 8-110(c).

We, therefore, affirm the judgment of the Circuit Court for Baltimore County.

MOTION TO DISMISS APPEAL

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

The JUVRA does not include any provision specifically authorizing or foreclosing an appeal of a denial of a motion for modification filed pursuant to CP § 8-110. While CP § 8-110 does not specifically refer to a motion for modification of sentence filed pursuant

to Maryland Rule 4-345(e),[6] functionally, the statute extends the opportunity to file such a motion to inmates who were previously ineligible to file one. The statute also requires, *inter alia*, that the court hold a hearing and issue a written decision addressing the eleven factors outlined earlier. As such, we address the appealability of the denial of a motion under the JUVRA in the same way we address the appealability of the denial of a motion filed pursuant to Rule 4-345(e).

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

> Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. In a civil case, a plaintiff who has accepted a remittitur may cross-appeal from the final judgment.

However, the Supreme Court of Maryland has held that a "discretionary denial" of

[6] Rule 4-345 titled *Sentencing -- Revisory Power of Court*, contains subsection (e), titled *Modification Upon Motion*, which provides:

> *Generally*. Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

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

In this case, appellant alleges that the circuit court's denial of his motion for modification filed pursuant to the JUVRA was premised on an error of law. As a result, in our view, under the existing case law, that makes the denial of his motion an appealable final order. *Sexton*, 258 Md. App at 541-42. We, therefore, deny the State's motion to dismiss this appeal.[7]

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

[7] Appellant argues in the alternative (1) that the denial of his motion under the JUVRA is appealable because such a motion is similar to a motion filed under Section 5-609.1 of the Criminal Law Article and the Justice Reinvestment Act ("JRA") which is appealable according to *Brown v. State*, 470 Md. 503, 552 (2020); and (2) that the cases holding that a discretionary denial of a motion for modification is not appealable should be overruled. Given our resolution of this case, we need not reach these issues.

APPENDIX

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

> (a) This section applies only to an individual who:
>
> (1) was convicted as an adult for an offense committed when the individual was a minor;
>
> (2) was sentenced for the offense before October 1, 2021; and
>
> (3) has been imprisoned for at least 20 years for the offense.
>
> (b)(1) An individual described in subsection (a) of this section may file a motion with the court to reduce the duration of the sentence.
>
> (2) A court shall conduct a hearing on a motion to reduce the duration of a sentence.
>
> (3)(i) The individual shall be present at the hearing, unless the individual waives the right to be present.
>
> (ii) The requirement that the individual be present at the hearing is satisfied if the hearing is conducted by video conference.
>
> (4)(i) The individual may introduce evidence in support of the motion at the hearing.
>
> (ii) The State may introduce evidence in support of or in opposition to the motion at the hearing.
>
> (5) Notice of the hearing under this subsection shall be given to the victim or the victim's representative as provided in §§ 11-104 and 11-503 of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) any other factor the court deems relevant.

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

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

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

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

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