Circuit Court for Baltimore City
Case Nos. 193263011
594024027

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 486

September Term, 2020

ANTHONY JOHNSON

v.

STATE OF MARYLAND

Kehoe,
Berger,
Zic,

JJ.

PER CURIAM

Filed: March 1, 2021

Anthony Johnson ("Johnson") appeals from an order of the Circuit Court for Baltimore City denying his motion for a modification of sentence. He presents one issue:

> Did the circuit court err and/or abuse its discretion in denying [his] motion for modification of sentence on grounds that it did not have the authority to modify his sentence?

Because we agree with Johnson and the State that the circuit court did have the authority to modify the sentence, we will vacate the court's judgment and remand this case for proceedings consistent with this opinion.

Background

On March 4, 1994, Johnson pled guilty to charges of first-degree felony murder, attempted murder, and attempted robbery with a deadly weapon. He committed these offenses when he was fifteen years old. The court imposed a sentence of imprisonment for life with all but fifty years suspended for the first-degree felony murder conviction together with concurrent sentences of thirty years for the attempted murder conviction and twenty years for the attempted robbery with a deadly weapon conviction. The court did not impose a period of probation.

Johnson's original sentence for murder was illegal. *See Cathcart v. State*, 397 Md. 320, 330 (2007) and *Greco v. State*, 427 Md. 477, 502–13 (2012) ("*Greco II*").[1, 2] In 2017, and relying on *Cathcart* and *Greco*, Johnson filed a motion to correct his sentences. In 2018, the circuit court granted the motion. The court resentenced him to imprisonment for life with all but fifty years suspended, thirty years concurrent for attempted murder, and twenty years concurrent for attempted robbery with a deadly weapon, with three years' probation. This brings us to the current appeal.

In 2019, Johnson filed a motion for modification of sentence. The State opposed the motion and the circuit court denied it. The court identified two concerns with Johnson's motion.

First, the court took note that a portion of Johnson's motion emphasized his youth at the time of his offenses and the neuroscience related to juvenile brain development and amenability to rehabilitation, as recognized in the Supreme Court's Eighth Amendment decisions concerning juvenile sentencing such as *Roper v. Simmons*, 543 U.S. 551 (2005),

[1] To distinguish it from *Greco v. State*, 347 Md. 432 (1997) ("*Greco I*"), which we will discuss later in our opinion.

[2] In *Cathcart*, the Court held that a partially suspended sentence that does not include a term of probation effectively limits "the period of incarceration to the unsuspended part of the sentence, [which] becomes, in law, the effective sentence." 397 Md. at 330. The relevant holding in *Greco* was that a "previously imposed sentence for first degree premeditated murder of life, suspend all but fifty years, was converted by operation of law into a term-of-years sentence of fifty years imprisonment. That converted sentence was not authorized by statute; therefore, it was illegal." 427 Md. at 513.

and *Miller v. Alabama*, 567 U.S. 460 (2012). The circuit court concluded that *Roper* and *Miller* were factually and legally distinguishable: In *Roper* and *Miller*, the teenage defendants were sentenced to death (*Roper*) or life without the possibility of parole (*Miller*), whereas Johnson received neither of those sentences. Moreover, the court noted that Johnson's youth "appears to have been considered" by the court when it imposed the sentences in 1994.

Second, the circuit court concluded that Johnson's motion was untimely. The court noted that Md. Rule 4-345(e) required a defendant to file a motion to revise a sentence within ninety days of the date of imposition of sentence and that a court's revisory authority had to be exercised within five years of the date of sentencing. In its opinion, the court expressed concerns as to whether modifying Johnson's sentence was consistent with the purpose of Rule 4-345(e):

> Now, Md. Rule 4-345 provides a window of 90-days following the imposition of a sentence for a Petitioner to request a modification, and the trial court "may not revise the sentence after the expiration of five years from the date the sentence [was] originally imposed." *Id*. at Rule 4-345(e)(1). Revisiting Petitioner's original life sentence—suspending all but fifty-years—on the felony murder conviction, a sentence which has been undisturbed and unmodified[Footnote] since its imposition in 1994, would appear to be inconsistent the purpose of the rule.
>
> [Footnote] The addition of the 3-year period of probation in 2018 constituted a *correction* of an illegal sentence under Md. 4-345(a) rather than a *modification* of sentence under Md. Rule 4-345(e). The distinction between a correction and modification is key in this instance because the correction results in no immediate change to Petitioner's period of incarceration. The correction merely involved the imposition of a three-year period of probation

> where the Petitioner was not initially sentenced to a probationary period to begin following his release on the life-sentence, suspending all but fifty-years (a split sentence). Where a sentencing court intends to impose a split-sentence, a defendant must be sentenced to a subsequent probationary period. . . . This Court's 2018 Order properly established the Court's authority over the entirety of Petitioner's split sentence, particularly following his release from incarceration.

(Emphasis in original; some citations omitted).

This appeal followed.

A. Appellate Jurisdiction

As a general rule, a circuit court's decision to deny a motion to revise a sentence is not appealable. However, appellate courts may review a denial of a motion to revise if the circuit court's decision was based on a belief that the court lacked jurisdiction to address the motion on its merits. *Brown v. State*, 470 Md. 503, 548 n.52 (2020); *Fuller v. State*, 169 Md. App. 303, 310 n.5 (2006).

B. The circuit court's revisory authority under Md. Rule 4-345

Rule 4-345(e)(1) states:

> 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.

The circuit court reasoned that, because Johnson's original life sentence had been "undisturbed and unmodified since its imposition in 1994," modification of the sentence would be inconsistent with Rule 4-345(e). The court's premise was incorrect: Johnson's

original sentence had not been "undisturbed and unmodified" since 1994. In 2018, the circuit court corrected the hitherto illegal sentence by resentencing him and adding a probationary period. The Court of Appeals has made it clear that a "modification of sentence constitutes the imposition of a new sentence" for the purposes of Md. Rule 4-345(e). *Hoile v. State*, 404 Md. 591, 614 (2008) (citing *McDonald v. State*, 314 Md. 271, 285 (1988) and *Coley v. State*, 74 Md. App. 151, 156 (1988)).

As the parties point out in their briefs, for purposes of Rule 4-345(e), the Court of Appeals has rejected "a narrow view of what constitutes a sentence 'imposed' by a court." *Hoile*, 404 Md. at 612. Rather, a change to a sentence—such as a sentence modification, or the reinstatement of a suspended sentence following a violation of parole or probation—constitutes a new "imposition" of a sentence, creating a new opportunity to file a motion for modification of sentence within 90 days. This is the clear lesson of cases such as: *State v. Green*, 367 Md. 61, 83–84 (2001) ("[O]ur cases make clear that when a trial court grants a motion to revise a criminal sentence, it resurrects the penalty portion of a judgment, thus, the new sentence represents the actual disposition of the case and the modified sentence becomes the appealable order."); *Greco I*, 347 Md. at 433 (holding that "when a sentencing court grants a timely request for modification or reduction of sentence, the defendant may file another request for modification or reduction of sentence within 90 days of the date of the subsequent imposition of sentence[.]"); *McDonald v. State*, 314 Md. 271, 284–85 (1988) (holding that in violation of probation cases, "[w]hether the hearing judge reimposes

the original sentence or imposes a new sentence, the effect under Rule 4-345([(f)] remains the same; the 90-day period runs from the time *any* sentence is imposed or reimposed upon revocation of probation, and the court retains the authority to modify that sentence as the rule provides." (emphasis in original)); and *Coley v. State*, 74 Md. App. 151, 155–57 (1988) (same); *see also Sanders v. State*, 105 Md. App. 247, 253 (1995) ("When any court vacates a sentence because it is illegal, the trial court has sole jurisdiction to impose a new sentence. . . . [W]hether a sentence is found to be illegal on appeal or by the trial court directly, the result is that a new sentence must be imposed.").

One of the many issues in *Hoile* was whether a circuit court's decision to vacate a modified sentence and reimpose the original sentence constituted the imposition of a new sentence. In rejecting the State's contention that it did not, the Court explained:

> The State, in this argument, takes a narrow view of what constitutes a sentence "imposed" by a court. The State urges that the original sentence of 15 years incarceration was not reimposed on Hoile, rather, it simply was "resurrected," "revived," "sprung back," or "reverted" by virtue of the court's vacation of the altered sentence of time served and five years' probation. The State's argument ignores the procedure required to "revive" Hoile's original sentence and our caselaw which takes a broader view of what constitutes the imposition of sentence.

Collectively, these decisions point to the conclusion that when the court in 2018 resentenced Johnson to correct the previous illegality in his sentence, the time limitations for modification of a sentence in Md. Rule 4-345(e) began to run anew. For these reasons, Johnson's motion to modify his sentence was timely filed and, because five years had not passed since he was resentenced, the court had jurisdiction over the motion.

For these reasons, we vacate the judgment of the circuit court and remand this case so that the court can address the motion on its merits. We have one further observation. The court's opinion denying Johnson's motion can be read to suggest that it did not afford weight to his arguments based on "the neuroscience related to juvenile brain development and amenability to rehabilitation" because those policy considerations were first recognized at the Supreme Court level in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Miller v. Alabama*, 567 U.S. 460 (2012), and in those cases, the juvenile defendants were respectively sentenced to death and life without the possibility of parole. The circuit court must make its own assessment as to how the well-established body of scientific research pertaining to judgment and decision-making in teenagers applies to Johnson's case. But the validity of that research does not depend upon the sentences actually imposed in particular cases. That Johnson was not sentenced to death or life without parole does not render this type of evidence irrelevant.

C. The motion for summary reversal

On February 12, 2021, Johnson filed a motion in this Court seeking a summary reversal of the court's judgment together with a request that this Court expedite issuance of its mandate. The State did not oppose the motion. Although we appreciate Johnson's reasons for filing the motion, we deny it. It is difficult for us to conjure up a scenario in which we would vacate a judgment of the circuit court and remand the case for further proceedings without providing the court with an explanation of our reasoning. This is because, even in

unpublished opinions, our role is to provide guidance to the court and counsel. *Cf. Carroll County Ethics Comm'n v. Lennon*, 119 Md. App. 49, 59 (1998) (observing that a summary reversal "provides very little in the way of interpretive guidance"). Nor will we expedite issuance of our mandate because doing so might hamper the ability of either party to file a motion for reconsideration. However, in light of the motion, we have transferred this case to the per curiam docket and prepared an opinion as expeditiously as we could consistent with the orderly discharge of our responsibilities in other pending cases. *See Hyatt v. Hyatt*, 53 Md. App. 55, 56 (1982) (denying a motion for summary reversal but advancing the appeal on the docket of this Court).

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS VACATED AND THIS CASE IS REMANDED TO IT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.