

Circuit Court for Harford County
Case No.: 12-K-15-000795

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 720

September Term, 2022

KEENAN ADRIAN BAILEY

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: December 5, 2022

*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.

On May 31, 2017, pursuant to a binding guilty plea agreement, Keenan Adrian Bailey, appellant, pleaded guilty in the Circuit Court for Harford County to one count of distribution of heroin in violation of section 5-602 of the Criminal Law (“CL”) Article of the Maryland Code.¹ As part of the guilty plea agreement, the court sentenced him, pursuant to the subsequent offender penalty provision found in CL § 5-905(a)², to 40 years’ imprisonment with all but 25 years suspended in favor of 5 years’ supervised probation.³

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act (“JRA”).⁴ Among other things, the JRA eliminated certain mandatory minimum sentences for persons convicted as subsequent offenders of certain drug offenses. In addition, the JRA created CL § 5-609.1, which provides that a defendant who had received a mandatory minimum sentence prior to the elimination of such sentences could seek modification of that sentence pursuant to Maryland Rule 4-345 regardless of whether the defendant had previously filed a timely motion for reconsideration *vel non*.

In May 2022, appellant, acting *pro se*, sought to have the sentence imposed in this case modified pursuant to the provisions of CL § 5-609.1, and, on June 6, 2022, the court

¹ At the time, a person found guilty of this provision was subject to imprisonment not exceeding 20 years for a first offense.

² The version of CL § 5-905(a) in effect during the time period relevant to this case increased the maximum potential penalty for a subsequent offender to “twice that otherwise authorized[.]”

³ Appellant did not thereafter seek leave to appeal his guilty plea in this Court.

⁴ Chapter 515, Laws of Maryland 2016.

summarily denied that request, prompting this appeal.⁵

On appeal, appellant, again acting *pro se*, claims that the circuit court erred by denying his motion and erred by not granting a hearing on it before doing so. We disagree and shall affirm for the simple reason that appellant is not among the class of persons entitled to seek sentence modification under the provisions of CL § 5-609.1 because he is not serving a mandatory minimum sentence. Section 5-609.1, by its terms, only applies to persons sentenced to certain mandatory minimum sentences. While it is true that appellant was sentenced as a subsequent offender, it is equally true that he was not sentenced to a mandatory minimum sentence. Instead, the subsequent offender provision under which he was sentenced subjected him to an increased maximum potential sentence. The record in this case is unmistakably clear that, by pleading guilty, appellant avoided all mandatory minimum penalties he may have been subjected to as a subsequent offender. With appellant's central premise removed, all of his arguments collapse under their own weight.

We, therefore, perceive no error or abuse of discretion in the circuit court's decision

⁵ The JRA gave persons, otherwise eligible for relief, until September 30, 2018 to seek a sentence modification. The JRA, however, permits a court to consider an untimely filed motion for good cause shown. CL § 5-609.1(c)(2).

In his motion for modification, Bailey asserted that such good cause existed because he was unaware, until August 24, 2020 when the Court of Appeals decided *Brown v. State*, 470 Md. 503 (2020), that a circuit court had the authority, under the JRA, to modify, without the acquiescence of the State, a sentence, such as his, that had been imposed as part of binding guilty plea agreement.

Given our resolution of this case, we need not, and do not, decide whether Bailey had shown good cause in this case to excuse his late-filed motion.

to summarily deny appellant’s motion without a hearing.

**JUDGMENT OF THE CIRCUIT
COURT FOR HARFORD COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**