

Circuit Court for Baltimore City
Case No. 108010018-25

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 957

September Term, 2022

DURRELL LEMON

v.

STATE OF MARYLAND

Friedman,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 10, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

In 2009, Durrell Lemon, appellant, was convicted by a jury in the Circuit Court for Baltimore City of two counts of armed robbery; two counts of first-degree assault; two counts of use of a handgun in the commission of a crime of violence; two counts wearing, carrying, or transporting a handgun; two counts of conspiracy to commit armed robbery; two counts of conspiracy to commit first-degree assault; two counts of conspiracy to use a handgun in a crime of violence; two counts of conspiracy to wear, carry, or transport a handgun; and three counts of possession of a firearm after a disqualifying conviction. The court initially sentenced appellant to serve seven consecutive terms of incarceration, totaling 110 years. However, appellant filed a motion for modification of sentence, which the court granted in part on August 11, 2009. Following a re-sentencing hearing, the court reduced his total sentence to 100 years' imprisonment. This Court affirmed his convictions on direct appeal. *Lemon v. State*, No. 455, Sept. Term 2009 (filed Dec. 8, 2011).

In 2021, appellant filed a “Motion for Re-Sentencing,” wherein he claimed that, in 2009, the re-sentencing court had violated Maryland Rule 4-342 by not affording him the opportunity to make a statement and present information in mitigation, and in not advising him of his post-sentencing rights. The circuit court treated appellant’s motion as a motion to modify sentence, and denied the motion. On appeal, appellant contends that the court erred in treating his motion as a motion to modify sentence, and in not contacting the Office of the Public Defender to “advise them that [he] was entitled to representation” on his motion. For the reasons that follow, we shall affirm.

Maryland Rule 4-342 does not provide for the filing of a post-trial “motion for re-sentencing” when a defendant alleges that the sentencing court violated one of its provisions. Rather, any claim that the sentencing court erred in not complying with Rule 4-342 must be raised either on direct appeal following the imposition of sentence or, under certain circumstances, in a cognizable post-trial motion.¹ Because the Maryland Rules do not provide for the filing of a “motion for re-sentencing,” had the court treated appellant’s motion as such, it would have been required to deny the motion.² Consequently, any error in treating the motion as a motion for modification of sentence was harmless, and does not require reversal.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

¹ For example, such a claim could arguably be raised in a motion to correct illegal sentence or in a petition for post-conviction relief. Appellant’s motion, however, did not claim that the court imposed an illegal sentence or that his trial counsel was ineffective in not objecting to the court’s alleged failure to comply with Rule 4-342.

² Because the “motion for re-sentencing” was not a cognizable motion, appellant was also not entitled to representation by the Office of the Public Defender.