

Circuit Court for Baltimore County
Case Nos. 03-K-14-1806 and
03-K-14-1646

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1224

September Term, 2021

JAMES RICHARDSON

v.

STATE OF MARYLAND

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

JJ.

Opinion by Friedman, J.

Filed: October 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.

Under the specific facts of this case, we conclude that it was error not to hold a hearing to consider the appellant’s motion for modification of sentence.

BACKGROUND

This case, before us for the second time, has its origins in a plea agreement entered into by James Richardson, appellant, in the Circuit Court for Baltimore County. Pursuant to the agreement, Richardson pleaded guilty to first degree assault in Case No. 03-K-14-1806 and possession with intent to distribute heroin in Case No. 03-K-14-1646. The State nolle prossed a third case. In support of the plea agreement, the Assistant State’s Attorney presented a statement of facts as to both the first-degree assault and possession with intent to distribute heroin charges. According to that statement, a man identified as Mr. Ford reported to police that Richardson, whom he knew as Nate Hardy, began helping him with construction projects. Ford was not satisfied with Richardson’s work and fired him. Thereafter, Richardson left Ford threatening voice mail messages and slashed his tires. Ford agreed to meet Richardson at a gas station to give him his final paycheck less the cost of the damage to his tires. Ford handed Richardson the money and began to walk away. Richardson then assaulted Ford with his fists, hitting him on both the left and right side of his face. Ford believed Richardson had a weapon in his hand. Ford suffered “incredibly severe injuries” that required numerous reconstructive surgeries and treatment by an orthodontist.

Based on the assault charge, police obtained an arrest warrant for Richardson. In a search incident to his arrest, police found 12 bags of heroin on Richardson’s person. In a search of Richardson’s home, police recovered documents in his name, clear baggies, an

antique .36 caliber, black powder handgun, 2 scales, and 20 glass vials in a shoebox. Chemical analysis identified the substance in the 12 bags to be 1.3 grams of heroin. At the plea hearing, defense counsel clarified that in the assault case no weapon was identified with particularity and there was no evidence to corroborate Ford’s belief that Richardson used a weapon in the assault. The court accepted the statement of facts.

At a subsequent disposition hearing, the circuit court sentenced Richardson for possession with intent to distribute heroin, as a subsequent offender, to 20 years, with all but 10 years suspended, without the possibility of parole. It imposed a concurrent term of 20 years, with all but 10 years suspended, for the first-degree assault. Both sentences were to run concurrent to a sentence Richardson was serving in a federal penitentiary for violation of his supervised release.¹

THE JUSTICE REINVESTMENT ACT

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act (“JRA”).² Among other things, the JRA eliminated mandatory minimum sentences of imprisonment without the possibility of parole for persons convicted of certain drug offenses who were repeat offenders. The JRA also created a special procedure by which a person who had previously received such a mandatory minimum sentence could seek modification of that sentence. MD. CODE, CRIMINAL LAW

¹ Richardson was physically present at his plea hearing but attended his disposition hearing by telephone from a federal penitentiary.

² Chapter 515, Laws of Maryland 2016.

(“CR”) § 5-609.1. This special procedure, for a limited time,³ allowed these defendants to file a motion for modification of sentence pursuant to Maryland Rule 4-345, but without regard to otherwise applicable timing requirements. CR § 5-609.1(a). The law also provides specific criteria for the circuit court to consider when deciding whether to modify such a mandatory minimum sentence:

- (b) The court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant’s chances of successful rehabilitation:
 - (1) retention of the mandatory minimum sentence would not result in substantial injustice to the defendant; and
 - (2) the mandatory minimum sentence is necessary for the protection of the public.

CR §5-609.1(b). The statute thus requires the circuit court to consider—“giv[e] due regard to”—3 factors: (1) the relevant crime; (2) the defendant’s history and character; and (3) the defendant’s chances of successful rehabilitation. The State then bears the burden of showing that the circuit court should not modify the previously-imposed mandatory minimum sentence by proving both that (1) retention of the sentence would not result in injustice and (2) the sentence is necessary for public safety. CR § 5-609.1(b); *Brown v. State*, 470 Md. 503, 552 (2020) (discussing State’s burden of persuasion).

Although the *Brown* Court declined to make a hearing mandatory in every situation, the Court of Appeals was clear that, in most circumstances, a hearing is appropriate:

In considering the factors set forth in CR [§] 5-609.1(b) and exercising its discretion to decide whether to modify a mandatory minimum sentence

³ Pursuant to CR § 5-609.1(c), except for good cause shown, a request for a hearing on any such motion needed to have been filed on or before September 30, 2018.

pursuant to that statute, a court should, in most circumstances, conduct a hearing to receive evidence when such evidence will aid the exercise of the court’s discretion and to hear argument from the parties concerning the application of the factors in CR § 5-609.1(b). Under Maryland Rule 4-345, the court must hold a hearing before it grants a motion. There is no absolute requirement in the statute or rule to hold a hearing when the court denies a motion.

Id. at 554.

RICHARDSON’S MOTION FOR MODIFICATION OF SENTENCE

On June 20, 2018, pursuant to CR § 5-609.1, Richardson filed a motion for modification of his sentence for possession with intent to distribute heroin. Richardson’s motion included information about his upbringing, family, education, employment, substance abuse, and his plans for after his release. He also provided letters from his fiancé and his aunt and information about his participation in various programs including a substance abuse program, a “forgiveness” class, a 2-level parenting class, home improvement classes, and the “Taking a Chance on Change” program. In addition, he advised that he had obtained a GED and was a model inmate with no infractions while in federal prison.

The circuit court denied Richardson’s motion without a hearing on August 10, 2018. Richardson filed a motion for reconsideration, which was denied by the circuit court on August 30, 2018. Richardson then noted an appeal to this Court, which we stayed pending the Court of Appeals’ decision in *Brown*. After the decision in *Brown* was issued, we remanded Richardson’s case to the circuit court for reconsideration in light of the Court of Appeals’ decision in *Brown*.

On remand, again without a hearing, the circuit court denied Richardson’s motion for modification of his sentence for possession with intent to distribute heroin. In reaching that decision, the circuit court wrote:

Pursuant to an Order of the Court of Special Appeals of Maryland, dated February 12, 2021, and the accompanying Mandate of same date, this Court has reviewed and reconsidered the Motion for Modification filed by Defendant on October 1, 2020. The Court denied said Motion on October 7, 2020 stating that due to the untimely filing allowed by Rule, it was Denied. The Court notes that it denied an earlier, belated Motion for Modification filed by Defendant on August 23, 2016.

In a footnote, the circuit court wrote that it had “granted a Petition by Defendant to file a belated Motion for Modification of sentence.” The circuit court went on to state that it had “reviewed [its] notes from the binding, guilty pleas taken in these cases” and the subsequent disposition. The circuit court referenced the first-degree assault case and noted that “[t]he victim of the assault sustained permanent facial injuries with bills (and a subsequent judgment of restitution) in the amount of [\$]70,000.” The circuit court’s discussion of the guilty plea for possession with intent to distribute heroin was limited to the fact that Richardson had been sentenced as a subsequent offender. The circuit court noted that the sentences for both crimes were to run concurrent with a federal sentence Richardson was serving at the time of disposition. The circuit court concluded:

The Court has reviewed the case of *Brown, et al. v. State of Maryland*, 470 Md. 503 (2020), and the said Order of the Court of Special Appeals. Giving regard to the nature of the crime at issue, the serious injury sustained by the victim, the history and character of the Defendant, and his chances of successful rehabilitation, the Court denies said Motion for Modification of Sentence. The mandatory minimum sentence imposed in Case K-14-1646 did not result in substantial injustice to the Defendant, and that the sentence was necessary for the protection of the public. Therefore, Defendant’s Motion is Denied[.]

Richardson filed a motion for reconsideration,⁴ which was denied. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the circuit court abused its discretion by summarily denying Richardson’s motion for modification of his mandatory minimum sentence pursuant to CR § 5-609.1. For the reasons set forth below, we shall vacate the circuit court’s order and remand for further consideration of Richardson’s motion for modification.

ANALYSIS

We hold that the circuit court applied the wrong standards to its consideration of Richardson’s motion. Moreover, we hold that, although the *Brown* Court was clear that not every motion for reconsideration pursuant to CR § 5-609.1 must be considered at a hearing, given the facts of Richardson’s case, a hearing was necessary here. We, therefore, vacate

⁴ In his motion for reconsideration, Richardson asserted, among other things, that the circuit court’s order denying his motion referenced events, specifically an October 1, 2020 motion that was denied on October 7, 2020, that did not correspond to the procedural history of his case. He argued:

The procedural history set forth in paragraph one of this Court’s September 15, 2021 order does not correspond to the procedural history of case number 03-K-14-001646. As explained above, Mr. Richardson filed a timely motion for modification pursuant to ... [CR] § 5-609.1, in June of 2018, in case number 03-K-14-001646. The denial of this motion was the subject of his appeal, and was then in turn the subject of the remand for reconsideration that was ordered by the Court of Special Appeals in February of 2021.

The circuit court did not respond to this specific concern.

the circuit court’s order denying Richardson’s motion and remand for the circuit court to hold a hearing and reconsider Richardson’s motion anew.

As noted above, CR § 5-609.1(b) sets forth the legal standards that the circuit court is required to consider and the allocation of the burdens of proof. Specifically, the circuit court must consider (1) the relevant crime; (2) the defendant’s history and character; and (3) the defendant’s chances of successful rehabilitation. CR § 5-609.1(b). The State then bears the burden of showing that the circuit court should not modify the previously-imposed mandatory minimum sentence by proving both that (1) retention of the sentence would not result in substantial injustice and (2) the sentence is necessary for public safety. *Id.*; *Brown*, 470 Md. at 552. The circuit court’s previous attempts did not satisfy these standards.

First, the circuit court was required to give “due regard” to the crime for which Richardson received a mandatory minimum sentence. CR §5-609(b). As noted above, that was heroin distribution. The circuit court’s opinion suggests that rather than considering Richardson’s heroin distribution conviction, it instead considered Richardson’s contemporaneous assault conviction and the injuries sustained by the victim of that assault. Richardson, however, was separately sentenced and is serving the sentence for that assault conviction. It is not the relevant “crime” to which the court must give “due regard” under CR § 5-609.1.

Second, the court was required to give “due regard” to Richardson’s “history and character.” CR §5-609(b). The circuit court reported that it had “reviewed [its] notes from the binding, guilty plea taken in these cases.” Although in considering this factor it was

appropriate for the circuit court to consider Richardson’s prior convictions—including, of course, the assault and the heroin distribution and any other crimes—it was also required to consider any changes in Richardson’s character since sentencing. By merely reviewing its notes and without holding a hearing, it is not clear to us how or even whether the circuit court evaluated Richardson’s current character.

Third, the court was required to give “due regard” to Richardson’s current chances for a “successful rehabilitation.” CR § 5-609.1(b). Here, as noted above, Richardson had provided, with his motion, evidence to suggest that he had changed while in prison and that his chances for a “successful rehabilitation” had improved since the time of sentencing. There is nothing in the circuit court’s opinion to suggest that it considered this evidence or that it considered anything from the State to rebut this evidence.

And, *fourth*, the statute is clear that it is the State’s burden of proof to show both that modification will not result in substantial injustice to the defendant or endanger public safety. CR §5-609.1(b)(1), (2). This record is utterly devoid of any evidence from the State to satisfy its burden on these points.⁵

This was not the process that the General Assembly envisioned when it adopted the JRA. It envisioned a careful, thoughtful reconsideration of sentences based on individualized information. As the Court of Appeals recognized in *Brown*, the JRA provides:

⁵ We understand that the General Assembly, by assigning the burden of proof to the State, meant for it to bear both the burden of production and the burden of persuasion. *See Kassap v. Seitz*, 315 Md. 155, 161-62 (1989) (“burden of proof” consists of at least two component parts: the burden of production ... and the burden of persuasion”).

an extraordinary opportunity for defendants serving mandatory minimum sentences to be afforded something that the statute previously did not allow for these defendants – individualized sentencing based on the circumstances of each case, just as a sentencing judge would have conducted in the absence of a mandatory minimum sentencing regime.

Brown, 470 Md. at 552 (discussing CR §5-609.1).

We, therefore, remand the case to the circuit court to conduct the hearing and consider the factors to which Richardson is entitled.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY VACATED;
CASE REMANDED FOR FURTHER
CONSIDERATION; COSTS TO BE PAID
BY BALTIMORE COUNTY.**