

Circuit Court for Baltimore County
Case Nos.: 03-K-15-004099

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1406

September Term, 2021

MICHAEL ANTHONY HUTH

v.

STATE OF MARYLAND

Arthur,
Shaw,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 28, 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.

This appeal involves the propriety of the circuit court’s denial of a paper titled “motion to dismiss with prejudice, or in the alternative, a motion for reduction of sentence” filed by a criminal defendant several years after his guilty plea and sentencing took place. For the reasons explained herein, we shall deny the State’s motion to dismiss this appeal, and affirm the judgment of the circuit court.

BACKGROUND

On April 14, 2016, in the Circuit Court for Baltimore County, Michael Anthony Huth, appellant, pleaded guilty to second-degree murder. On January 24, 2017, the circuit court sentenced appellant to thirty years’ imprisonment.¹ Appellant did not thereafter seek leave to appeal his guilty plea in this Court.

On April 3, 2017, appellant filed, through counsel, a timely motion for modification or reduction of sentence pursuant to Maryland Rule 4-345. Among other things, that motion asserted that appellant was “extremely remorseful” for having taken the life of the victim who had been a lifelong friend, and that he was “intoxicated at the time of the offense on a mixture of alcohol and pills and has very little recollection of the events.” On April 5, 2017, the circuit court summarily denied that motion.

As noted earlier, several years later, on September 13, 2021, appellant filed in the circuit court a paper titled “motion to dismiss with prejudice, or in the alternative, a motion

¹ Neither a written motion to withdraw the guilty plea, nor an order denying one, appears in the appellate record. Nevertheless, the circuit court clerk’s worksheet dated for the day of the sentencing proceeding reflects that the court denied such a motion on that date. Appellant has not provided us with a transcript of the guilty plea or sentencing proceeding, as was his duty under Maryland Rule 8-411.

for reduction of sentence.” That motion requested that the circuit court “invoke its revisory power over [appellant’s case]” under Maryland Rule 4-345(e)(1)(B)² “because the sentence is not after the expiration of five years in which it was imposed on 01/24/2017[.]” The motion contained various contentions to include what it described as ineffective assistance of counsel, prosecutorial misconduct, fraud, and newly discovered evidence.

On October 5, 2021, the circuit court denied appellant’s motion by way of a brief order explaining that (1) appellant’s motion was untimely under Maryland Rule 4-345 because it was not filed within 90 days of his sentencing, and (2) it declined to treat the motion as a petition for post-conviction relief filed pursuant to Maryland Rule 4-401, *et. seq.*³ On November 4, 2021, appellant filed a timely *pro se* notice of appeal from the circuit court’s denial of his motion.

In his *pro se* informal brief before this Court, which we have liberally construed,⁴ appellant first re-asserts, verbatim, the claims made in his motion filed in the circuit court.⁵

² Maryland Rule 4-345(e)(1)(B) provides, in pertinent part:

(1) Upon a motion filed within 90 days after imposition of a sentence ... (B) in a circuit court ... 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[.]

³ The circuit court pointed out that appellant’s paper was signed by a “John Noonan” who also signed an affidavit submitted in support of the motion. The circuit court noted that “Mr. Noonan does not appear to be licensed to practice law in Maryland and the Court is uncertain as to what, if any, involvement he has in this case.”

⁴ *See Simms v. Shearin*, 221 Md. App. 460, 480 (2015) (noting that we generally liberally construe papers filed by *pro se* litigants).

⁵ Appellant also seems to have added another claim, or, perhaps, has expanded on a claim previously raised dealing with trial counsel’s alleged errors in connection with certain allegedly exculpatory evidence.

He next claims that, the circuit court erred when it denied his motion on the basis that it was filed outside the 90-day window provided in Maryland Rule 4-345(e)(1)(A) and therefore untimely. According to appellant, pursuant to Maryland Rule 4-345(e)(1)(B), the circuit court had the authority to revise his sentence until five years had elapsed from the date it was originally imposed.

DISCUSSION

Appellant’s argument that the circuit court retained the authority to rule on a motion for modification of sentence for five years from the date of sentencing regardless of the fact that such a motion had already been timely filed and denied, is incorrect. There are three conditions precedent for a circuit court to have the authority to rule on a motion for modification of sentence filed pursuant to Maryland Rule 4-345(e)(1)(B). *First*, such a motion needs to have been filed within 90-days of sentencing pursuant to Maryland Rule 4-345 (e)(1)(A). *Second*, such a motion must never have been denied. And *third*, five years must not have elapsed from the date of sentencing.

In appellant’s case, his late-filed motion for modification of sentence failed to meet the second condition listed because, while such a motion had been timely filed, the motion had been denied within days of its filing. As a result, when the circuit court denied the motion now at issue in this case, it had before it no timely filed Rule 4-345 motion upon which to act. *Tolson v. State*, 201 Md. App. 512, 517-18 (2011). Therefore, the circuit court did not err or abuse its discretion when it denied appellant’s motion on that basis.

Also, the circuit court did not err or abuse its discretion when it chose not to treat appellant’s motion as a petition for post-conviction relief filed pursuant to the Maryland

Uniform Post-Conviction Act found in Section 7-101, *et. seq.* of the Criminal Procedure Article and Section 4-401, *et. seq.* of the Maryland Rules. Pursuant to the Act, among other things, a criminal defendant is entitled to file only one petition for post-conviction relief, is entitled to counsel for that purpose, and is entitled to a hearing on the petition. Moreover, the sort of allegations appellant raised in his motion are most appropriately litigated in a petition for post-conviction relief filed under that Act.⁶ *Mosley v. State*, 378 Md. 548, 558-60 (2003). Thus, we think that this decision of the circuit court caused no harm to appellant, and possibly benefitted him, because, as a result, he still retains his ability to pursue his claims in the proper procedural vehicle.

Consequently, we affirm the judgment of the circuit court.⁷

**STATE’S MOTION TO DISMISS
APPEAL DENIED. JUDGMENT
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

⁶ Or, perhaps, litigated in some other proceeding, but certainly not in an untimely filed motion for modification of sentence.

⁷ The State has moved this Court to dismiss this appeal for various reasons some of which have to do with treating the appeal as an application for leave to appeal from a guilty plea filed pursuant to Section 12-302(e)(2) of the Court’s Article. To be sure, depending on how we were to construe the nebulous papers appellant filed in both the circuit court and this Court, and depending on how many shortcomings of the appellate rules we were to notice, there could have been more than one reason to dismiss this appeal. Nevertheless, given our resolution of this appeal, it is not necessary to do so. As a result, we deny the State’s motion to dismiss this appeal.