Circuit Court for Prince George's County
Case No.: CT-07-0343X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1662

September Term, 2024

MICHAEL WAYNE BROWN

v.

STATE OF MARYLAND

Berger,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 29, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 2008, in the Circuit Court for Prince George's County, Michael Wayne Brown, appellant, pleaded guilty to first-degree assault and robbery with a dangerous weapon and was sentenced to a total term of 40 years' imprisonment, all but seven years suspended, to be followed by a five-year term of supervised probation. While on probation, Brown was arrested and charged with new criminal offenses, which prompted a violation of probation proceeding in this case. In January 2019, following a hearing, the court found Brown had violated conditions of his probation, revoked his probation, and ordered him to serve the balance of his sentence (33 years), to run consecutively to any sentence he was then serving. Brown, through counsel, filed a timely application for review of sentence by a three-judge panel pursuant to §§ 8-102 et seq. of the Criminal Procedure Article of the Maryland Code and Maryland Rule 4-344. The State filed an opposition, asserting that a reduction in Brown's sentence was not warranted. By order dated August 22, 2024, a three-judge panel, "DENIED" relief, without a hearing. Brown, representing himself, filed an appeal. The State, noting that the review panel failed to exercise its discretion in considering the application for review of sentence, urges this Court to vacate the decision and remand with instructions to the panel to consider whether Brown's sentence is appropriate. For the reasons to be explained, we agree with the State that the review panel concluded that Brown's sentence is legal but failed to determine whether it was

appropriate. Accordingly, we shall vacate the judgment and remand for further proceedings.[1]

The review panel's memorandum illustrates its failure to exercise its discretion in reviewing Brown's sentence. After setting forth the factual and procedural background of Brown's case, Brown's criminal history, and the reasons he gave in support of his request for a reduction in his sentence, the panel provided a "legal analysis" in which it stated in relevant part:

> Review of sentences are extremely limited in Maryland, as there are only three grounds of review that are recognized: (1) the sentence may not constitute cruel and unusual punishment or otherwise violate constitutional requirements; (2) the sentencing judge may not be motivated by ill-will, prejudice, or other impermissible considerations; and (3) the sentence must be within statutory limitations. *Teasley v. State*, 298 Md. 364, 370 (1984).
>
> In this present case, the sentence handed down does fall within the statutory limitations provided in the applicable statues [sic] and does not constitute cruel and unusual punishment.
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> ***
>
> The sentences imposed by Judge McKee fall within the statutory guidelines and does not constitute cruel and unusual punishment or otherwise violate constitutional requirements. Pursuant to Md. Code, Crim. Proc. § 6-223(d), where the Court, at violation of probation hearing, finds a defendant or probationer has violated a condition of probation, the Court may revoke the probation granted or the suspension of sentence and for a non-technical violation, impose any sentence that might have originally been imposed for the crime of which the probationer or defendant was convicted. Where the sentence imposed falls within the statutory limits set by the legislature, and there is no showing that it was motivated by ill will, prejudice, or other

[1] Although the decision of a three-judge panel is normally not appealable unless the panel increases the sentence originally imposed, the judgment is subject to appellate review where the panel "has not performed its duty to provide the review." *Collins v. State*, 326 Md. 423, 432 (1992).

> improper considerations, it is beyond appellate challenge. *Teasley v. State*, 298 Md. 364, 370 (1984).
>
> Here, a violation of probation hearing was held on January 11, 2019, before Judge McKee. The Court found that Petitioner had a non-technical violation, a criminal prohibition other than a minor traffic offense, based on Petitioner's commitment to a federal facility and admission. The question of whether to revoke probation is a matter within trial court's discretion. In addition, the Court has greater authority over the initiation and prosecution of a probation violation charge than over the underlying criminal charges.
>
> As such, there is nothing to indicate that Judge McKee was motivated by ill will, prejudice, or other improper considerations, nor does Petitioner assert such allegations, when the sentence was imposed in this case. Revocation of probation is not second punishment added upon original sentence, but rather it represents withdrawal treatment previously accorded to the defendant.

(Footnotes omitted.)

As the State points out, the review panel's memorandum reflects that "it considered its role as akin to that of an appellate court and believed that it could revise [Brown's] sentence only if it were illegally imposed." "By considering only the legality of Brown's sentence, and not its appropriateness under the totality of the circumstances," the State maintains that "the review panel did not exercise its discretion to revise or not revise Brown's sentence." We agree.

Although the review panel correctly noted the grounds for *appellate* review of a sentence, a three-judge sentence review panel in the circuit court is not functioning as an appellate court and, therefore, its review of a defendant's sentence is not limited to the grounds set forth in *Teasley, supra*, as the panel in this case seemed to assume. We made this clear in *Raley v. State*, 32 Md. App. 515 (1976), where we stated that, although the factors an appellate court considers when reviewing a sentence on appeal "are properly to

be considered by the review panel, its scope is not so limited, the application [for review of sentence] being addressed to the wide discretion of the panel in determining the appropriateness of the sentences." *Id*. at 528 n.2. Thus, "[t]o modify a sentence, the review panel need not find that the sentencing judge abused his discretion, only that it does not agree that the sentence was appropriate under all the circumstances, including the accused's background and prior criminal record." *Id*. Accordingly, a three-judge review panel may decide that the sentence imposed by the trial court "should remain unchanged" or "may order a different sentence to be imposed or served" and increase, decrease, or suspend a sentence. Crim. Proc. § 8-105(c)(3).

In sum, our reading of the review panel's memorandum in this case indicates that the panel incorrectly believed that it could not modify Brown's sentence unless it exceeded the statutory limitations, constituted cruel and unusual punishment, or was motivated by ill-will, prejudice, or other impermissible considerations. We conclude, therefore, that the panel failed to exercise the discretion afforded it when it considered Brown's application for review of sentence. We vacate the judgment and remand for a new consideration of Brown's application for review of sentence and a determination as to whether the sentence is or is not appropriate under all the circumstances.

JUDGMENT VACATED.

CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR REVIEW OF SENTENCE BY A THREE-JUDGE PANEL CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.