Circuit Court for Worcester County
Case No. 23-K-09-000436

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1770

September Term, 2017

CLIFTON WATERS

v.

STATE OF MARYLAND

Wright,
Graeff,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 23, 2019

Clifton Waters, appellant, challenges that part of an October 13, 2017 ruling of the Circuit Court for Worcester County that rejected his motion for modification of sentence asserted under Md. Code (2002, 2012 Repl. Vol., 2018 Supp.), Criminal Law Article (CR), § 5-609.1. We affirm.[1]

FACTS AND PROCEDURAL BACKGROUND

In 2010, Waters was convicted, under CR § 5-602, of nine counts of distribution of cocaine, a Schedule II controlled dangerous substance (CDS).[2] A sentencing hearing was held on September 14, 2010, at which Waters, who had previously been convicted of distribution of CDS, was sentenced as a second time offender pursuant to a penalty provision then in effect, which provided for a mandatory minimum sentence of 10 years without the possibility of parole.[3]

In accordance with that statute, Waters was sentenced, on the first count of distribution of CDS (Count 1), to 20 years' imprisonment, the first ten years to be served without the possibility of parole. On the remaining eight distribution counts, the court imposed four consecutive ten-year sentences (Counts 3, 5, 7 and 9); and four concurrent 20-year sentences (Counts 11, 13, 15 and 17, to be served concurrent with Count 1), for a

[1] This Court assumes, without deciding, that appellate jurisdiction exists here. *Cf. Fuller v. State*, 169 Md. App. 303 (2006), *aff'd*, 397 Md. 372 (2007).

[2] Waters was also convicted of nine counts of possession of a controlled dangerous substance (cocaine). Those convictions were merged for sentencing purposes with the convictions for distribution of cocaine and are not at issue in this appeal.

[3] Md. Code (2002, 2010 Supp.), Criminal Law Article (CR), § 5-608(b).

total sentence of 60 years, the first ten to be served without the possibility of parole. Waters filed a timely motion for modification, which the court denied.

As relevant here, on October 1, 2017, the Justice Reinvestment Act went into effect, which, *inter alia*, eliminated mandatory minimum sentences for certain offenses, including distribution of CDS.[4] That legislation also rewrote CR § 5-609.1,[5] reopening a door for individuals serving mandatory minimum sentences for drug violations to seek reconsideration of those sentences, regardless of whether a timely motion for reconsideration was filed, or whether such a motion was denied.

Waters filed a motion for modification of his sentence pursuant to § 5-609.1. At the hearing on the motion on October 13, 2017, defense counsel not only requested that the court modify the mandatory minimum penalty imposed on Count 1, but also sought modification of the consecutive and concurrent sentences imposed for the remaining eight distribution convictions. The court found that modification of Waters's mandatory minimum sentence on Count 1 was appropriate, and it suspended the remainder of the sentence on that count. The court declined to modify the non-mandatory sentences imposed on the other convictions, stating that "the only issue before me is the mandatory minimum sentence; I don't have any authority to make a ruling as to the remainder of that sentence." This appeal followed.

4 Chapter 515, Laws of 2016.

5 Section 5-609.1 was originally enacted in 2015. *See* Chapter 490, Laws of 2015.

DISCUSSION

Waters contends that the court erroneously concluded that it did not have authority *under § 5-609.1* to modify the non-mandatory minimum sentences imposed on eight of the convictions. We disagree.

"The interpretation of a statute is a question of law that this Court reviews *de novo*." *Brown v. State*, 454 Md. 546, 550 (2017). In our view, the issue of statutory interpretation in this case is largely controlled by the plain meaning rule, which examines the text of the statute giving it its ordinary meaning, viewing it in context and considering it in light of the statute as a whole. *Prince George's County v. Blue*, 206 Md. App. 608, 617 (2012), *aff'd*, 434 Md. 681 (2013).

The statute at issue here provides:

> (a) Notwithstanding any other provision of law and subject to subsection (c) of this section, a person who is serving a term of confinement that includes a *mandatory minimum sentence* imposed on or before September 30, 2017, for a violation of §§ 5-602 through 5-606 of this subtitle may apply to the court to modify or reduce the *mandatory minimum sentence* as provided in Maryland Rule 4-345, regardless of whether the defendant filed a timely motion for reconsideration or a motion for reconsideration was denied by the court.
>
> (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.
>
> (c) (1) Except as provided in paragraph (2) of this subsection, an application for a hearing under subsection (a) of this section shall be submitted to the court or review panel on or before September 30, 2018.

> (2) The court may consider an application after September 30, 2018, only for good cause shown.
> (3) The court shall notify the State's Attorney of a request for a hearing.
> (4) A person may not file more than one application for a hearing under subsection (a) of this section for a *mandatory minimum sentence* for a violation of §§ 5-602 through 5-606 of this subtitle.
>
> (Emphasis added.)

Md. Code (2002, 2012 Repl. Vol., 2018 Supp.), CR § 5-609.1.

Waters asserts that (1) the Legislature's use of the conjunction "and" in subsection (b) of the statute ("[t]he court may modify the sentence *and* depart from the mandatory minimum sentence . . ." (emphasis added)), "demonstrated that the General Assembly intended to grant the trial court the discretion to modify any of a defendant's sentences for certain drug offenses, even if one of those sentences included a non-mandatory term of confinement," and; (2) the language in subsection (b), which authorizes the court to modify "the sentence", applies to the entire sentence arising out of the same case, and not just a mandatory minimum sentence.

We disagree with Waters's interpretation of § 5-609.1, which is based on isolated language that is taken out of context. The words, "the sentence" in subsection (b) clearly refer back to "mandatory minimum sentence" in subsection (a). In addition, the word, "and" cannot support Waters's reading of the statute. The "modify" and "depart" terms are obviously related, if not integrated. *See* Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* (7th ed. 2009) at § 21.14 ("When two or more requirements are provided in a section and it is the legislative intent that all of the requirements must be fulfilled to comply with the statute, the conjunctive 'and' should be used."). A court departs from the mandatory minimum sentence by modifying the

sentence. This is the ordinary reading of this language in subsection (b). The repeated usage of "mandatory minimum sentence" throughout the statute without specification of a process or procedure for other types of sentence modification completely undercuts the argument that the first six words of subsection (b) authorize an additional remedy. The plain language of the whole statute, when read in context, clearly and unambiguously establishes a process for review of mandatory minimum sentences and authorizes no more.

Moreover, this interpretation is reinforced by the title to the 2016 legislation. The purpose clause of the title to the Justice Reinvestment Act states that the legislation is "authorizing a person who is serving a certain *mandatory minimum sentence* to apply to the court to modify or reduce the *mandatory minimum sentence* under certain circumstances." Chapter 515, Laws of 2016. (Emphasis added). Absent in the title is a reference to the authority of a court to modify sentences other than mandatory minimums. This is particularly telling because a statute can be given no more extended operation than that explained in its title. *See Barrett v. Clark*, 189 Md. 116, 127 (1947), *superseded by statute on other grounds*; and Md. Const., Art. III, § 29.[6]

For these reasons, the circuit court did not err in concluding that it lacked authority to modify any sentence other than a mandatory minimum sentence.

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

[6] Given the plain meaning of § 5-609.1, we need not search the measure's legislative history for a contrary reading. However, we note that we have not found anything in this history that clearly, expressly, or unambiguously authorizes the remedy that Waters seeks.