

Circuit Court for Charles County
Case No.: 08-K-09-000070

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2082

September Term, 2018

DELANTE PHILLIP GRAY

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: July 9, 2021

*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.

On March 26, 2010, in the Circuit Court for Charles County, Delante Phillip Gray, appellant, pleaded guilty pursuant to a binding guilty plea agreement to distribution of a controlled dangerous substance (“CDS”) and admitted to violations of probation in two other cases. On April 19, 2010, the court sentenced appellant, in accordance with the binding plea agreement, to two concurrent five-year terms of imprisonment for the violations of probation, and, as a subsequent offender to a consecutive ten-year term of imprisonment, to be served without parole, for distribution of CDS.

In 2016, the Maryland General Assembly enacted, and the Governor signed, the Justice Reinvestment Act (“JRA”).¹ Among other things, the JRA eliminated certain mandatory minimum sentences for persons convicted as subsequent offenders of certain drug offenses. In addition, the JRA created Maryland Code, Criminal Law Article (“CR”), § 5-609.1, which provides that a defendant who had received a mandatory minimum sentence, prior to the elimination of such sentences, could seek modification of that sentence pursuant to 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.² Section 5-609.1 also provided some criteria for the court to consider when deciding whether to modify such a sentence.³

¹ Chapter 515, Laws of Maryland 2016.

² 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.

³ CR § 5-609.1(b) provides:

(b) The court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that, giving due regard to the

(continued)

In April 2018, appellant sought to have his sentence modified pursuant to the provisions of CR § 5-609.1. The State opposed this request. On August 8, 2018, at the conclusion of a hearing on the motion, the circuit court denied relief on the basis that it lacked the authority to modify the sentence without the State’s consent because the sentence had been imposed pursuant to a binding guilty plea agreement. Appellant appealed the denial, and we stayed the appeal pending the Court of Appeals’ answer to the four certified questions we posed in *Brown v. State*, 470 Md. 503 (2020).

Among the questions *Brown* addressed was whether a circuit court can modify a mandatory sentence imposed pursuant to a binding guilty plea agreement. The Court of Appeals determined that the circuit court has the authority to modify such a sentence pursuant to CR § 5-609.1. *Id.* at 534-40.

Another question addressed in *Brown* was whether a defendant is entitled to a hearing on a motion for modification of sentence filed pursuant to CR § 5-609.1. *Brown*, 470 Md. at 541-46. After a discussion of the issue the Court concluded:

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 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

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.

absolute requirement in the statute or rule to hold a hearing when the court denies a motion.

Id. at 554.

After *Brown* was decided, appellant requested this Court to lift the stay we had earlier placed on this case. On June 10, 2021, we lifted the stay. Both appellant and appellee have now filed their briefs in this Court and they both take the position that appellant is entitled to have the August 8, 2018 order denying his motion for modification of sentence vacated, and to have the case remanded to the circuit court for it to reconsider his motion in light of *Brown*. Mindful that the circuit court did not have the benefit of the Court of Appeals' guidance when it denied appellant's motion for modification of sentence, we agree with the parties.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
VACATED. CASE REMANDED
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS
OPINION. COSTS TO BE PAID BY
CHARLES COUNTY.**