

Circuit Court for Baltimore City
Case No. 191155007, 09, 11

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No.1626

September Term, 2016

JOSEPH DORSEY

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 3, 2017

*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.

In 2016, Joseph Emmanuel Dorsey, appellant, filed a motion, in the Circuit Court for Baltimore City, to correct an illegal sentence on the ground that his sentence to life imprisonment for first-degree murder was unlawful. The court denied the motion and Dorsey filed a timely appeal. We affirm.

Dorsey was convicted by a jury in 1991 of first-degree murder and other offenses. He was sentenced by the court on January 24, 1992, to life imprisonment for first-degree murder and to a consecutive term totaling thirty-five years imprisonment for other offenses. This Court affirmed the judgments. *Rucker & Dorsey v. State*, No. 218, September Term, 1992 (filed November 19, 1992).

In this appeal, Dorsey asserts that the court erred in denying his motion because his sentence for murder exceeded the maximum permitted penalty, his sentence is ambiguous, and his sentence is “incapable of being diminished [by] the amount of diminution credits he has earned” during his years of confinement.

At the time Dorsey was sentenced, Art. 27, § 412(b) of the Maryland Code (1987 Repl. Vol., 1991 Supp.) provided:

[A] person found guilty of murder in the first degree shall be sentenced to death, imprisonment for life, or imprisonment for life without the possibility of parole. The sentence shall be imprisonment for life unless: (1)(i) the State notified the person in writing at least 30 days prior to trial that it intended to seek a sentence of death . . . ; or (2) the State notified the person in writing at least 30 days prior to trial that it intended to seek a sentence of imprisonment for life without the possibility of parole[.]

(Emphasis added.)

The docket entry, the commitment record, and the sentencing hearing transcript indicate that the court sentenced Dorsey to “the Department of Correction for the term of

[his] natural life.”¹ There is no mention whatsoever that the sentence was a life term *without the possibility of parole*. Nor do the docket entries reflect that the State filed a notice of intent to seek a sentence of life without the possibility of parole. Moreover, a sentence to one’s “natural life” was terminology previously used to mean life imprisonment. *See* Art. 27, § 413(a) of the Maryland Code (1976 Repl. Vol.) (“Every person convicted of murder in the first degree shall undergo a confinement in the penitentiary of the State for the period of their natural life unless otherwise provided in this section.”).² In short, based on the record before us, we perceive no ambiguity in Dorsey’s sentence for first-degree murder; the record reflects that the court imposed a sentence of life imprisonment. And because life imprisonment was a permitted sentence for the offense, it did not exceed the statutory maximum as Dorsey claims and, hence, it is legal.

We also reject Dorsey’s contention that his sentence is unlawful because it is “incapable of being diminished [by] the amount of diminution credits he has earned” during his years of confinement. That allegation does not render his sentence “inherently illegal” and thus is not an issue he may raise in a Rule 4-345(a) motion to correct an illegal sentence. Relief under Rule 4-345(a) is limited; it applies only to situations “in which the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting

¹ The record before us initially included only excerpts from the transcript of the January 24, 1992, sentencing hearing. The State moved in its brief to dismiss the appeal due to the lack of transcripts and did not address the merits of Dorsey’s claim. We decline to dismiss the appeal. At this Court’s request, the circuit court supplemented the record with the full transcript of the sentencing hearing.

² A sentence to life imprisonment without the possibility of parole did not become a sentencing option until 1987. *See* Acts of 1987, chapter 237.

any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.” *Chaney v. State*, 397 Md. 460, 466 (2007).

In any event, Dorsey’s complaint about the use of diminution credits in the context of a life sentence was addressed by this Court in *Witherspoon v. Maryland Parole Commission*, 149 Md. App. 101 (2002). There, we agreed with the Attorney General’s analysis of the issue, *see* 86 Op. Att’y Gen., 01-002 (January 25, 2001), and concluded that “[a]n inmate serving a parolable life sentence cannot obtain early release based on diminution of confinement credits . . . because there is no maximum expiration date on such an inmate’s sentence from which the diminution credits could be subtracted.” 149 Md. App. at 106. The credits are not useless, however, because they may be considered when determining the date the inmate is eligible for parole. *Id.*

**APPELLEE’S MOTION TO DISMISS THE
APPEAL DENIED.**

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.**

COSTS TO BE PAID BY APPELLANT.