

Circuit Court for Baltimore County  
Case No. 03-K-94-000195

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 311

September Term, 2017

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TIMOTHY D. BELL

v.

STATE OF MARYLAND

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Berger,  
Friedman,  
Beachley,

JJ.

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Opinion by Berger, J.

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Filed: June 10, 2019

\*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 case is before us on appeal from an order of the Circuit Court for Baltimore County denying the motion to correct illegal sentence filed by appellant, Timothy Bell. In 1994, Bell entered an *Alford* plea to first-degree rape and use of a handgun in the commission of a crime of violence.<sup>1</sup> He was sentenced to life in prison for first-degree rape and twenty years' imprisonment for the handgun offense. Bell was fifteen years old when he committed the crimes.

Following the decisions of the United States Supreme Court in *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, \_\_ U.S. \_\_, 136 S. Ct. 718 (2016), Bell filed a motion to correct what he alleged was an illegal sentence. Bell asserted that his sentence was unconstitutional pursuant to recent Supreme Court precedent addressing life sentences without parole for juvenile offenders. The circuit court denied Bell's motion.

Bell noted a timely appeal. This Court stayed Bell's appeal pending the decision of the Court of Appeals in *Carter v. State*, No. 54, Sept. Term, 2017; *Bowie v. State*, No. 55, Sept. Term, 2017; and *McCullough v. State*, No. 56, Sept. Term, 2017, because the cases raised issues relating to whether a life sentence with the possibility of parole constituted an unconstitutional *de facto* life without parole sentence. On August 29, 2018, the Court of Appeals issued a consolidated opinion in *Carter v. State*, 461 Md. 295 (2018). The opinion

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<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970). "An *Alford* plea lies somewhere between a plea of guilty and a plea of *nolo contendere* and [l]ike a guilty plea and *nolo* plea, the *Alford* plea waives challenges to adverse rulings on pretrial motions and all procedural objections, constitutional or otherwise, limiting appeals to jurisdictional defects and challenges based on the propriety of the trial court's acceptance of the plea." *Jamison v. State*, 450 Md. 387, 389 n.1 (2016) (citations and quotations omitted).

resolved the cases of *Carter*, *Bowie*, and *McCullough*. Following the issuance of the *Carter* opinion, the stay was lifted in Bell’s appeal and the appeal proceeded.

In this appeal, Bell presents one question, which we set forth *verbatim*.

Is Mr. Bell’s sentence unconstitutional under the 8<sup>th</sup> Amendment and the Maryland Declaration of Rights Articles 16 and 25, and thus illegal?

For the reasons explained herein, we affirm.

### **BACKGROUND**

We set forth briefly the factual background underlying this appeal. The underlying rape occurred in 1993 when Bell was fifteen years old. On December 23, 1993, L.F. exited a train at the Baltimore Highlands Light Rail Station in Halethorpe, Maryland.<sup>2</sup> As L.F. walked towards the parking lot, Bell approached her from behind. Bell pointed a small gun at L.F. and demanded that she follow him to a field. L.F. complied. Bell then ordered L.F. to strip off her clothes and lie on the ground. Bell proceeded to rape L.F. After police officers apprehended Bell, Bell provided a written statement in which he admitted to having vaginal and anal intercourse with L.F. while displaying a “pellet pistol.”

On May 17, 1994, Bell entered an *Alford* plea to first-degree rape and use of a handgun in the commission of a crime of violence. Thereafter, the Circuit Court for Baltimore County imposed a life sentence for the first-degree rape plea and a concurrent twenty-year term of imprisonment for the handgun offense. The sentence imposed by Judge John G. Turnbull II provides for the possibility of parole.

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<sup>2</sup> Out of respect for the privacy interests of the victim, we shall not refer to her by name.

On February 21, 2017, Bell filed the motion to correct illegal sentence pursuant to Maryland Rule 4-345(a) that ultimately gave rise to this appeal. He argued that his life sentence was unconstitutional as a *de facto* sentence of life without parole. Bell asserted that in Maryland, a sentence of life with parole is equivalent to life without parole because there is no meaningful opportunity to obtain release. In doing so, Bell relied on the United States Supreme Court cases of *Graham, supra*, 560 U.S. 48, and *Miller, supra*, 567 U.S. 460. On March 22, 2017, the circuit court denied Bell’s motion.

Bell filed a timely appeal. His appeal was stayed pending the Court of Appeals’ decision in *Carter, Bowie, and McCullough, supra*, which presented the same theory underlying Bell’s motion. Following the publication of *Carter, supra*, 461 Md. 295, Bell filed a supplemental brief.

### DISCUSSION

Bell, who was fifteen years old at the time of the crime, challenges the constitutionality of his sentence. He argues that his life sentence is the functional equivalent of life without parole because Maryland’s parole system for inmates serving life sentences does not provide a meaningful opportunity for release as constitutionally required for juveniles. Bell further contends that the sentencing court erred in failing to consider Bell’s age and additional mitigating factors as required by Supreme Court precedent. We review the circuit court’s denial of a motion to correct illegal sentence *de novo*. *Rainey v. State*, 236 Md. App. 368, 374 (2018).

Before addressing Bell’s assertions, it is helpful to first review the United States Supreme Court cases that form the basis of Bell’s appeal. In *Graham v. Florida*, the

Supreme Court held that it is unconstitutional for a state to sentence a juvenile non-homicide offender to a life sentence without the possibility of parole, because such a sentence deprives the juvenile of a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 560 U.S. at 75.

Two years later, the Supreme Court held in *Miller v. Alabama* that “*Graham*’s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses.” 567 U.S. at 473. The Court did not prohibit life sentences without parole entirely, but commented that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Id.* at 480. The *Miller* Court clarified that its holding would not foreclose a sentencing court’s authority to sentence a juvenile homicide offender to life imprisonment without the possibility of parole, but emphasized that the sentencing court must first “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.*

Even though Bell is eligible for parole, he nonetheless contends that Maryland’s parole system does not provide a meaningful opportunity for release as required by the Supreme Court in *Graham*. Bell, therefore, argues that his sentence is the functional equivalent of life without the possibility of parole.

The Court of Appeals recently rejected an identical issue in *Carter, supra*, 461 Md. 295. In *Carter*, two juvenile offenders -- Carter and Bowie -- received life sentences with parole eligibility and argued that their sentences were *de facto* sentences of life without the possibility of parole. *Id.* at 326-30. Like Bell, Carter and Bowie argued that Maryland’s

parole system does not provide juvenile offenders serving life sentences with a meaningful opportunity to obtain release as required by the Supreme Court in *Graham*. *Id.* at 306-07. The Court of Appeals rejected their arguments, holding that “[t]he Maryland law governing parole ... provides a juvenile offender serving a life sentence with a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’” *Id.* at 365. Critically, Bell is eligible for parole, and as such, Bell’s sentence -- under *Carter* -- is not the equivalent of life without the possibility of parole.

Bell endeavors to distinguish this case from *Carter* by asserting that he was “administratively refused parole,” and such an administrative refusal “amounts to a life without parole sentence” under the Code of Maryland Regulations. In doing so, Bell relies on the contents of a “Parole Recommendation/Decision” form that a parole hearing officer submitted on July 11, 2017. In the form, the parole officer recommended that Bell be denied parole. The parole officer provided the following reasoning:

The juvenile brain factors were considered and the age of the offender at the time of the crime. Nature of offense warrants no consideration for parole at this time. [Bell’s] last infraction was 2007. [Bell] has completed as many programs as possible. Time will allow [Bell] to continue to improve in his adjustment. [Bell] must continue to stay infraction free.

According to Bell, the parole officer’s reasoning demonstrates that Bell was denied parole based on the “[n]ature of [his] offense.” As such, Bell contends that he will never be granted parole because the nature of his offense -- the rape -- will never change. Bell’s argument is without merit.

Indeed, the “Parole Recommendation/Decision” form is not part of the record and this Court denied Bell’s prior motion to supplement the record with the form. Consequently, “we shall, as we must, disregard and not consider such extraneous materials.” *Colao v. Cty. Council of Prince George’s Cty.*, 109 Md. App. 431, 469 (1996), *aff’d*, 346 Md. 342 (1997). *See also Frosburg v. State Dep’t of Pers.*, 37 Md. App. 18, 32 (1977) (“If the matter included in the appellant’s brief was not before the trial court, it may not be considered by us. We are compelled to ignore that portion of the brief which attempts to supplement the record by adding information concerning these prior decisions.”).

Moreover, to the extent that Bell is using the contents of the form to challenge the way in which the parole commissioners exercised their duties, we observe that this is not the proper forum for Bell to articulate his grievance. Indeed, such a challenge is “outside the scope of a motion to correct an illegal sentence.” *Carter, supra*, 461 Md. at 337 (“[C]halleng[es] [to] the actual practice of the Parole Commission and the Governor in making parole decisions ... are outside the scope of a motion to correct an illegal sentence.”).

Finally, Bell argues that the sentencing court erred in failing to consider his youth and other mitigating factors “deemed imperative” in *Graham* and *Miller*. As discussed, *supra*, the Supreme Court held in *Miller* that a sentencing court must consider “an offender’s youth and attendant circumstances” before sentencing a juvenile offender to life without parole. 567 U.S. at 480. In the instant case, the circuit court did not sentence Bell to life without parole. Rather, Bell received a life sentence and is eligible for parole. As a result, the circuit court was not required to consider Bell’s youth and attendant

circumstances at sentencing. Accordingly, Bell's life-with-parole sentence does not violate the Eighth Amendment or the Maryland Declaration of Rights. We, therefore, hold that the circuit court did not err in denying Bell's motion to correct illegal sentence.

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