

Circuit Court for Baltimore City
Case No. 18128014

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 947

September Term, 2017

ROBERT DAVIS

v.

STATE OF MARYLAND

Berger,
Arthur,
Beachley,

JJ.

Opinion by Berger, J.

Filed: July 2, 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.

In 1982, following a jury trial in the Circuit Court for Baltimore City, Robert Davis, appellant, was convicted of first-degree felony murder and use of a handgun in the commission of a crime of violence. Davis was sentenced to life imprisonment with parole, and this Court affirmed his convictions on direct appeal. *Davis v. State*, No. 596, Sept. Term 1982 (unreported per curiam opinion filed Feb. 10, 1983). Davis was sixteen years old at the time of the murder.

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), Davis filed a motion to correct what he alleged was an illegal sentence. Davis asserted that his sentence was unconstitutional because the sentencing court failed to consider his youth before sentencing him to life with parole. On May 23, 2017, the circuit court denied Davis' motion. The order was entered electronically on May 25, 2017.

Davis noted a timely appeal.¹ This Court stayed Davis' 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 or a lengthy term of years sentence constituted an unconstitutional *de facto* life without parole sentence. On August 29, 2018, the Court of Appeals issued an opinion in *Carter v. State*, 461 Md. 295 (2018). The Court's consolidated opinion resolved the cases of *Carter*,

¹ The State initially moved to dismiss Davis' appeal as untimely, but has since withdrawn its motion.

Bowie, and *McCullough*. Following the issuance of the *Carter* opinion, we lifted the stay in Davis' appeal and this appeal proceeded.

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

Did the circuit court err in denying appellant's motion to correct illegal sentence?

For the reasons explained herein, we affirm.

BACKGROUND

We set forth briefly the factual background underlying this appeal. On September 11, 1981, Samuel Blakney was fatally shot. Witnesses identified Davis -- then sixteen years old -- as a potential suspect.

On February 16, 1982, Davis was convicted of first-degree felony murder and use of a handgun in the commission of a crime of violence. Thereafter, the Circuit Court for Baltimore City imposed a life sentence for the felony murder conviction and a concurrent five-year term of imprisonment for the handgun offense. The sentence imposed by the circuit court provides for the possibility of parole.

On March 23, 2017, Davis filed the motion to correct illegal sentence pursuant to Maryland Rule 4-345(a) that ultimately gave rise to this appeal. He argued, through counsel, that his life sentence was unconstitutional as a *de facto* sentence of life without parole. On May 23, 2017, the circuit court denied Davis' motion.

DISCUSSION

Davis contends that his sentence of life with parole is unconstitutional because it does not afford him a meaningful opportunity to obtain release. Davis asserts that there is no meaningful opportunity for him to demonstrate maturity and rehabilitation and obtain release because Maryland’s parole system does not provide a right to state-furnished counsel at parole hearings, public funds for experts, or judicial review of parole decisions. Moreover, Davis argues that he has a liberty interest in a meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation. Davis avers that such a liberty interest implicates the Due Process Clause of the Fourteenth Amendment and that due process entitles juvenile offenders to be provided these procedural rights. Davis further urges us to adopt the reasoning of the Supreme Judicial Court of Massachusetts in *Diatchenko v. District Attorney for Suffolk District*, 27 N.E. 3d 349 (Mass. 2015) (*Diatchenko II*).

We recently addressed this identical argument in *Holly v. State*, __ Md. App. __, No. 1720, Sept. Term 2017, Slip Op. (Ct. of Spec. App. June 26, 2019). In *Holly*, we first rejected the juvenile offender’s claim that a life-with-parole sentence in Maryland violates the Fourteenth Amendment. *Holly*, __ Md. App. __, Slip Op. at 19 (“Assuming *arguendo* that *Graham*, *Miller*, and *Montgomery* establish a liberty interest in a ‘meaningful opportunity to obtain release’ for juvenile offenders, the Due Process Clause of the Fourteenth Amendment requires no more than is already guaranteed under Maryland law.”). We then rejected the notion that the Maryland Declaration of Rights provides a right to state-furnished counsel at parole hearings, public funds for experts, and judicial

review of parole decisions. *Id.* at 20-24 ([W]e are not persuaded that Article 24 guarantees the procedural rights Holly seeks in this case.”). Finally, we declined to adopt the Supreme Judicial Court of Massachusetts’ decision in *Diatchenko II*. *Id.* at 24-25.

For the reasons explained in *Holly, supra*, we hold that the circuit court did not err in denying Davis’ motion to correct illegal sentence.

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