

Circuit Court for Prince George's County
Case No. CT981898X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1077

September Term, 2017

RASHEEN BLUE

v.

STATE OF MARYLAND

Berger,
Friedman,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: June 5, 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.

On June 4, 1999, in the Circuit Court for Prince George’s County, appellant Rasheen Blue pleaded guilty to first-degree felony murder and use of a handgun in the commission of a crime of violence. The court sentenced appellant to life imprisonment for the murder charge, and twenty years consecutive for the handgun offense. Of relevance to this appeal, on December 12, 2016, appellant filed a Motion to Correct an Illegal Sentence. There, appellant noted that he had committed his crimes as a seventeen-year-old, and that his life sentence constituted a *de facto* life without parole sentence in violation of the Eighth Amendment’s proscription on cruel and unusual punishment. In making this argument, appellant relied on recent Supreme Court precedent addressing the constitutionality of juveniles who received life without parole sentences.

In an order entered June 21, 2017, the circuit court denied appellant’s motion “for failing to state a claim under Maryland Rule 4-345.” Appellant filed a motion for reconsideration on July 5, 2017, and, while awaiting resolution of that motion, noted his appeal on July 7, 2017. According to the docket entries, the motion for reconsideration was addressed on August 30, 2017, “in Chambers of [the judge]” and “No action [was] taken at [that] time.”

On appeal, appellant raises the following question for our review: “Is [appellant’s] sentence of life plus twenty years consecutive, imposed when he was seventeen years old, illegal?”

We answer this question in the negative and affirm.

DISCUSSION

On September 23, 1998, appellant, then seventeen years old, shot and killed Calvin Ball. On June 4, 1999, appellant pleaded guilty to first-degree murder and use of a handgun in the commission of a crime of violence. He received a life sentence for murder and twenty years consecutive for the handgun charge.

In his opening brief, filed February 14, 2018, appellant argued that his life sentence was unconstitutional under the trilogy of Supreme Court cases addressing the constitutionality of juvenile life without parole sentences: *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). In order to understand his argument, we first explain the Supreme Court’s decisions regarding the constitutional limits on the punishment of juvenile offenders. Next, we shall turn to *Carter v. State*, 461 Md. 295 (2018), and explain why appellant’s arguments fail.

Graham: Juvenile Nonhomicide Offenders

The Supreme Court first addressed the constitutionality of a juvenile offender’s life without parole sentence in *Graham*. 560 U.S. 48. There, the State of Florida sentenced Graham, a juvenile *nonhomicide* offender, to life in prison. *Id.* at 52-53, 57. Because Florida had abolished its parole system, Graham’s life sentence effectively became life without the possibility of parole—his only opportunity for release was through executive clemency. *Id.* at 57. In reviewing whether Graham’s life without parole sentence violated the Eighth Amendment’s proscription on cruel and unusual punishment, the Supreme Court

found that: 1) the practice of sentencing juvenile nonhomicide offenders to life without parole was “as rare as other sentencing practices found to be cruel and unusual,” *id.* at 66; and 2) that no penological theory could justify a sentence of life without parole for a juvenile *nonhomicide* offender. *Id.* at 71.

Consequently, the Supreme Court held that, “A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.* at 75. The Supreme Court ultimately concluded that a juvenile *nonhomicide* offender could not be sentenced to life without the possibility parole. *Id.* at 82.

Miller: Juvenile Homicide Offenders

After concluding that a juvenile nonhomicide offender could not be sentenced to life without parole in *Graham*, the Supreme Court next considered whether a juvenile *homicide* offender could *mandatorily* receive such a sentence. In *Miller*, two fourteen-year-old offenders were convicted of murder and, pursuant to state sentencing schemes, received mandatory life without parole sentences. 567 U.S. at 465.

In holding these sentencing schemes unconstitutional, the Supreme Court noted that, in light of *Graham*’s reasoning, mandatory sentencing schemes prevented sentencing judges from “taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 476. Accordingly, the Supreme Court concluded that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without

possibility of parole for juvenile offenders.” *Id.* at 479 (citing *Graham*, 560 U.S. at 75). The Court noted, however, that “Although [it did] not foreclose a sentencer’s ability to make that judgment in homicide cases, [the Court] require[d] it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 480.

Montgomery: Miller Applies Retroactively

In *Montgomery*, the third case concerning life without parole sentences for juvenile offenders, the Supreme Court held that “*Miller* announced a substantive rule that is retroactive in cases on collateral review.” 136 S. Ct. at 732. Although the Supreme Court held that *Miller* applied retroactively, its holding did “not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole.” *Id.* at 736. Rather, the Court stated that “A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.” *Id.*

Carter: Maryland’s Sentencing and Parole Scheme is Constitutional

In his opening brief, appellant contended that his life sentence constituted life without parole “because, in Maryland, those serving life sentences must receive gubernatorial blessing in order to be paroled.” On August 29, 2018, the Court of Appeals issued its opinion *Carter*, where the Court unequivocally held, “The Maryland law governing parole, including the statutes, regulations, and executive order, provides a juvenile offender serving a life sentence with a ‘meaningful opportunity to obtain release

based on demonstrated maturity and rehabilitation.”” 461 Md. at 365. Put simply, the Court upheld the constitutionality of Maryland’s sentencing and parole scheme for juvenile offenders. *Id.*

Following the issuance of *Carter*, appellant filed a supplemental brief on January 7, 2019. In it, appellant acknowledged the *Carter* opinion, but maintained that the dissent demonstrated that Maryland’s parole system fails to comport with the Eighth Amendment. We summarily reject this argument. “Appellant overlooks that opinions assented to by a majority of the Court [of Appeals], unless subsequently overruled in another case or by statute, are the law, and must be followed by this Court.” *Marlin v. State*, 192 Md. App. 134, 151 (2010).

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**