Circuit Court for Baltimore City
Case Nos. 000197328001-04

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1713

September Term, 2017

DONTA BROOKS

v.

STATE OF MARYLAND

Berger,
Arthur,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: June 5, 2019

On January 14, 1999, appellant Donta Brooks appeared in the Circuit Court for Baltimore City and, pursuant to a binding plea agreement, pleaded guilty to: two counts of first-degree murder, one count of attempted first-degree murder, one count of second-degree assault, and two counts of use of a handgun in the commission of a crime of violence. On March 25, 1999, the court sentenced Brooks to three concurrent life sentences for the two counts of first-degree murder and one count of attempted first-degree murder, ten years concurrent for second-degree assault, and twenty years concurrent for the two counts of use of a handgun in the commission of a crime of violence. On March 16, 2017, Brooks, representing himself, filed a Motion to Correct Illegal Sentence and Request for a Hearing in which he alleged that his sentence was unconstitutional. On September 13, 2017, the Maryland Office of the Public Defender filed a supplement to Brooks's motion.

Following a hearing on September 19, 2017, the court denied Brooks's motion. Brooks timely appealed, and presents the following question for our review: "Are the three life sentences now being served by [Brooks] unconstitutional?"

As we shall explain, *Carter v. State*, 461 Md. 295 (2018), *reconsideration denied* (Oct. 4, 2018), mandates that we answer this question in the negative. Accordingly, we affirm.

BACKGROUND

At the age of seventeen, Brooks murdered two people and attempted to murder a third. On January 14, 1999, Brooks entered into a binding plea agreement for the two first-degree murders and one attempted first-degree murder. Relevant to this appeal, on March

25, 1999, the court sentenced Brooks to three concurrent life sentences for those two murders and one attempted murder.

On April 13, 2010, the Maryland Parole Commission (the "Parole Commission") recommended denying Brooks parole. The Commission provided the following rationale in support of its recommendation: "Horrendous record cannot be avoided. Refusal is warranted – although institutional adjustment has shown some improvement, the original incident involving CO's [Correctional Officers] further warrants refusal."

One month later, on May 17, 2010, the United States Supreme Court issued *Graham v. Florida*, 560 U.S. 48 (2010), the first of three opinions applying the Eighth Amendment's proscription on cruel and unusual punishment to juvenile offenders serving life without parole sentences. The other two opinions were *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718 (2016). Both Brooks's initial motion to correct illegal sentence and the public defender's supplement to that motion relied on these three cases to argue that Brooks's three concurrent life sentences were unconstitutional. Following a hearing on September 19, 2017, the circuit court denied Brooks's motion.

DISCUSSION

In his brief, Brooks argues that the rules governing the Parole Commission, coupled with Maryland's requirement that the Governor approve any recommendation for parole, have rendered his life sentences *de facto* life without parole sentences. He further argues that, in light of the Supreme Court opinions addressing juvenile offenders, his *de facto* life without parole sentences violate the Eighth Amendment's proscription against cruel and

unusual punishment. As we shall explain, in *Carter*, the Court of Appeals rejected the contention that a juvenile offender's life sentence in Maryland constitutes *de facto* life without parole.

Before we address Brooks's arguments, however, it is necessary to explain the Supreme Court's decisions regarding constitutional limits on the punishment of juveniles. After establishing the thrust of these three cases, we will explain Maryland's parole system. Finally, we will turn to *Carter*, an opinion that controls the outcome of Brooks's appeal. We begin our analysis with the Supreme Court's cases concerning juvenile offenders.

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 sentences 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*.

Maryland's Parole System

We next explain the parole process for an individual who receives a life sentence in Maryland. An inmate in prison for a life sentence does not become eligible for parole consideration until after serving fifteen years (or the equivalent of fifteen years after taking applicable diminution credits into account). Md. Code (1999, 2017 Repl. Vol.), § 7-301(d)(1) of the Correctional Services Article ("CS"). However, individuals such as Brooks, who are serving life sentences for first-degree murder, do not become eligible for parole until after serving twenty-five years (or the equivalent of twenty-five years after taking applicable diminution credits into account). CS § 7-301(d)(2).

When the Parole Commission determines whether an inmate is suitable for parole, it considers a long list of factors, such as the circumstances surrounding the crime, the "physical, mental, and moral qualifications" of the inmate, and whether there is a substantial risk the inmate will not conform to the conditions of parole. COMAR

12.08.01.18A(1)-(2). In response to the Supreme Court's jurisprudence concerning juvenile offenders, on October 24, 2016, the Parole Commission adopted 12.08.01.18A(3), which contains the following additional factors when considering parole for a juvenile offender:

> (a) Age at the time the crime was committed;
>
> (b) The individual's level of maturity and sense of responsibility at the time of [sic] the crime was committed;
>
> (c) Whether influence or pressure from other individuals contributed to the commission of the crime;
>
> (d) Whether the prisoner's character developed since the time of the crime in a manner that indicates the prisoner will comply with the conditions of release;
>
> (e) The home environment and family relationships at the time the crime was committed;
>
> (f) The individual's educational background and achievement at the time the crime was committed; and
>
> (g) Other factors or circumstances unique to prisoners who committed crimes at the time the individual was a juvenile that the Commissioner determines to be relevant.

Although the Parole Commission "has the exclusive power to . . . authorize the parole of an individual sentenced under the laws of the State to any correctional facility in the State[,]" CS § 7-205(a)(1), "an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor." CS § 7-301(d)(4). Apparently in response to the Supreme Court cases concerning juvenile offenders, on February 9, 2018, the Governor issued an Executive Order (the "2018 Executive Order") setting forth how he would exercise his discretion pursuant to CS § 7-301(d)(4). 45:5 Md. Reg. 261 (March 2,

2018), *codified at* COMAR 01.01.2018.06. In the 2018 Executive Order, the Governor stated that he would specifically consider:

> i. The juvenile offender's age at the time the crime was committed and the lesser culpability of juvenile offenders as compared to adult offenders;
>
> ii. The degree to which the juvenile offender has demonstrated maturity since the commission of the crime; and
>
> iii. The degree to which the juvenile offender has demonstrated rehabilitation since the commission of the crime.

Carter: Maryland's Parole System is Constitutional

In *Carter*, the Court of Appeals was tasked with determining "whether the Maryland system complies with *Miller* and *Graham* – *i.e.*, whether the peculiar features of Maryland's system for releasing inmates serving life sentences provides that meaningful opportunity for release for a juvenile offender serving a life sentence." 461 Md. at 340. There, the Court of Appeals considered two cases involving juvenile offenders who received life sentences. *Id*. at 306.[1] Daniel Carter, a homicide offender, was sentenced to life for first-degree murder (among other crimes), and, as of oral argument in *Carter*, had not yet received a parole hearing. *Id*. at 326-27. James Bowie, a nonhomicide offender, was sentenced to life for attempted first-degree and attempted second-degree murder (among other crimes). *Id*. at 329. As of oral argument, the Parole Commission had given Bowie a "set off," or continuance, rather than make a parole recommendation. *Id*. at 330.

[1] The Court of Appeals also considered a third case involving a juvenile offender, Matthew McCullough. *Carter*, 461 Md. at 331. Because McCullough's sentence concerned an aggregate term of years, however, that case's discussion is not relevant here.

Both Carter and Bowie argued that their sentences were unconstitutional because "CS § 7-301(d) [did] not require the Governor to consider any particular criteria in deciding whether to approve parole for an inmate serving a life sentence." *Id*. at 339. They claimed that this deficiency in the statute "reduce[d] the Maryland parole system for an inmate serving a life sentence to an executive clemency system that is not equivalent to parole." *Id*. at 340.

The Court of Appeals rejected this argument. First, the Court noted that the Parole Commission adopted regulations that "explicitly require consideration of the offender's age at the time of the offense, other factors that distinguish juveniles from adults, and developments that indicate that the offender has demonstrated maturity and rehabilitation." *Id*. at 343. The Court held that these regulations complied with the required considerations identified in *Graham* and *Miller*. *Id*. Notably, the Court stated that, "Arguably, CS § 7-305 already required the Parole Commission – although not the Governor – to take into account an inmate's youth and demonstrated rehabilitation in making parole decisions." *Id*. Finally on this issue, the Court concluded that the 2018 Executive Order was both "effective and appropriate to bring the sentences" of the juvenile offenders into compliance with the Eighth Amendment. *Id*. at 343-44. In fact, the Court noted that "What the Governor 'surrendered' in the 2018 Executive Order was the very defect that put into question the constitutionality of the parole system, including the discretion conferred on him by statute." *Id*. at 345.

In summarizing the State of Maryland's parole system, the Court noted that,

> While the general statutory standards that govern the Parole Commission's decisions already arguably take into account demonstrated maturity and rehabilitation, the Parole Commission has exercised the authority delegated

> by the General Assembly and has adopted regulations that incorporate factors specific to juvenile offenders. Those regulations have the force of law. Moreover, the Governor has adopted an executive order concerning parole recommendations related to juvenile offenders that is clearly designed to comply with *Graham* and *Miller* and to make transparent the Governor's consideration of those factors.

Id. at 345-46. The Court concluded,

> 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." Accordingly, the life sentences . . . do not inherently violate the Eighth Amendment and are not illegal for that reason.

Id. at 365.

Recently, our own Court interpreted *Carter* in *Hartless v. State*, ___ Md. App. ___, No. 123, Sept. Term, 2017 (Ct. of Spec. App. May 30, 2019). There, relying on *Carter*, we expressly rejected the "proposition that all juvenile offenders convicted of homicide have the right to an individualized sentencing process that takes account of the offender's youth." *Hartless*, slip op. at 15.

Brooks's Opening Brief

Having explained the framework regarding the constitutionality of Maryland's parole system, we turn to Brooks's arguments. It is worth noting, at the outset, that Brooks filed his opening brief in this Court on May 3, 2018, nearly four months before the Court of Appeals issued its *Carter* decision. On May 10, a week after Brooks filed his opening brief, the State filed an unopposed motion to stay proceedings pending the outcome of *Carter*. Our Court granted the stay on May 15, and on November 14, 2018, nearly two months after the issuance of *Carter*, we lifted the stay and ordered the appeal to proceed.

Our Court then invited supplemental briefing in light of *Carter*, but Brooks declined our invitation. Consequently, Brooks's opening brief presents either obsolete or unconvincing arguments, and we summarily reject them.

In his opening brief, Brooks first argues that his three life sentences are the functional equivalent of three life without parole sentences. To support this argument, Brooks relies on an argument rejected by the *Carter* Court, i.e., "in Maryland, the Governor has unfettered discretion to deny parole to an inmate serving a life sentence." As stated above, the Court of Appeals expressly rejected this contention, noting that the 2018 Executive Order was "effective and appropriate to bring the sentences of . . . juvenile offenders . . . into compliance with the Constitution." *Id*. at 343-44.

Brooks next argues that he is entitled to a new sentencing hearing because "[t]he trial judge did not make any findings; rather, she simply imposed an agreed-upon sentence." In making this argument, Brooks relies on the language from *Miller* which requires an individualized sentencing hearing before a court may impose its harshest sentence. 567 U.S. at 474-75. Brooks is mistaken. *Miller* requires an individualized sentencing hearing before a court may sentence a juvenile offender to life without parole. *Id*. at 480. Because Brooks's life sentences are not *de facto* life without parole sentences under *Carter*, he is not entitled to individualized sentencing. 461 Md. at 365; *see also Hartless*, slip op. at 15.

Brooks's third argument on appeal is that his life sentence for attempted first-degree murder—a non-homicide crime—is unconstitutional under *Graham* because it is a *de facto* life without parole sentence. As we explained above, however, the Court of Appeals

rejected this argument in *Carter* when it held that "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.'" *Id*.

Brooks's fourth contention is that the 2018 Executive Order "did not change the status quo." In this argument, Brooks states that the press release accompanying the Executive Order indicated that the Governor was simply formalizing his extant approach to parole decisions regarding juvenile offenders. Brooks goes on to claim, without any support for his contention, that "after three years in office, with hundreds of them in prison, this Governor has approved parole for exactly zero juvenile lifers." Regardless of whether this is true, the Court of Appeals expressly stated that the 2018 Executive Order is "effective and appropriate to bring the sentences . . . of other juvenile offenders . . . into compliance with the Constitution." *Id*. at 343-44. We therefore reject this contention.

Finally, Brooks argues that Article 25 of the Maryland Declaration of Rights provides an alternative ground for concluding that his life sentences are illegal. Unlike the Eighth Amendment, which proscribes "cruel *and* unusual punishment," (emphasis added), Article 25 of the Maryland Declaration of Rights proscribes "cruel *or* unusual punishment." (Emphasis added). Brooks claims that the disjunctive conjunction "or" in Article 25 provides greater protection than the Eighth Amendment. Brooks relies on the following language from *Thomas v. State*, 333 Md. 84, 103 n.5 (1993) (*abrogated on other grounds by statute as noted in Robinson v. State*, 353 Md. 583, 700-01 (1999)), to support this argument:

> The defendant's argument that we should afford greater protection under Article 25 of the Maryland Declaration of Rights than is afforded by the Eighth Amendment to the United States Constitution, based upon the disjunctive phrasing "cruel or unusual" of the Maryland protection, is not without support. *See People v. Bullock*, 440 Mich. 15, 485 N.W.2d 866, 870–72 (1992) (phrasing of "cruel or unusual" in Michigan Constitution not accidental or inadvertent, and may constitute a compelling reason for broader interpretation of state constitution provision than that given Eighth Amendment clause).

Although the Court of Appeals in *Carter* acknowledged this very language from *Thomas*, nowhere in its opinion did the Court consider whether Maryland's sentencing scheme violated Article 25's proscription on cruel or unusual punishment. Indeed, *Thomas* itself also provides that:

> Our cases interpreting Article 25 of the Maryland Declaration of Rights have generally used the terms "cruel and unusual" and "cruel or unusual" interchangeably. The Court of Special Appeals has suggested that "the adjective 'unusual' adds nothing of constitutional significance to the adjective 'cruel' which says it all, standing alone." *Walker, supra,* 53 Md. App. at 193 n. 9, 452 A.2d 1234. *Because the prevailing view of the Supreme Court recognizes the existence of a proportionality component in the Eighth Amendment, we perceive no difference between the protection afforded by that amendment and by the 25th Article of our Declaration of Rights.*

Id. (emphasis added). In light of the fact that neither the *Thomas* Court nor the *Carter* Court definitively concluded that Article 25 provides greater protections than the Eighth Amendment, we decline to do so here.[2]

[2] Brooks also argues in his opening brief that our Court may review the constitutionality of his sentences despite them flowing from a binding plea agreement, and that the circuit court erred in finding that Brooks lacked standing to challenge his sentences. Because we conclude that Brooks's sentences are constitutional, we need not address these collateral arguments.

Brooks's Reply Brief

As stated above, Brooks filed his opening brief in our Court before the Court of Appeals issued *Carter*. Brooks filed his reply brief after *Carter*, however, and raises an additional argument nowhere to be found in his opening brief. In *Gazunis v. Foster*, the Court of Appeals noted that "a reply brief should ordinarily be confined to responding to the points and issues raised in the appellee's brief." 400 Md. 541, 554 (2007) (quoting *Ritchie v. Donnelly*, 324 Md. 344, 375 (1991)). The Court noted,

> [t]he function of a reply brief is limited. The appellant has the opportunity and duty to use the opening salvo of his original brief to state and argue clearly each point of his appeal. . . . the reply brief must be limited to responding to the points and issues raised in the appellee's brief.

Id. The Court went on to hold that, "Accordingly, appellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief." *Id*. (citing *Jones v. State*, 379 Md. 704, 713 (2004)). Nevertheless, "appellate courts have the discretion to hear such issues." *Id*. Although the State has not had an opportunity to respond to the new argument in Brooks's reply brief, under these unusual circumstances, we exercise our discretion to address this argument.

In his reply brief, Brooks claims that he "stands in a different position than the petitioners [Carter] and [Bowie][,]" and that he "cannot benefit from the ruling in *Carter v. State*. He was refused parole in 2010." He further notes that, because he was denied parole in 2010, he cannot benefit from the Parole Commission's adoption of COMAR

12.08.01.18A(3) or the 2018 Executive Order.[3]

There is no dispute that Brooks was denied parole prior to the Supreme Court's issuance of its trilogy of juvenile life decisions, the Parole Commission's adoption of COMAR 12.08.01.18A(3), and the Governor's issuance of the 2018 Executive Order. This does not mean, however, that Brooks received an unconstitutional sentence.

In 2010 when Brooks received his parole hearing, CS § 7-305 provided the following:

> Each hearing examiner and commissioner determining whether an inmate is suitable for parole, and the Commission before entering into a predetermined parole release agreement, shall consider:
>
> (1) the circumstances surrounding the crime;
>
> (2) the physical, mental, and moral qualifications of the inmate;
>
> (3) the progress of the inmate during confinement, including the academic progress of the inmate in the mandatory education program required under § 22–102 of the Education Article;
>
> (4) a report on a drug or alcohol evaluation that has been conducted on the inmate, including any recommendations concerning the inmate's amenability for treatment and the availability of an appropriate treatment program;

[3] We question whether Brooks truly stands in a different position than Bowie did in *Carter*. Bowie was sentenced on January 21, 1997, and received a parole hearing approximately twelve years into his sentence. *Carter*, 461 Md. at 329-30. At that hearing he received a "set off" where the Parole Commission deferred making a recommendation. *Id*. at 330. Regarding future parole considerations, the Court of Appeals simply stated, "It is expected that he will have another hearing in the not too distant future." *Id*. Although Brooks was denied parole in 2010, he may file a written request for a new hearing pursuant to COMAR 12.08.01.23B(1). In exercising its discretion whether to grant Brooks a new hearing, we presume that the Parole Commission will consider the recent Supreme Court jurisprudence as well as the Court of Appeals's decision in *Carter*.

> (5) whether there is reasonable probability that the inmate, if released on parole, will remain at liberty without violating the law;
>
> (6) whether release of the inmate on parole is compatible with the welfare of society;
>
> (7) an updated victim impact statement or recommendation prepared under § 7–801 of this title;
>
> (8) any recommendation made by the sentencing judge at the time of sentencing;
>
> (9) any information that is presented to a commissioner at a meeting with the victim; and
>
> (10) any testimony presented to the Commission by the victim or the victim's designated representative under § 7–801 of this title.

In *Carter*, the Court of Appeals stated in *dicta* that, prior to the adoption of COMAR 12.08.01.18A(3), "Arguably, CS § 7-305 already required the Parole Commission – although not the Governor – to take into account an inmate's youth and demonstrated rehabilitation in making parole decisions." 461 Md. at 343. We are persuaded by the Court's *dicta* in *Carter*.

Graham requires the states to "give defendants . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. at 75. But the Supreme Court allowed the states "to explore the means and mechanisms for compliance." *Id*. The Parole Commission considered Brooks's youth and demonstrated rehabilitation pursuant to CS § 7-305 when it evaluated: "the circumstances surrounding the crime"; "the physical, mental, and moral qualifications of the inmate"; the inmate's progress during confinement; the inmate's amenability for drug treatment; the probability that the inmate would remain a law-abiding citizen; and whether the inmate's release would be

"compatible with the welfare of society[.]" Accordingly, we agree with the Court of Appeals that these and the other factors contained in the previous iteration of CS § 7-305 required the Parole Commission to consider Brooks's youth and demonstrated rehabilitation, thereby satisfying *Graham*'s requirement for a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*.

Finally, we turn to Brooks's contention that "Because he is no longer eligible for parole or for a recommendation of parole from the [Parole Commission], [Brooks] cannot benefit from the policies embodied in the Governor's Executive Order issued on February 9, 2018." In a footnote in *Carter*, the Court of Appeals stated,

> Assessment of the legality of a sentence, often an exercise done with reference to the law at the time of sentencing, has a certain "back to the future" quality in these cases. These sentences were legal at the time they were imposed, under the contemporary understanding of the relevant statutes and constitutional provisions, and remained so for more than a decade. They may have become illegal recently by virtue of the retroactive application of *Graham* and *Miller*. If necessary, they could be restored retroactively to legality through corrective legislation. Or, as we indicate in the text, their legality can be restored by the recent executive order. There appears to be a sort of time travel here that boggles the judicial mind – or at least one without an advanced physics degree.

461 Md. at 344 n.31 (citation omitted). Like Carter and Bowie, Brooks received his sentence prior to *Graham* and *Miller*, meaning that Carter's, Bowie's, and Brooks's sentences all preceded the 2018 Executive Order. Despite Carter and Bowie receiving sentences prior to issuance of the 2018 Executive Order, the Court of Appeals nevertheless concluded that, "the life sentences being served by Mr. Carter and Mr. Bowie do not inherently violate the Eighth Amendment and are not illegal for that reason." *Id*. at 365. The Court concluded that, although *Graham* and *Miller* may have rendered Carter's and

Bowie's sentences illegal by virtue of their retroactivity, the legality of those sentences was restored during their sentences. *Id*. at 344 n.31. Brooks's sentences are no different from Carter's or Bowie's in this regard; to the extent his sentences may have been rendered illegal by virtue of *Graham*'s and *Miller*'s retroactivity, they are currently constitutional.[4] Because his sentence is currently constitutional, we affirm the circuit court's denial of his request for a new sentencing hearing.[5]

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

[4] To the extent Brooks claims that his sentence was unconstitutional because he could not take advantage of the 2018 Executive Order at his 2010 parole hearing, we simply reiterate that CS § 7-305 sufficiently required the Parole Commission to consider Brooks's youth attributes, and the Parole Commission nevertheless denied him parole. Accordingly, whether the Governor had unfettered discretion to deny parole in 2010 is completely irrelevant in this case.

[5] Although Brooks explicitly requests a new sentencing hearing, he implicitly requests that we order the Parole Commission to grant him another parole hearing. Were the Parole Commission to take such action, it would certainly obviate the need for this appeal. Nevertheless, Rule 4-345 is not the proper vehicle for such a request. That Rule only allows a court to modify, reduce, correct, or vacate a sentence.