UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1637

September Term, 2014

JAMES A. CALHOUN

v.

STATE OF MARYLAND

Wright,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 30, 2017

In 1981, a jury in the Circuit Court for Montgomery County, convicted appellant, James Calhoun,[1] of first-degree premeditated murder of Philip Metz, a Montgomery County police officer; first-degree felony murder of David Myers, an employee of Electro Protective Corporation, attempted murder of Douglas Cummins, an assistant manager of W. Bell Company; two counts of use of a handgun in the commission of a felony or crime of violence; robbery with a deadly weapon; and storehouse breaking. *Calhoun v. State*, 297 Md. 563 (1983), *cert. denied sub nom. Tichnell v. Maryland*, 466 U.S. 993 (1984). The jury sentenced appellant to death for the murder of the Officer Metz, and the circuit court sentenced appellant to life for the murder of the civilian, and an additional eighty years, consecutive, for the remaining convictions Appellant's convictions were affirmed on appeal by the Court of Appeals.[2] *Id.* at 571.

Appellant subsequently filed numerous post-conviction petitions, motions for new trial, and motions to correct illegal sentences, challenging his convictions, his sentences, or both. As pertinent here, in one of those instances, he obtained partial relief in a post-conviction proceeding—in 1989, the circuit court vacated appellant's death sentence and granted him a new capital sentencing hearing. After the new sentencing hearing, a jury determined that appellant should receive a sentence of life imprisonment for the murder of Officer Metz. On June 19, 1990, the circuit court imposed a sentence of life imprisonment

[1] Appellant is also known as "James Calhoun-El."

[2] Appellant's case was reviewed directly by the Court of Appeals pursuant to former Md. Code (1982 Repl. Vol), Art. 27, § 414, which provided for automatic review by the Court of Appeals in cases in which the death penalty was imposed.

for the murder of Officer Metz, to run consecutively to any and all sentences then being served.

On October 7, 2013, appellant filed, in the Circuit Court for Montgomery County, the motion to correct illegal sentence that is the subject of this appeal. In that motion, appellant asserted three grounds for relief: (1) the sentences imposed exceed the maximum sentences provided by law "at the time of . . . sentencing"; (2) the sentences imposed "were . . . ambiguous"; and (3) the purportedly illegal sentences prevent appellant from "gaining the full benefit of" the diminution credits to which he is entitled. The circuit court denied that motion.

On appeal, appellant presents three questions for this Court's review, which we have consolidated, as follows:

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

For the reasons set forth below, we shall affirm the judgment of the circuit court.[3]

[3] Prior to the docketing of this appeal, appellant filed a motion to reopen post-conviction, arguing that, pursuant to *Unger v. State*, 427 Md. 383 (2012), his 1981 convictions were invalid because advisory jury instructions had been given at his trial. The circuit court denied the motion, and this Court granted appellant's application for leave to appeal. *Calhoun-El v. State*, No, 2768, September Term, 2012 (Dec. 10, 2015) (order granting appellant's application for leave to appeal). Because the outcome of that case could have mooted appellant's illegal sentence claim, we stayed this appeal. This Court has now rendered a decision in the post-conviction case, holding that appellant waived his *Unger* claim by failing to object to the jury instructions and affirming the circuit court's ruling, denying appellant's motion to reopen. *Calhoun-El v. State*, ___ Md. App. ___, No. 2768, Sept. Term, 2012, slip op. at 13, 16 (filed Dec. 21, 2016). Accordingly, the stay that had been entered in the instant case has been lifted and we will render a decision on the merits.

Discussion

Appellant argues that his sentences of life imprisonment were illegal because they exceeded the maximum penalty authorized by law at the time of sentencing, and they were ambiguous. His contention appears to be that he was sentenced to "natural life," which he interprets to mean life imprisonment without the possibility of parole, a sentence that was not permitted at the time the crimes were committed. This claim is without merit.

A "court may correct an illegal sentence at any time." Md. Rule 4-345(a). What constitutes an "illegal sentence," under Rule 4-345(a), however, is narrowly defined; it is "a sentence which is beyond the statutorily granted power of the judge to impose." *Meyer v. State*, 445 Md. 648, 683 (2015) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)). 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 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). *Accord Colvin v. State*, ___ Md. ___, No. 8, September Term, 2016, slip op. at 5 (filed Dec. 15, 2016). With this understanding of Rule 4-345(a), it is plain that appellant does not state grounds for relief.

Appellant was sentenced in 1981 for the first-degree felony murder of David Myers, "for the period of [appellant's] life to run consecutively to all other sentences that he [was

then] serving."[4] The sentence ultimately imposed in 1990, for the first-degree murder of Officer Metz, was "life imprisonment, sentence to run consecutive[ly] to any and all sentence[s] now being served." It is clear that the sentences imposed upon his convictions in this case did not exceed the statutory limits for any of those offenses. At the time appellant committed those crimes, and continuing to this time, a term of life imprisonment was a statutorily authorized punishment for first-degree murder. *See* Md. Code (1982 Repl. Vol.) Art. 27, § 412(b). That is the sentence ultimately imposed for both first-degree murders appellant committed.

This Court, in *State v. Wooten*, 27 Md. App. 434 (1975), *aff'd*, 277 Md. 114 (1976), *disapproved on other grounds by Cathcart v. State*, 397 Md. 320, 328-29 (2007), set forth the history of the law of first-degree murder in Maryland. There, we said:

> At common law penalty for murder was death. F. Wharton, The Law of Homicide, s 659 (3rd ed., 1907). In 1809 Maryland for the first time made statutory provisions for the punishment of unlawful homicide. Acts 1809, ch. 138, s IV(1) prescribed: "Every person convicted of murder of the first degree, his or her aiders, abettors and counsellors, shall suffer death by hanging by the neck." This statutory affirmation as to murder in the first degree of the common law penalty for murder obtained until 1908 when a lesser sentence in the discretion of the trial court was authorized by the General Assembly. It provided in ch. 115, Acts 1908:

[4] Appellant contends that the commitment record states that his sentences was "natural life" and the docket entry indicates that that sentence was for the duration of appellant's "natural life." To the extent that there is a "discrepancy between the transcript and the docket entries, absent any evidence that there is error in the transcript, the transcript controls." *Turner v. State*, 181 Md. App. 477, 491 (2008). It is clear from the transcript that appellant was sentenced to life imprisonment, not life without parole. Any discrepancy between the transcript and the docket entries or commitment record does not render the sentence illegal, and appellant is free to file a motion in the circuit court to correct the docket entry or commitment record. *Scott v. State*, 379 Md. 170, 190-91 (2004) (Md. Rule 4-345 governing illegal sentences did not apply to correction of commitment record).

> Every person convicted of murder in the first degree, his or her aiders, abettors and counsellors, shall suffer death, **or undergo a confinement in the penitentiary of the State for the period of their natural life**, in the discretion of the court before whom such person may be tried.

Id. at 437-38 (emphasis added) (footnote omitted). Similar "natural life" language remained in the Code until the 1970s. *See, e.g.*, Md. Code (1939) Art. 27, § 481; Md. Code (1957) Art. 27, § 413; Md. Code (1976 Repl. Vol.) Art. 27, § 413(a).

By Acts of 1978, chapter 3, the General Assembly amended the penalty statute for first-degree murder to read as follows:

> A person found guilty of murder in the first degree shall be sentenced either to death or to imprisonment for life. The sentence shall be **imprisonment for life** unless (1) the State notified the person in writing at least 30 days prior to trial that it intended to seek a sentence of death, and advised the person of each aggravating circumstance upon which it intended to rely, and (2) a sentence of death is imposed in accordance with [Art. 27,] § 413.

Md. Code (1979 Supp.) Art. 27, § 412(b) (emphasis added). In other words, beginning with the 1978 amendment, the first-degree murder penalty statute referred to a life sentence as "imprisonment for life" rather than, as it had previously, "confinement in the penitentiary of the State for the period of [one's] natural life." That change in the language of the penalty statute did not, however, in any way change any life sentence that already had been imposed.

In 1987, the General Assembly first provided for the option of a sentence of life imprisonment without the possibility of parole. 1987 Md. Laws, Chap. 237. Under that legislative enactment, "imprisonment for life without the possibility of parole" was defined as "**imprisonment for the natural life of an inmate** under the custody of a correctional

institution, including the Patuxent Institution." *Id.* at 1050 (adding new subsection (E) to Art. 27, § 412, defining "imprisonment for life without the possibility of parole") (emphasis added). But the 1987 enactment did not, and could not, retroactively increase a sentence of life imprisonment, imposed for a crime committed before July 1, 1987, to one of life imprisonment without the possibility of parole. Moreover, a sentence of life without the possibility of parole could not (and cannot) be imposed unless the State provided a defendant with notice, at least 30 days prior to trial, of its intent to seek such a sentence. *Id.* at 1049 (amending Art. 27, § 412(b)).

Here, appellant was sentenced to two terms of life imprisonment for the two murders he committed in 1981. There is no "ambiguity" in appellant's sentence. And because his sentences are not illegal, they have not unlawfully prevented appellant from "gaining the full benefit of" the diminution credits to which he is entitled. In any event, even if there were an error in the calculation of appellant's diminution credits (which he has not established on this record), such an error would not render his sentences inherently illegal. Accordingly, the circuit court properly denied appellant's motion to correct an illegal sentence.

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