

Circuit Court for Charles County
Case No. 96-119

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1906

September Term, 2016

JAMES E. BOWIE

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Beachley,
Shaw Geter,

JJ.

Opinion by Beachley, J.

Filed: August 11, 2017

*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 January 21, 1997, in the Circuit Court for Charles County, appellant James Bowie was sentenced to life in prison for attempted first-degree murder, as well as a concurrent twenty years for robbery with a deadly weapon. Almost two decades later, on March 21, 2016, appellant filed a motion to correct illegal sentence with the circuit court, arguing that recent United States Supreme Court precedent had rendered his sentence unconstitutional. After the circuit court denied appellant’s motion without a hearing, appellant timely appealed. He presents a single issue for our review,¹ which we slightly rephrase as follows:

Whether a life sentence for a non-homicide crime committed by a juvenile is unconstitutional and therefore illegal, because Maryland law does not afford the offender a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

We hold that because appellant cannot allege that he has suffered a cognizable harm, he lacks standing to maintain this appeal. Accordingly, we affirm the circuit court’s decision.

BACKGROUND

On December 28, 1995, appellant used a baseball bat to attack and rob a 67-year-old man. *Bowie v. State*, No. 355, September Term, 1997, Slip Op. at 1. Appellant was seventeen years and eleven months old at the time of the robbery.

¹ Appellant presents the following question:

Is a life sentence for a non-homicide crime committed by a juvenile unconstitutional and therefore illegal under Rule 4-345(a) because Maryland law does not afford the offender a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation?

On October 7, 1996, appellant appeared for a bench trial in the Circuit Court for Charles County and pled not guilty to charges of attempted first-degree murder, attempted second-degree murder, and robbery with a deadly weapon. Pursuant to an agreement with the State, appellant stipulated to a statement of proffered evidence in lieu of a typical adversarial trial. Following an unsuccessful motion for acquittal, the trial court found appellant guilty, and subsequently sentenced him to life in prison for attempted first-degree murder, as well as a concurrent twenty years for robbery with a deadly weapon.

Approximately fourteen years after appellant’s convictions, the United States Supreme Court decided *Graham v. Florida*, holding it unconstitutional for a state to sentence a juvenile nonhomicide offender to life without the possibility of parole, depriving that juvenile of a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 560 U.S. 48, 75 (2010). Appellant thereafter filed a motion to correct illegal sentence pursuant to *Graham* and its progeny. After the circuit court denied his motion, he timely appealed.

DISCUSSION

Appellant argues that due to the nature of Maryland’s parole system, his life sentence is effectively a sentence of life without the possibility of parole, which the Supreme Court held in *Graham* constitutes an unconstitutional sentence for juveniles convicted of nonhomicide offenses. *Id.* In *Graham*, 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 holding that sentence unconstitutional, the Supreme Court stated,

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. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.

Id. at 75.

Appellant contends that because the Governor and the Maryland Parole Commission (the “Commission”) have the discretion to deny parole without considering an inmate’s demonstrated maturity and rehabilitation, Maryland’s parole system is unconstitutional as applied to juvenile offenders serving life sentences.

Maryland’s Parole System

Our analysis begins with a brief overview of the parole process for nonhomicide offenders sentenced to life. “[A]n inmate who has been sentenced to life imprisonment is not eligible for parole consideration until the inmate has served 15 years or the equivalent of 15 years considering the allowances for diminution of the inmate’s term of

confinement.”² Md. Code (1999, 2008 Repl. Vol., 2016 Supp.), § 7-301(d)(1) of the Correctional Services Article (“CS”).

In all cases, to determine whether an inmate is suitable for parole, the Commission 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). When considering whether a juvenile offender is suitable for parole, the Commission also considers the following factors:³

- (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

² We note that different rules apply to those inmates sentenced to life imprisonment for committing homicide crimes. See Md. Code (1999, 2008 Repl. Vol., 2016 Supp.), § 7-301(d)(2), (3) of the Correctional Services Article (“CS”).

³ On October 26, 2016, the Commission added these factors to the regulations in an apparent attempt to comply with *Graham* and its progeny.

(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.

COMAR 12.08.01.18A(3).

Generally, the 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). However, “an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor.” CS § 7-301(d)(4). In these cases, the Commission can only review and make recommendations to the Governor, who ultimately decides whether to grant or deny parole.⁴ CS § 7-206(3)(i).

Appellant’s Claims

Appellant argues that Maryland’s parole system is unconstitutional because the Governor’s power is equivalent to *ad hoc* executive clemency. As stated above, *Graham* requires states to provide juvenile nonhomicide offenders serving life sentences with “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 560 U.S. at 75. According to appellant, his opportunity to obtain release is not meaningful because Maryland law does not require the Governor to consider demonstrated maturity and rehabilitation.

⁴ If the Commission recommends parole for an inmate sentenced to life who has served twenty-five years, and the Governor does not disapprove of the Commission’s decision within 180 days of receiving that decision, the parole decision “becomes effective.” CS § 7-301(d)(5).

Appellant also argues in passing that the current regulations are unconstitutional because the Commission is not required to treat age as a mitigating factor, and further claims that the Commission’s decision is not tied to a consideration of whether an offender has reformed. However, appellant acknowledges that after last year’s amendments to COMAR which added specific considerations for juvenile offenders, the Commission is now required to consider an individual’s age and maturity at the time the crime was committed, as well as whether that person’s character has “developed since the time of the crime in a manner that indicates the prisoner will comply with the conditions of release.” COMAR 12.08.01.18A(3).

Appellant contends that these alleged defects are an inherent part of his life sentence, as well as the sentences of all juvenile nonhomicide offenders sentenced to life in Maryland. Accordingly, he asserts that his sentence is unconstitutional and must be vacated.

Appellant’s Claims are Premature

Based on the record before us in the instant case, we conclude that appellant cannot show that he has suffered any legally cognizable harm, and therefore his complaint is premature. The United States Supreme Court has explained that, to have constitutional standing, a party “must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is . . . actual or imminent, not ‘conjectural’ or ‘hypothetical[.]’” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted).

Pursuant to Maryland’s parole procedures, the Commission must first recommend appellant for parole before the Governor can consider whether to ultimately grant parole. Here, appellant does not claim that the Commission has recommended him for parole, and it is unclear whether this will ever occur. In the absence of a recommendation for parole by the Commission, there is no need to decide a constitutional issue regarding the Governor’s alleged unfettered discretion in the parole process. Furthermore, to the extent appellant claims that the factors contained in COMAR 12.08.01.18A(3) may be applied in unconstitutional ways, he does not allege that the Commission has actually applied these new factors in his case,⁵ nor does he provide us with any basis—aside from his own speculation—to support the notion that they will be applied unconstitutionally. Appellant’s claims, in the parlance of *Lujan*, are “conjectural” or “hypothetical.”

Appellant also lacks standing to argue that Maryland’s parole system is unconstitutional as applied to all juvenile nonhomicide offenders serving life sentences. “As a general rule, if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations.” *Cty. Court of Ulster Cty. v. Allen*, 442 U.S. 140, 155 (1979).

⁵ At oral argument, appellant’s counsel expressed his understanding that appellant had a parole hearing in light of *Graham* and received a set-off. Appellant’s counsel explained that a set-off occurs when the Commission neither grants nor denies parole; he also noted that the record does not reflect the duration of the set-off.

The Court of Appeals “has emphasized, time after time, that [its] strong and established policy is to decide constitutional issues only when necessary.” *VNA Hospice of Md. v. Dep’t of Health and Mental Hygiene*, 406 Md. 584, 604 (2008) (internal quotation marks omitted) (quoting *Burch v. United Cable*, 391 Md. 687, 695 (2006)). Here, we believe it unnecessary to address the constitutional issues raised by appellant.

We find support for our conclusion in the relevant case law. In *People v. Franklin*, 370 P.3d 1053, 1054 (Cal. 2016), the Supreme Court of California addressed an appeal pursuant to *Graham* and its progeny regarding a juvenile homicide offender. There, in addition to addressing other issues, the *Franklin* court considered an argument by amicus curiae that the parole board’s regulations concerning a juvenile offender’s suitability for parole did not effectively provide those offenders a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation” as required by *Graham*. *Id.* at 1065. Declining to address the issue, the *Franklin* court held,

As of this writing, the Board [of Parole Hearings] has yet to revise existing regulations or adopt new regulations applicable to youth offender parole hearings. In advance of regulatory action by the Board, and *in the absence of any concrete controversy in this case* concerning suitability criteria or their application by the Board or the Governor, it would be *premature* for this court to opine on whether and, if so, how existing suitability criteria, parole hearing procedures, or other practices must be revised to conform to the dictates of applicable statutory and constitutional law.

Id. at 1066 (emphasis added).

Like the California Supreme Court, many appellate courts, including the Supreme Court of the United States, have routinely declined to consider premature allegations of constitutionally recognized harm in a variety of contexts. *See Williamson Cty. Reg’l*

Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 186 (1985) (declining to consider constitutional issue, stating that “a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue”); *Hodel v. Indiana*, 452 U.S. 314, 335-336 (1981) (dismissing a due process challenge as premature because “appellees [had] made no showing that they were ever assessed civil penalties under the [Surface Mining] Act, much less that the statutory prepayment requirement was ever applied to them or caused them any injury”); *U.S. v. Foundas*, 610 F.2d 298, 301 (5th Cir. 1980) (declining to consider whether application of the Federal Parole Commission guidelines was invalid where defendant had not yet begun to serve her sentence, and it was possible that the guidelines could change before she became eligible for parole); *Pyles v. State*, 25 Md. App. 263, 269 (1975) (rejecting as premature appellant’s due process claim regarding post-sentencing procedures when “it [would] be a long time before the appellant’s sentence expire[d] and the principle [complained of] . . . [would come] into play”).

We find this authority persuasive. Based on the record in the instant case, we perceive no concrete controversy that would require us to opine on the constitutionality of Maryland’s parole system or appellant’s sentence. Appellant cites to *Graham* in an effort to demonstrate that the alleged defects are inherent in his sentence, arguing that the Supreme Court permitted Graham to challenge his life sentence without having a request

for commutation denied. We conclude that *Graham* is distinguishable from the instant case.

In *Graham*, Graham received a life sentence in Florida, a state which had abolished its parole system. 560 U.S. at 57. Pursuant to Florida’s statutory scheme at that time, “a life sentence [gave] a defendant no possibility of release unless he [was] granted executive clemency.” *Id.* After receiving his sentence, Graham’s only opportunity to be released from prison during his lifetime was through executive clemency. The same cannot be said for appellant. Maryland, unlike Florida, has not abolished its parole system. Moreover, the Commission has recently articulated a new set of factors in COMAR 12.08.01.18A(3) in an apparent attempt to comply with *Graham*, factors which the Commission has not yet applied to appellant’s case.

CONCLUSION

Accordingly, appellant’s assertion that his sentence is unconstitutional is speculative and hypothetical. The trial court, therefore, did not err in denying appellant’s motion.

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