

Circuit Court for Baltimore City
Case Nos. 190319017-18

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2213

September Term, 2017

BARRY FITZGERALD

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 31, 2018

*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.

Barry Fitzgerald, appellant, appeals the denial, by the Circuit Court for Baltimore City, of his motion to correct illegal sentence and motion to compel enforcement of plea agreement. Because the court did not breach the plea agreement and Mr. Fitzgerald's sentences are not illegal, we affirm.

In 1991, Mr. Fitzgerald pleaded guilty to first-degree murder, attempted first-degree murder, and the use of a firearm during the commission of a crime of violence. In exchange for his guilty plea, the State agreed to withdraw its Notice of Intent to Seek Life Without the Possibility of Parole. The court ultimately sentenced Mr. Fitzgerald to concurrent life sentences for first-degree murder and attempted murder and a consecutive sentence of ten years' imprisonment for the use of a firearm in the commission of a crime of violence. Mr. Fitzgerald did not file an application for leave to appeal or a petition for post-conviction relief.

In 2016, Mr. Fitzgerald filed a "Motion to Correct Illegal Sentence, or in the Alternative, Motion for Appropriate Relief." In that motion he asserted that his life sentences were illegal because they did not "have a numeric value." Specifically, he claimed that, because his life sentence was indefinite, he (1) was unable to receive diminution credits or credit for the time he spent awaiting trial, as required by Maryland law, and (2) could never serve the ten-year sentence for use of a firearm in the commission of a crime of violence. In 2017, Mr. Fitzgerald also filed a "Motion to Compel Enforcement of Plea Agreement." In that motion he claimed that his sentences were illegal because the "court breached the plea agreement by knowingly imposing a sentence that is equivalent to life without parole which was the very sentence [he had] sought to avoid by

entering a guilty plea.” The circuit court denied both of Mr. Fitzgerald’s motions without a hearing. This appeal followed.

On appeal, Mr. Fitzgerald continues to press his claim that the court breached the plea agreement by imposing a sentence that was equivalent to life without parole. We disagree. The terms of the plea agreement were that, in exchange for the guilty plea, the State would withdraw its Notice of Intent to Seek a Sentence of Life Without the Possibility of Parole. Mr. Fitzgerald concedes that the State complied with its end of the bargain. And there is nothing in the record indicating that the sentencing court agreed to impose any particular sentence or that it was objectively reasonable for Mr. Fitzgerald to believe that any particular sentence would be imposed. *See Cuffley v. State*, 416 Md. 568, 582 (2010) (holding that “the test for determining what the defendant reasonably understood at the time of the plea is an objective one” that is “based on the record developed at the plea proceeding”). In fact, although there is no transcript of the sentencing proceeding, a July 2, 1991 memorandum authored by the sentencing judge indicates that, as part of the guilty plea, “the State would recommend a life sentence plus 20 years [without parole],” a sentence that was less than the one imposed by the court. Moreover, there is no merit to Mr. Fitzgerald’s contention that his sentence is illegal because it has now become the functional equivalent of life without parole. First, the circuit court found that Mr. Fitzgerald is currently eligible for parole under Maryland law. And even assuming that the policies of Governor and the Parole Commission make it unlikely that Mr. Fitzgerald will be granted parole, as he claims, that would not render his sentence inherently illegal. *See State v. Kanaras*, 357 Md. 1170 185 (1999) (rejecting the claim that an inmate’s life

sentence had become illegal as a result of Governor Glendening’s “Life Means Life” parole policy).

Mr. Fitzgerald also asserts that his life sentences are illegal because they do not “have a numeric value.” But the Court of Appeals has stated that “[t]he imposition of a life sentence for first-degree murder is a sentence permitted by law.” *State v. Wilkins*, 393 Md. 269, 276 (2006). And, contrary to Mr. Fitzgerald’s claim, he will receive full credit for all time he spent in confinement, including pre-trial incarceration, despite his sentence not having a numerical value. That credit is simply applied “for parole eligibility purposes.” See *Bartholomey v. State*, 267 Md. 175, 195 (1972); see also Md. Code Ann., Correctional Servs. § 7-301(d)((1) (“[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 under § 6-218 of the Criminal Procedure Article”). Moreover, Mr. Fitzgerald is also capable of serving the ten-year consecutive sentence. If he is granted parole on the life sentences, for which he is now eligible, he would immediately begin serving the ten-year sentence, minus any diminution credits.

Mr. Fitzgerald has not identified any illegality in his sentences. Consequently, the circuit court did not err in denying his motions to correct illegal sentence.

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