Circuit Court for Cecil County
Case No. 07-K-10-470

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2471

September Term, 2017

SETH DALLAS JEDLICKA

v.

STATE OF MARYLAND

Kehoe,
Berger,
Beachley,

JJ.

Opinion by Berger, J.

Filed: July 9, 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.

In 2010, following a bench trial in the Circuit Court for Cecil County, Seth Dallas Jedlicka ("Jedlicka") was convicted of first-degree felony murder, armed robbery, first-degree assault, first-degree burglary, theft over $100,000.00, and conspiracy. Jedlicka was sentenced to life in prison with all but sixty years suspended for first-degree felony murder. For the remaining counts, Jedlicka was sentenced to an aggregate of sixty years' incarceration, to be served concurrently with the sentence for felony murder. Jedlicka's convictions were affirmed on direct appeal. *Jedlicka v. State*, No. 197, Sept. Term 2011 (filed May 16, 2012) (unreported opinion). Jedlicka was sixteen at the time he committed the offenses.

Following the decisions of the United States Supreme Court in *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), Jedlicka filed a motion to correct what he alleged to be an illegal sentence. Jedlicka asserted that his sentence was unconstitutional pursuant to recent Supreme Court precedent addressing life sentences without parole for juvenile homicide offenders. Following a hearing on February 22, 2018, the circuit court denied Jedlicka's motion.

Jedlicka noted a timely appeal. This Court stayed Jedlicka's appeal pending the decision of the Court of Appeals in *Carter v. State*, No. 54, Sept. Term, 2017; *Bowie v. State*, No. 55, Sept. Term 2017; and *McCullough v. State*, No. 56, Sept. Term, 2017, because the cases raised issues relating to whether a life sentence with the possibility of parole or a lengthy term of years sentence constituted an unconstitutional *de facto* life without parole sentence. On August 29, 2018, the Court of Appeals issued an opinion in

Carter v. State, 461 Md. 295 (2018), *reconsideration denied*, October 4, 2018. This consolidated opinion resolved the cases of *Carter*, *Bowie*, and *McCullough*.

Following the issuance of the *Carter* opinion, this Court issued a show cause order as to why this appeal should not be remanded to the circuit court. The parties filed a joint response in which they agreed that Jedlicka would be eligible for parole after serving twenty-five years in prison and asserted that any remaining disputes involved solely legal questions that could be resolved by this Court with no need for a remand. The stay was subsequently lifted and the case proceeded on Jedlicka's appeal.[1]

In this appeal, Jedlicka presents four issues for our consideration, which we set forth verbatim:

> 1. Pursuant to the McCullough portion of *Carter*, does Mr. Jedlicka's aggregate sixty-year sentence with a 25-year period of parole ineligibility violate the Eighth Amendment?
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> 2. What is the scope of the requirement in *Carter v. State*, 461 Md. 295 (2018), that all juvenile offenders are entitled to an individualized sentencing hearing, in particular those for whom the State seeks life without parole; and based on *Carter's* interpretation of this requirement, should the circuit court have determined that Mr. Jedlicka's sentence was illegal, as it was imposed without an individualized sentencing proceeding?
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> 3. Presenting an issue that was not ruled upon in *Carter*, did the circuit court err in not finding Mr. Jedlicka's life sentence illegal since the statutes and regulations governing

[1] Kathy VanCulin, the victim's representative, filed a brief before this Court on March 29, 2019. On April 5, 2019, the State filed a Motion to Treat Brief of Victim's Representative as Amicus Curiae Brief. Jedlicka took no position with respect to the State's motion. The victim's representative filed a response on April 17, 2019. We denied the State's motion on May 28, 2019.

the Maryland parole system authorize the Parole Commission to divert any parole application to a request for executive clemency?

4. An argument raised for preservation purposes, is the Court of Appeals' decision in *Carter* in contravention with Supreme Court precedent in *Miller* and *Montgomery*, which held that a non-incorrigible juvenile offender has a substantive right to release upon a showing of demonstrated maturity and rehabilitation?

With respect to the first issue raised by Jedlicka, for reasons we shall explain, we reject Jedlicka's contention that his sentence violates the Eighth Amendment pursuant to the McCullough portion of *Carter*. The remaining issues raised by Jedlicka were recently addressed and rejected by this court in *Hartless v. State*, ___ Md. App. ___, No. 123, Sept. Term 2017 (Ct. of Spec. App. May 30, 2019). We shall affirm.

BACKGROUND

We set forth briefly the factual and procedural background underlying this appeal. Jedlicka's convictions stem a home invasion robbery that occurred during the early morning hours of November 4, 2009 and resulted in the shooting death of Terri Ann McCoy. Jedlicka and three accomplices broke into the home shared by Terry and Geraldine McCoy, their daughter, Terri McCoy, and Terri's partner, Tara McCoy, while the family was asleep. Terry McCoy was awakened by a thumping noise. He initially believed that the noise was his daughter, Terri, falling due to low blood sugar, but he quickly realized that someone had broken into the home. Terry saw "masked boys" "with guns" and attempted to hold the bedroom door closed, but he was overpowered. One intruder struck Terry in the eye with a gun, causing permanent injury.

The intruders threatened to shoot Terry and ordered both Terry and Geraldine to unlock safes, after which the intruders emptied the safes of their contents. At one point Terry was forced to lie down on the floor. While lying on the floor, Terry heard a series of gunshots. He later discovered that Terri McCoy had been shot multiple times. After the intruders left, Terry heard his daughter Terri say, "I'm dying." She later died from multiple gunshot wounds.

Police ultimately developed four suspects in the home invasion, one of whom was Jedlicka. In February 2010, police officers executed a search warrant at Jedlicka's home in Delaware. Jedlicka was not present, and his family and friends informed officers that they did not know where Jedlicka was. On March 15, 2010, police found him and another one of the four suspects in Miami, Florida, and Jedlicka was arrested.

At trial, the State did not assert at trial that Jedlicka was the shooter, but rather sought a felony murder conviction. The trial court determined that Jedlicka had "participated in the planning and execution of the home invasion"; "possessed and wielded a handgun during this event"; and possessed "with others . . . the property of the victims taken" during the crime. The court found that Jedlicka "understood the consequences of his actions and his later conduct, including his flight to Florida," which, the court found, showed "a consciousness of his own guilt." The trial court found Jedlicka guilty of first-degree felony murder, armed robbery, first-degree assault, first-degree burglary, theft of over $100,000.00, use of a handgun in the commission of a felony, and conspiracy to commit the substantive offenses.

On August 29, 2017, Jedlicka filed the motion to correct illegal sentence pursuant to Maryland Rule 4-345(a) that ultimately gave rise to this appeal. He argued that his sentence was illegal based upon the United States Supreme Court cases of *Graham*, *supra*, 56 U.S. 48 (2010); *Miller*, *supra*, 567 U.S. 460, and *Montgomery*, *supra*, 136 S. Ct. 718. We shall discuss the relevant caselaw in further detail *infra*, but it is helpful to set forth the holdings of each case here in order to provide context for Jedlicka's motion. In *Graham*, the United States Supreme Court held that the Eighth Amendment bars a sentence of life in prison without parole for juvenile offenders convicted of only non-homicide crimes. 560 U.S. at 82. In *Miller*, the Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" 567 U.S. at 465.

The *Montgomery* Court held that *Miller* announced a new substantive rule that applies retroactively to convictions that were final prior to the *Miller* decision. 136 S. Ct. at 736. The *Montgomery* Court explained that *Miller* "requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence." *Id.* at 734. The Court further explained that *Miller* "determined that sentencing a child to life without parole is excessive for all but 'the rare juvenile offender whose crime reflects irreparable corruption.'" *Id.* (quoting *Miller*, 567 U.S. at 479-80).[2]

[2] Courts have reached different conclusions on the issue of whether *Montgomery* made *Miller* retroactive to all cases involving juveniles sentenced to life without parole or only to cases involving juveniles sentenced to life without parole pursuant to a mandatory sentencing scheme. The United States Supreme Court has granted certiorari to address this

Against this backdrop, Jedlicka filed a motion to correct what he alleged to be an illegal sentence on August 29, 2017, arguing that his sentence was unconstitutional as a *de facto* sentence of life without parole. Jedlicka filed three supplements to his motion on September 7, 2017, September 8, 2017, and February 6, 2018. Following a hearing, Jedlicka's motion was denied on February 22, 2018. This appeal followed.

DISCUSSION

I.

Jedlicka's first appellate contention is that his aggregate term-of-years sentence, which requires him to serve twenty-five years before parole eligibility,[3] is illegal pursuant to the McCullough portion of *Carter*. In *Carter*, the Court of Appeals addressed the constitutionality of sentences of life with parole for juveniles convicted of homicide as well as the constitutionality of an aggregate 100-year sentence for a juvenile offender, Matthew McCullough. McCullough was convicted of non-homicide offenses stemming from a

issue. *Mathena v. Malvo*, 893 F.3d 265 (2019), *cert. granted*, ___ S. Ct. ___ (Mar. 18, 2019).

[3] The victim's representative argues that the parties' stipulation that Jedlicka will be eligible for parole after serving twenty-five years does not accurately reflect Maryland law. The victim's representative asserts that the parties failed to consider diminution credits Jedlicka could earn while incarcerated to reduce the period of time before which he will be eligible for parole. According to the victim's representative, the earliest parole eligibility for Jedlicka's first-degree murder conviction is between fifteen and twenty-five years, and the earliest parole eligibility for Jedlicka's other convictions is twenty-seven and one-half years. We note, however, that diminution credits affect an inmate's release under mandatory supervision, not an inmate's eligibility for parole. *Stouffer v. Holbrook*, 417 Md. 170, 171 (2010). It is not necessary for us to resolve this disagreement for purposes of our analysis.

non-fatal shooting at his high school in which several students were injured. 461 Md. at 321.

With respect to the issue regarding life sentences with parole for juvenile offenders, the Court of Appeals rejected the argument that the life sentences were effectively life without parole, holding that that the petitioners' life sentences were legal because "the laws governing parole of inmates serving life sentences in Maryland, including the parole statute, regulations, and a recent executive order adopted by the Governor, on their face allow a juvenile offender serving a life sentence a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Id.* at 307.[4] The Court reached a different conclusion with respect to McCullough's sentence, holding that "[a] sentence of 100 years, comprised of consecutive maximum sentences for assault convictions arising out of a single incident, under which a juvenile offender will not be eligible for parole consideration for 50 years, is tantamount to a sentence of life without parole" and therefore unconstitutional. *Id.* at 365. The Court remanded McCullough's case for resentencing,

[4] The *Carter* Court explained that its holding was based upon the laws governing parole decision-making and not based upon how the laws have been carried out. 461 Md. at 337 ("To the extent that [the Petitioners] are challenging the actual practice of the Parole Commission and the Governor in making parole decisions, their claims are outside the scope of a motion to correct an illegal sentence. We thus agree with the Court of Special Appeals that whether the Parole Commission and others involved in the parole system are carrying out their duties in practice is not at issue in this appeal.") (footnote omitted). The Court observed that "other causes of action are more appropriate to litigate claims that the Parole Commission and others involved in the parole system are not carrying out their responsibilities." *Id.* The Court further commented that several of these claims are currently being litigated in the United States District Court for the District of Maryland in a lawsuit brought pursuant to 42 U.S.C. § 1983. *Id.* at 337 n.26; *see also Maryland Restorative Justice Initiative et al. v. Hogan et al.*, No. 16-01021-ELH (D. Md.).

explaining that McCullough "must be re-sentenced to a sentence that allows a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Id.* Jedlicka asserts that his sentence, like McCullough's, is unconstitutional because it fails to afford him a meaningful opportunity to obtain release. As we shall explain, we are not persuaded by Jedlicka's contention.

The *Carter* Court explained that the determination of "where to draw the line between sentences expressed as a term of years that are equivalent to life without parole and those that are not" is a "difficult question." The Court did not set forth a precise threshold at which a term-of-years sentence for a juvenile offender crosses the line to become an unconstitutional functional life without parole sentence, but set forth five "benchmarks" applied by other courts in this context:

- *Comparison to natural life expectancy*. A sentence under which the defendant will not be eligible for parole until a date that exceeds the offender's natural life expectancy would appear to be synonymous with life without parole. A number of courts have held that a sentence under which the offender would not be eligible for parole until a date well beyond the offender's life expectancy is equivalent to life without parole. Some courts have pointed out that this can be a difficult benchmark to apply fairly, given demographic differences in individual life expectancy.

- *Comparison to parole date for life sentence.* Some courts have compared the eligibility date for parole under a lengthy term-of-years sentence to the parole eligibility date for an offender sentenced to life in prison or for a murder conviction in the particular jurisdiction; if the parole eligibility date for the term of years is later, then it is treated as a life without parole sentence.

- *50-year threshold.* Many courts have concluded that a sentence of a term of years that precludes parole consideration

> for a half century or more is equivalent to a sentence of life without parole. This seems consistent with the observation of the *Graham* Court that the defendant in that case would not be released "even if he spends the next half century attempting to atone for his crimes and learn from his mistakes." 560 U.S. at 79, 130 S. Ct. 2011. Many decisions that attempt to identify when a specific term of years without eligibility for parole crosses the line into a life sentence for purposes of the Eighth Amendment appear to cluster under the 50-year mark.
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> - *Comparison to legislative reforms.* In *Graham*, the Supreme Court began its analysis with a search for "objective indicia of a national consensus" and indicated that the "the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." Similarly, some courts have looked to how various state legislatures have amended laws governing sentencing and parole to comply with the Supreme Court's recent decisions concerning the Eighth Amendment and sentencing of juvenile offenders. Of course, how each state has amended its law depends on the vagaries of its sentencing system (e.g., determinate vs. indeterminate), the possible sentences for certain crimes, and other policy considerations. There are differences in sentencing schemes of various jurisdictions that are not captured by the reference to a particular number of years concerning eligibility for parole, as jurisdictions have different ways of reducing that number with credit for good conduct and other factors. However, one thing is clear: precluding eligibility for parole for 50 years is not part of the legislative effort to comply with *Graham* and *Miller*.
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> - *Comparison to typical retirement age.* At least one court has used retirement age as a reference point.

Carter, *supra*, 461 Md. at 351-55 (footnotes omitted) (italics and bullets in original).

The Court further commented that "[a]nother point of comparison has been provided by the Maryland General Assembly." *Id.* at 355. The Court observed:

> Under Maryland Code, Criminal Law Article ("CR"), § 14-101(c), an individual who has been convicted three times of a crime of violence and has served three separate terms of confinement with respect to those convictions, upon a fourth conviction, is to be sentenced to life without parole. However,

> once that individual has reached age 60 and served at least 15 years of the life-without-parole sentence, the individual may seek release on parole. CR § 14-101(g). That provision applies to adult offenders, as well as juvenile offenders.

Carter, *supra*, 461 Md. at 355. The Court emphasized that whether a lengthy term-of-years sentence is functionally a life without parole sentence is a "case-by-case" determination. *Id.* at 356. The Court explained that each case falls along a "spectrum." *Id.* At one end, "an individual may embark on a serious crime spree, involving, for example, a series of armed robberies or sexual assaults over weeks or months or even years." *Id.* The Court observed that although the individual may be sentenced to "significant periods of incarceration for each incident," "[t]hese circumstances are least likely to warrant the aggregate sentence being treated as a *de facto* life sentence." *Id.* The Court further explained that "[t]he number of crimes, their seriousness, and the opportunity for the juvenile to reflect before each bad decision also makes it less likely that the aggregate sentence is constitutionally disproportionate even after taking youth and attendant characteristics into account." *Id.*

At the other end of the spectrum, an individual may be "involved in one event or make[] one bad decision that, for various reasons, may involve several separate crimes that do not merge into one another for sentencing purposes and for which consecutive sentences may be imposed." *Id.* at 357. The Court commented that "[h]ere, the argument to treat a lengthy stacked sentence as if it were a *de facto* life sentence is strongest" because "[t]here is little, if any, opportunity to reflect upon or abandon the underlying conduct between individual offenses." *Id.*

The *Carter* Court then considered the application of the benchmarks to McCullough's case, emphasizing that "McCullough was sentenced to a total of 100 years incarceration and will not be eligible for parole until he has served 50 years of that sentence." *Id.* at 362. The Court observed that if McCullough's sentence were "a sentence for a single conviction, it would be treated as a sentence of life without parole for purposes of Eighth Amendment analysis under most of the benchmarks applied by the courts." *Id.* The Court explained that McCullough's "parole eligibility date far exceeds the parole eligibility date for a defendant sentenced to life in prison under Maryland law (15 years); it exceeds the threshold duration recognized by most courts in decisions and legislatures in reform legislation (significantly less than 50 years); and the eligibility date will be later than a typical retirement date for someone of Mr. McCullough's age." *Id.*

The court further considered that McCullough's sentence was not from a single assault conviction, "but rather from the maximum sentences for four such convictions run consecutively," all stemming from a "single incident on a single day." *Id.* at 363. The Court concluded that the circumstances of McCullough's sentence "appear to be towards the lower end of the spectrum described in the previous section of this opinion" given that all of the convictions were related to a single incident. *Id.* The Court emphasized that "[a]lthough the offenses were very serious in their execution and in their consequences and Mr. McCullough was characterized as the instigator of the incident, it appears that he was convicted as an aider and abettor of the offenses rather than as the principal." *Id.* For these reasons, the Court determined that McCullough's sentence violated the Eighth Amendment. *Id.* at 362-63. The Court vacated McCullough's sentence and remanded the

case to the circuit court for resentencing with a sentence that would allow McCullough a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" so that Mr. McCullough has "hope for some years of life outside the prison walls," which, in the Court's view, meant "a sentence with parole eligibility significantly short of the 50-year mark. *Id.* at 364.

Our application of the benchmarks to the circumstances of Jedlicka's sentence leads us to conclude that his sentence, unlike McCullough's, allows Jedlicka a meaningful opportunity to obtain release, and, therefore, does not violate the Eighth Amendment. First, we observe that Jedlicka's parole-eligibility date does not exceed his natural life expectancy; Jedlicka will be in his early forties when he is first eligible for parole. Second, Jedlicka's parole-eligibility date for his term-of-years sentence is similar or equal to his parole-eligibility date for his life sentence.[5] Notably, the period of time Jedlicka must serve prior to being eligible for parole is far less than the 50-year threshold emphasized by the Court in *Carter*. Jedlicka's parole-eligibility date is also consistent with the legislative reforms enacted in response to *Graham*, which, the Court of Appeals observed, range

[5] We acknowledge that the victim's representative has raised some ambiguity as to Jedlicka's actual parole-eligibility date, due, in part, to the possibility that Jedlicka may earn diminution credits. Nonetheless, the victim's representative maintains that, at the longest, Jedlicka will be eligible for parole after serving between fifteen and twenty-five years for the murder count and after serving twenty-seven and one-half years for the remaining counts. The *Carter* Court did not explain whether, for the purposes of comparing the parole date for a term-of-years sentence to the parole date for a life sentence, courts should consider diminution credits. The Court did not take any diminution credits into consideration when discussion McCullough's sentence in *Carter*, and we do not take the potential earning of diminution credits into consideration here.

between fifteen and forty years. *See id.* at 354-55 n.43. Jedlicka will also be eligible for parole decades before he reaches typical retirement age.

We further note that Jedlicka was convicted of homicide while McCullough was convicted of nonhomicide offenses. This is a distinction that should not be ignored. As the Court of Appeals explained, "[t]he number of crimes, their seriousness, and the opportunity for the juvenile to reflect before each bad decision also makes it less likely that the aggregate sentence is constitutionally disproportionate even after taking youth and attendant characteristics into account." *Id.* at 357. Although we are cognizant that Jedlicka was not proven to be the shooter, he was nonetheless convicted of homicide. Having considered the benchmarks set forth by the Court of Appeals in *Carter*, as well as the seriousness of Jedlicka's crimes, we hold that Jedlicka's sentence does not constitute a *de facto* life sentence equivalent to life without parole.[6]

II.

Jedlicka further asserts that his sentence is unconstitutional for three additional reasons: (1) because he did not receive an "individualized sentencing hearing" at which the sentencing court expressly considered his youth and attendant circumstances; (2) because the Parole Commission has the authority to divert a parole application to an application for executive clemency; and (3) because *Carter* was wrongly decided.

[6] In light of our holding, we shall not consider the victim's representative's alternative argument that a motion to correct illegal sentence pursuant to Rule 4-345 is an inappropriate vehicle for the challenges to Jedlicka's sentence raised in this case.

We recently addressed all three of these arguments in *Hartless*, *supra*, ___Md. App. ___, No. 123, Sept. Term 2017 (Ct. of Spec. App. May 30, 2019). As we explained in *Hartless*, an individualized sentencing process taking into account the offender's youth is only required for juvenile offenders sentenced to life without parole, not to all juvenile homicide offenders.[7] *Hartless*, *supra*, Slip Op. at 15-16. We further rejected the same executive clemency argument, holding that the laws and regulations governing executive clemency in Maryland do not render a juvenile homicide offender's sentence of life with parole unconstitutional. *Id.* at 18. Finally, as in *Hartless*, we shall not address Jedlicka's assertion that *Carter* is inconsistent with Supreme Court precedent and should be reconsidered. *See id.* at 8. We are bound by the Court of Appeals' decision in *Carter*, and, therefore, we will not address Jedlicka's assertion that *Carter* was wrongly decided.

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

[7] Jedlicka asserts that the individualized sentencing hearing at which the circuit court considers the distinctive attributes of youth is particularly required in this case because the State sought a sentence of life without parole. We reject this assertion. *Miller*, *Montgomery*, and *Hartless* require an individualized sentencing hearing taking account of the offender's youth before a juvenile homicide offender may be sentenced to life without parole. Our analysis is premised upon the sentence Jedlica actually received, not an alternative sentence that was advocated before the circuit court. Because Jedlicka was sentenced to life with parole, an individualized sentencing hearing taking into account his youth was not mandated.