Circuit Court for Prince George's County
Case No. CT890459X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2607

September Term, 2016

STATE OF MARYLAND

v.

PHILLIP JAMES CLEMENTS

Eyler, Deborah S.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 15, 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.

Following a three-day bench trial in August 1989 before the Circuit Court for Prince George's County, appellee Phillip Clements was convicted on three counts of first-degree murder, two counts of attempted first-degree murder, three counts of robbery with a dangerous weapon, and three counts of openly carrying a weapon with intent to injure. At the time of the above offenses, appellee was seventeen years old. On September 13, 1989, appellee received life sentences on all three counts of first-degree murder and both counts of attempted first-degree murder, resulting in a total of five life sentences, all to be served consecutively.[1]

On May 13, 2016, appellee filed a motion to correct illegal sentence in the circuit court, arguing that the United States Supreme Court's decisions in *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) rendered his sentence unconstitutional. After holding a hearing, the circuit court granted appellee's motion on January 6, 2017, vacating appellee's sentences and scheduling the matter for resentencing. The State noted an appeal from the circuit court's ruling, and presents two questions on appeal:

1. Did the lower court err in determining that a challenge to the State's parole system was cognizable under a Motion to Correct an Illegal Sentence?

2. Did the lower court err in determining that five consecutive sentences of life, with the possibility for parole, was an illegal sentence for the crime of first-degree murder?

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[1] Appellee also received three concurrent twenty-year sentences for robbery with a dangerous weapon, and three concurrent three-year sentences for openly carrying a weapon with intent to injure.

Appellee filed a motion to dismiss the State's appeal, arguing that the State currently lacks appeal rights because the circuit court's order vacating his sentences does not amount to a final judgment. We agree.

DISCUSSION

In Maryland, the State's right to appeal in criminal cases is governed entirely by statute. *State v. Manck*, 385 Md. 581, 597 (2005). Md. Code (1973, 2013 Repl. Vol., 2016 Supp.), § 12-302(c) of the Courts and Judicial Proceedings Article ("CJP") provides the following situations in which the State may appeal:

> (2) The State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition.
>
> (3) The State may appeal from a final judgment if the State alleges that the trial judge:
>
> > (i) Failed to impose the sentence specifically mandated by the Code; or
> >
> > (ii) Imposed or modified a sentence in violation of the Maryland Rules.
>
> (4)(i) In a case involving a crime of violence as defined in § 14-101 of the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United States, the Maryland Constitution, or the Maryland Declaration of Rights.

These restrictions have been strictly construed against the State. *Manck*, 385 Md. at 597. "Unless the issue presented may properly be categorized as one of the actions enumerated in the statute, the State has no power to seek appellate review." *Id.* at 597-98.

Here, in granting the motion to correct illegal sentence, the circuit court vacated appellee's sentences and scheduled the matter for resentencing a few months later. Appellee argues that because he has not been resentenced yet, the circuit court's decision does not constitute a final judgment that imposes or modifies a sentence in violation of the Maryland Rules, and therefore the State currently has no appeal right under CJP § 12-302(c)(3).[2]

"Under Maryland law, a final judgment in a criminal case is comprised of the verdict of guilty, and the rendition of sentence." *Webster v. State*, 359 Md. 465 (2000). In the context of the State's right to appeal, we have previously noted that the State's right of appeal in a criminal case is "ripe upon final judgment, which occur[s] when the trial court sentence[s] appellee for his convictions." *State v. Lee*, 178 Md. App. 478, 484 (2008).

In *Hoile v. State*, 404 Md. 591 (2008), the Court of Appeals considered what constitutes a final judgment in the context of the vacation of a sentence. There, Hoile initially received a fifteen-year suspended sentence with a period of probation for first-degree assault. *Id.* at 597. After Hoile violated the terms of his probation, the trial court ordered him to serve the fifteen-year sentence. *Id.* Roughly five years later, the trial court granted Hoile's motion to modify his sentence, reducing it to time served and five years' probation. *Id.* at 598. However, on the motion of the victim, the trial court vacated its time-served sentence, effectively reinstating Hoile's fifteen-year sentence. *Id.* at 600-01.

[2] Based on the procedural posture of the instant case, CJP § 12-302(c)(3) is the only provision that could potentially provide the State with the right to appeal.

In holding that the trial court's vacation of Hoile's reduced sentence constituted a final judgment from which Hoile could appeal, the Court of Appeals placed emphasis on the fact that a fifteen-year sentence had very clearly been imposed on Hoile, as evidenced by a new commitment order. *Id.* at 618-19. The *Hoile* Court noted that a sentence may also be deemed to be imposed on a defendant prior to the filing of a new commitment order—after the trial court announces the sentence and indicates that the case is concluded. *Id.*

Here, the State noted its appeal before the circuit court had the opportunity to resentence appellee. The circuit court has neither announced a new sentence nor issued a new commitment order.[3] We therefore conclude that there is no appealable final judgment.

CONCLUSION

For the reasons stated, we hold that the State currently lacks the right to appeal from the circuit court's January 6, 2017 decision. Accordingly, we grant appellee's motion to dismiss the appeal.

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[3] The State argues that the circuit court in this case lacked the authority to even address appellant's motion to correct illegal sentence. We need not decide that issue here, but refer counsel to *McCullough v. State*, __ Md. App. __, No. 1081, Sept. Term, 2016, Slip Op. at 50 (Ct. of Spec. App. Aug. 30, 2017) (holding appellant's argument—that his sentence did not offer him a meaningful opportunity for release as required by *Graham*—was cognizable on a motion to correct illegal sentence). *See also Miles v. State*, 435 Md. 540 (2013) (observing that, in the context of Maryland's death penalty statute, a sentence may be reviewable pursuant to a motion to correct illegal sentence "where a United States Supreme Court decision, promulgated after sentencing, announces a new judicial interpretation of a constitutional provision").

APPELLEE'S MOTION TO DISMISS GRANTED. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.