

Circuit Court for Baltimore City  
Case No. 101061034

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2511

September Term, 2015

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RICHARD GRAY-EL

v.

STATE OF MARYLAND

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Leahy,  
Reed,  
Zarnoch, Robert A.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: January 17, 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.

In October 2001, Appellant Richard Gray-El (“Gray-El”), pleaded guilty to first degree murder in the Circuit Court for Baltimore City. Pursuant to his plea agreement, Gray-El was sentenced to life imprisonment with all but thirty years suspended. Gray-El’s sentence did not include a period of probation. In October 2013, the State filed a motion alleging that appellant’s sentence was illegal and needed to be corrected because it lacked a period of probation. In November 2015, the circuit court granted the State’s motion and added an eighteen-month probationary period to Gray-El’s sentence. He appealed.

In his original brief, Gray-El presented two questions for our review,<sup>1</sup> which we have rephrased as one issue:

Whether the circuit court erred by belatedly imposing a probationary period to correct Gray-El’s illegal split-life sentence for first degree murder, which had been imposed pursuant to a plea agreement.

Because a possibly controlling case on this issue was pending in the Court of Appeals (*State v. Crawley*), we stayed this appeal until *Crawley*’s resolution. Following the Court

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<sup>1</sup> Appellant’s questions, as presented in his brief, are as follows:

1. Did the Court of Appeals’ decision in *Greco v. State*, 427 Md. 477 (2012) compel the belated addition of probation to a split-life sentence imposed pursuant to a 2001 plea agreement for first-degree murder, where the controlling law in 2001 was *State v. Wooten*, 27 Md. App. 434 (1975), which held that probation was discretionary under former Article 27 § 413?

2. Alternatively, did the circuit court violate appellant’s right to due process under the federal and state constitutions by belatedly imposing a probationary period to his split-life sentence pursuant to *Greco v. State*, 427 Md. 77 (2012)?

of Appeals’ decision, Crawley filed a supplemental brief phrasing the question in these terms:

Does the Court of Appeals decision in *State v. Crawley* have any effect on the consideration of the questions presented by Mr. Gray-El in this case?

For the following reasons, we answer yes to the latter question and no to the first. Thus, we affirm the judgment of the circuit court.

### **BACKGROUND**

On the evening of January 19, 2001, Quinton Brown was shot and killed in Baltimore City. Detective Don Kramer of the Baltimore City Police Department interviewed multiple witnesses who indicated that Gray-El was the shooter, including four separate witnesses who identified Gray-El as the shooter in photo lineups. Gray-El was charged with first degree murder and two handgun offenses in the Circuit Court for Baltimore City. On October 1, 2001, Gray-El entered an Alford plea to counts one and two, first degree murder and use of a handgun in the commission of a crime of violence. On November 17, 2001, he was sentenced to life imprisonment with all but thirty years suspended for the first degree murder conviction, and a concurrent sentence of twenty years for the handgun conviction.

On October 30, 2013, the State filed a Motion to Correct Illegal Sentence. The State’s motion asserted that the holding in *Greco v. State*, 427 Md. 477 (2012) made Gray-El’s sentence illegal because it lacked a period of probation. On November 17, 2015, a hearing was held on the motion. The court granted the motion and resentenced

Gray-El to life imprisonment with all but thirty years suspended, a concurrent sentence of twenty years, and eighteen months of probation upon release. Gray-El filed his notice of appeal on December 4, 2015.

### STANDARD OF REVIEW

Maryland Rule 4-345(a) confers revisory power on courts to correct an illegal sentence at any time. The following standard of review is applied to determine whether a sentence is illegal and requires correction:

Rule 4-345(a) appellate review deals only with legal questions, not factual or procedural questions. Deference as to factfinding or to discretionary decisions is not involved. Once the outer boundary markers for a sentence are objectively established, the only question is whether the ultimate sentence itself is or is not inherently illegal. That is quintessentially a question of law calling for *de novo* appellate review.

*Carlini v. State*, 215 Md. App. 415, 443 (2013).

### DISCUSSION

Maryland law provides that “[a] person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to imprisonment for life without the possibility of parole; or imprisonment for life.” Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), Crim. Law Art. (“CL”), § 2-201(b)(1). Accordingly, any first degree murder conviction carries a mandatory life sentence. However, while a life sentence must be imposed, the sentencing court has the discretion to suspend any portion of the sentence as long as the suspended portion includes a period of probation. *See* Md. Code (2001, 2008 Repl. Vol.), Crim. Pro. Art. (“CP”), § 6-222.

In the instant case, Gray-El was convicted of first degree murder and sentenced to life imprisonment, with all but thirty years suspended. However, the sentencing court failed to add the required period of probation to the suspended sentence.

The law on this particular issue has evolved in Maryland over the past decade. In 2007, the Court of Appeals decided *Cathcart v. State*, 397 Md. 320 (2007). In *Cathcart*, the defendant was convicted of first degree assault and false imprisonment. *Id.* at 322. The court sentenced him to ten years in prison for the assault conviction and to life imprisonment for the false imprisonment conviction with all but ten years suspended. *Id.* The court did not impose a period of probation. *Id.* at 322-23. The defendant appealed, arguing that it was an illegal sentence. *Id.* at 324. The Court noted that under CP § 6-222, courts have the authority to impose split sentences, which means that the court may “(1) impose a sentence for a specified time and provide that a lesser time be served in confinement; (2) suspend the remainder of the sentence; and (3) order probation for a time permitted by that statute.” *Id.* at 326 (quoting CP § 6-222). The Court emphasized that if a court wants to impose a split sentence, there must be a period of probation attached to the suspended portion of the sentence. *Id.* at 327. The Court explicitly rejected an earlier holding in *State v. Wooten*, 27 Md. App. 434 (1975) that probation is discretionary in split sentences. *Id.* at 329. As explained by the Court, there can be no split sentence without probation because there is no way for the court to enforce the suspended portion. *Id.* The Court reasoned that the absence of a period of probation had the effect of removing the portion of the life sentenced that had been suspended, thus

rendering it a term-of-years sentence. *Id.* at 330. The Court went on to hold that, because there was no mandatory minimum sentence for the false imprisonment conviction, the court’s failure to impose a period of probation did not render the sentence illegal. *Id.* at 330.

In 2012, the Court of Appeals decided *Greco*. In *Greco*, the defendant was convicted by a jury of first degree murder and first degree rape. 427 Md. at 485. The circuit court sentenced the defendant to concurrent life imprisonment terms for the murder and rape convictions, with all but fifty years suspended. *Id.* at 486. The court did not impose a period of probation. *Id.* Taking the *Cathcart* decision into consideration, the Court of Appeals determined that “[the defendant’s] previously imposed sentence for first degree premeditated murder of life, suspend all but fifty years, was converted by operation of law into a term-of-years sentence of fifty years imprisonment.” *Id.* at 513. Unlike in *Cathcart*, the defendant’s conviction for murder in *Greco* carried a statutorily mandated penalty of life imprisonment, making the fifty-year sentence illegal. *Id.* The Court held that the illegal sentence needed to be corrected by adding a period of probation. *Id.* Specifically, the Court held that on remand “the Circuit Court must impose a sentence of life imprisonment, all but fifty years suspended, to be followed by some period of probation.” *Id.*

In the instant case, Gray-El pleaded guilty to first degree murder in 2001. As part of his plea agreement, he was sentenced to life imprisonment with all but thirty years suspended with no period of probation included. After the *Greco* decision in 2012, the

State filed a motion to correct what was now an illegal sentence due to the lack of a probationary period. The court granted the motion and resented Gray-El to life imprisonment with all but thirty years suspended and eighteen months of probation upon release.

On appeal, Gray-El contends that this case is distinguishable from *Greco* because his conviction was the result of a guilty plea. Appellant argues that the new sentence violated the plea agreement as he understood it because probation was never contemplated as part of the deal.

The recent Court of Appeals decision in *State v. Crawley*, 455 Md. 52 (2017) provides guidance on the effect of a guilty plea on this scenario. In that case, the appellant, Crawley, pleaded guilty to first degree felony murder and armed robbery in 1997. *Id.* at 1. Under the plea agreement, Crawley was sentenced to life imprisonment with all but thirty-five years suspended. *Id.* at 2. The plea agreement did not mention probation, nor was the issue raised at the sentencing. *Id.* In 2011, Crawley filed a motion to correct an illegal sentence, asserting that the lack of a probationary period meant that the court had imposed a term-of-years sentence. *Id.* at 4. The circuit court ruled that the sentence was illegal under *Greco*. *Id.* Then, “[o]ver defense objection, the court vacated the then-extant sentence and resented Crawley to life imprisonment, all but 35 years suspended, with four years of supervised probation.” *Id.* Crawley appealed the circuit court’s addition of the period of probation, presenting an argument similar to Gray-El’s in the instant case. *Id.* Specifically, Crawley argued that *Greco* was distinguishable from

his case because Greco’s sentence was the result of a guilty verdict, not a guilty plea. *Id.* at 6. Crawley asserted that it was unreasonable for the Court to conclude that he understood that probation was part of the sentence because it was never mentioned or considered. *Id.*

After reviewing the *Cathcart* and *Greco* opinions, the *Crawley* Court issued the following decision:

The principle that a substantively illegal sentence must be corrected applies regardless of whether the sentence has been negotiated and imposed as part of a binding plea agreement. Here, the negotiated split sentence to which Crawley agreed and the court imposed was the statutorily-mandated life imprisonment, with all but 35 years suspended. Because the suspended portion could not remain due to the lack of a probationary period, the sentence was converted by operation of law to an illegal term-of-years sentence, which could not stand. **Crawley’s sentence -- unlawful as originally imposed -- was properly remedied through the imposition of a period of probation.**

*Greco* instructs that a corrected sentence is “limited by the maximum legal sentence that could have been imposed, with the illegality removed.” 427 Md. at 513, 48 A.3d 816. The circuit court followed the dictates of *Greco* by vacating the original unlawful sentence, reimposing the mandatory life sentence with all but 35 years suspended, and adding a period of probation to the suspended portion of that sentence. In doing so, the circuit court effectively removed the illegality created by the absence of a period of probation attached to the suspended portion of the life sentence. There is no dispute that the four-year probation period satisfied constitutional standards and statutory limits. *Meyer*, 445 Md. at 670 (“When imposing probation conditions, [a] judge is vested with very broad discretion . . . [in order] to best accomplish the objectives of sentencing—punishment, deterrence and rehabilitation[,] and is limited only by constitutional standards and statutory limits.”) (citations and internal quotations omitted). The imposition of that period of probation, moreover, did not constitute



an abuse of the circuit court's “very broad discretion.” *Id.*

*Id.* at 7-8 (Emphasis added).

In his supplemental brief, Gray-El stated that “[w]hile at first blush, *Crawley* would seem to control the disposition of this appeal, the central question posed by Mr. Gray-El is fundamentally distinct from that decided in *Crawley*.” He argues that because his sentence pre-dated the Court of Appeals’ decision in *Cathart*, his sentencing is governed by this Court’s now overruled 1975 ruling in *Wooten*. And, accordingly, the trial judge in his case had discretion to withhold a period of probation and thus, his sentence for murder must now be for a term-of-years. In addition, Gray-El contends that he could not have foreseen *Cathart*’s interpretation at CP, § 6-222.

First, we note that the plea agreement in *Crawley* also occurred prior to decisions in *Greco* and *Cathart*. Yet this did not prevent the correction of his sentence with additional probation.

More importantly, when the Court of Appeals interprets a statute, “the pronouncement of the law offered in that case is viewed generally as what has always been the law, albeit unannounced until that case.” *Attorney Greivance Comm’n v. Saridathis*, 402 Md. 413, 427 (2007). This is not considered an improper or unfair retroactive application of the law unless the decision represents a “clear break” with prior law. *Id.* The line of cases Gray-El would discount did not result in a “clear break” with any prior interpretation of CP § 6-222 by the Court of Appeals. *Crawly* and its predecessors represent a disagreement with a decision of this intermediate appellate court

that could have not have conclusively determined the meaning of the statute. In *U.S. v. Stridel*, 329 Md. 533, 557 n. 12 (1993), the Court of Appeals rejected the contention that the General Assembly would acquiesce in a construction of a Maryland Statute by this Court noting that this principle of statutory construction “has little or no applicability when the judicial construction of the statute is not by the highest court of the jurisdiction involved.” *Id.*<sup>2</sup>

In accordance with the Court’s holding in *Crawley*, we conclude that the circuit court properly remedied Gray-El’s sentence through the imposition of a period of probation. Furthermore, the eighteen-month probation period satisfied constitutional and statutory limits.

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

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<sup>2</sup> Finally, Gray-El argues that the State was precluded from challenging the legality of his sentence because it would violate limitations on the State’s right to appeal under CS § 12-302(c). However, the State has not appealed under that statute.