

Circuit Court for Baltimore City
Case No. 101081033

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2830

September Term, 2015

DONTA WALKER

v.

STATE OF MARYLAND

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

JJ.

Opinion by Zarnoch, J.

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.

On March 22, 2001 appellant Donta Walker (“Walker”) was charged in the Circuit Court for Baltimore City with the shooting of Albert Simpson (“Simpson”). On March 27, 2002, Walker entered a plea of guilty and was sentenced to life with all but fifty years suspended for murder in the first degree and twenty years’ incarceration to be served concurrently for the use of a handgun in the commission of a crime of violence. On August 7, 2015, the State filed a Motion to Correct Illegal Sentence. The circuit court granted the State’s motion, adding a five-year term of probation to Walker’s sentence.

Walker appealed and presents one question for our review, which we have rephrased as follows:

Whether the circuit court erred by adding a five-year probationary period to Walker’s sentence, which was originally imposed pursuant to a plea agreement.

For the following reasons, we affirm the decision of the circuit court.

BACKGROUND

On February 19, 2001, Appellant Donta Walker (“Walker”) got into the back of a vehicle operated by Albert Simpson, who was working as an unlicensed taxi driver on Harper Road in Baltimore. Walker shot Simpson in the back of his head, killing him, and pushed Simpson out of the vehicle.¹ He allowed a witness, who was inside of the vehicle, to live but threatened to kill her if she talked to the police. On March 22, 2001, Walker was charged in the Circuit Court for Baltimore City with one count of murder in

¹ Our review of these facts is based on the facts recounted by the State at the February 18, 2016 hearing before the circuit court.

the first degree, one count of using a handgun in the commission of a crime, and other weapon-related charges.²

Walker entered into a plea agreement on March 27, 2002, after Walker’s trial began and the witness to the shooting testified. Pursuant to the plea agreement, the circuit court sentenced Walker to life with all but fifty years suspended, plus twenty years to be served concurrently. On August 7, 2015, the State filed a Motion to Correct Illegal Sentence. After a hearing on February 18, 2016, the circuit court denied Walker’s request for a new trial, granted the State’s motion to correct the sentence, and resentenced Walker, adding a five-year term of probation to his original sentence. Walker timely appealed to this Court.

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).

² Walker was also charged with wearing, carrying, or transporting a handgun, among other gun possession charges disposed of on September 4, 2002.

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, Walker pleaded guilty to first degree murder and the use of a handgun in the commission of a crime of violence, and he was sentenced to life imprisonment, with all but fifty years suspended, plus a twenty years’ incarceration to be served concurrently. 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 v. State*. 427 Md. 477 (2012). In *Greco*, the defendant was convicted by a jury of first degree murder and first degree rape. *Id.* 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 instructed 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, Walker pleaded guilty in 2002 to first degree murder and the use of a handgun in the commission of a crime of violence. As part of his plea deal, he was sentenced to life imprisonment with all but fifty years suspended for the first count, and twenty years to be served concurrently for the second count, with no period of probation included. Based on the Court of Appeals’ decision in *Greco* in 2012, the State filed a motion to correct what had become an illegal sentence due to the absence of a probationary period in Walker’s original sentence. The circuit court granted the motion and resentenced Walker accordingly, adding the five-year term of probation.

On appeal, Walker argues that adding the five-year term of probation rendered the circuit court’s sentence illegal, because “probation was not mentioned as part of the original sentence or the original plea deal made on March 27, 2002.” Walker contends that this case is distinguishable from *Greco* because Walker’s conviction and sentence was the result of a guilty plea, rather than a guilty verdict.

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 resentenced 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 Walker’s in the instant case. *Id.* Specifically, Crawley argued that *Greco* was distinguishable because *Greco*’s sentence was the result of a guilty verdict, not a guilty plea. *Id.* at 6.

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 accordance with the Court’s holding in *Crawley*, we conclude that the circuit court properly remedied Walker’s sentence by adding the five-year 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.**