

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0669

September Term, 2012

STATE OF MARYLAND

v.

JOSEPH MAURICE WARD

Meredith,
Nazarian,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: June 24, 2015

*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.

This appeal involves the State’s motion to correct an illegal sentence after the Circuit Court for Prince George’s County granted Joseph Maurice Ward, appellee’s, petition for post conviction relief and modified his sentence for first degree murder from a term of life imprisonment with all but twenty-five years suspended to a term of incarceration of twenty-five years. The circuit court denied the State’s motion to correct an illegal sentence. The State presents the following question for our review:

“Did the circuit court err in denying the State’s motion to correct Ward’s illegal sentence of a term of years for his conviction of first degree murder?”

We answer this question in the affirmative and shall reverse.

I.

Appellee pled guilty in the Circuit Court for Prince George’s County to first degree felony murder, robbery with a dangerous and deadly weapon, first degree assault and the use of a handgun in the commission of a crime of violence. He was sentenced to life imprisonment, all but twenty-five years suspended, with credit for 321 days served for first degree murder, ten years consecutive for robbery with a dangerous and deadly weapon and twenty years concurrent for the use of a handgun in the commission of a crime of violence.¹ Appellee petitioned for post conviction relief, and the circuit court modified his sentence for

¹The circuit court merged appellee’s conviction for first degree assault.

first degree felony murder to a term of incarceration of twenty-five years.² The State filed a motion to correct an illegal sentence contending that appellee’s modified sentence was illegal. The circuit court denied the motion, and the State appealed.

The record reflects the following pertinent facts. On March 27, 2007, appellee filed a petition for post conviction relief, which he supplemented on May 14, 2010. The circuit court held a hearing on March 15, 2011, and appellee argued as follows:

“DEFENSE COUNSEL: Now the *Cathcart*[v. *State*, 397 Md. 320 (2006)] issue, this last issue — bear with me, Your Honor. It’s not an illegal sentence. What he’s asking the Court to do is review his commitment record or reissue an amended commitment record and eliminate the life as part of his sentence. So instead of life with all but 25 years suspended, it would be a 25-year sentence.

And the reason for that is that the Court never imposed probation for this sentence, so he could never be violated for probation. A life sentence could never be reimposed.

* * *

THE COURT: Okay. But does that convert the sentence — is that a basis for converting the sentence from life, suspend all but what is believed to be concurrent, to just a straight sentence?

DEFENSE COUNSEL: The way the Court dealt with the issue in *Cathcart* was it wasn’t so much of a correction of a sentence as it was a housekeeping measure. I believe that’s the phrase they used.”

²The circuit court modified appellees’ sentence for robbery with a deadly weapon from ten years consecutive to ten years concurrent in its post conviction order. The State did not argue that appellee’s sentence for robbery with a deadly weapon was an illegal sentence, and that aspect of the circuit court’s order is not at issue in this appeal.

The circuit court granted appellee’s petition and reduced appellee’s sentence to a term of incarceration for twenty-five years, explaining as follows:

“As previously mentioned, Petitioner received a sentence of life with all but 25 years suspended for felony murder. No period of probation was imposed. As stated in *Cathcart v. State*, 397 Md. 320 (2007), if a sentencing court suspends a portion of a sentence, it must impose a period of probation, and the failure to do so precludes it from having the status of a split sentence. Without a period of probation, the court will never have the ability to direct the execution of the suspended part of the sentence. *Id.*, at 329. Such a sentence is effectively a sentence for the term of years of the unsuspended portion.”

On April 6, 2012, the State filed a motion to correct an illegal sentence, arguing that any sentence less than life imprisonment is an illegal sentence.

Appellee did not respond and the court did not hold a hearing. On May 19, 2012, the circuit court denied the State’s motion to correct an illegal sentence, leaving the modified sentence in place.

This timely appeal followed.

II.

Before this Court, the State argues that appellee’s modified sentence is an illegal sentence. The State contends that this appeal is controlled by *Greco v. State*, 427 Md. 477 (2012), and therefore, appellee’s sentence is illegal because it is less than the statutory minimum for first degree murder.

Appellee disagrees. First, appellee argues that *Greco* established a new principle of law and does not apply retroactively. Because appellee’s trial, sentencing, post-conviction proceeding and resentencing were all completed before *Greco* was decided, appellee contends that *Greco* is inapplicable to his case. Second, appellee argues that his case is distinguishable from *Greco*.

III.

The court may correct an illegal sentence at any time. Rule 4-345(a); *Bonilla v. State*, 217 Md. App. 299, 303 (2014), *aff’d*, 2015 WL 2448752 (Md. 2015). A motion to correct an illegal sentence may be raised at any time, even if no objection was made at the time the sentence was imposed, the issue was not raised on a timely-filed direct appeal or the defendant purported to consent. *Matthews v. State*, 424 Md. 503, 513 (2012).

The interpretation of the Maryland Rules and provisions of the Maryland Code are questions of law, which we review *de novo*. *Davis v. Slater*, 383 Md. 599, 604 (2004). A judge’s discretion in sentencing a defendant for first degree murder is limited by § 412 of Article 27 of the Annotated Code of Maryland,³ which provides as follows:

³Unless otherwise indicated, all subsequent statutory references herein shall be to Maryland Code (1957, 1996 Repl. Vol.) Article 27.

Article 27 — Crimes and Punishments was repealed and reenacted as the Criminal Law Article of the Annotated Code of Maryland by 2002 Md. Laws Ch. 26 (H.B. 11). Currently, the mandatory minimum sentence for first degree murder is codified at § 2-201(b) of the Criminal Law Article of the Annotated Code of Maryland. At the time that appellant
(continued...)

(b) *Penalty for first degree murder.* — Except as provided under subsection (g) of this section, a person found guilty of murder in the first degree shall be sentenced to death, imprisonment for life, or imprisonment for life without the possibility of parole.

Section 412 establishes a mandatory sentence of life imprisonment for first degree murder. Because appellee's sentence to twenty-five years imprisonment for first degree murder violates § 412, it is illegal, and the court must impose the statutory mandated sentence of life imprisonment.

The Court of Appeals considered a similar case in *Greco v. State*, 427 Md. 477 (2012). In *Greco*, appellant was sentenced to life imprisonment, all but fifty years suspended, for first degree murder. *Id.* at 486. The judge did not add a term of probation. *Id.* Appellant argued that his sentence was converted to a term of incarceration of fifty years under *Cathcart*. *Id.* at 505-06. He maintained that, because the circuit court was prohibited from imposing a harsher sentence on remand and his current sentence was illegal, he could not be sentenced for first degree murder. *Id.* at 506. Instead, he continued, the court should impose the sentence statutorily prescribed for second degree murder, arguing it is not a separate offense but merely a statutory subpart of the same common law offense. *Id.* Appellant concluded that he could be sentenced to no more than thirty years in prison. *Id.*

(...continued)

entered his plea and was sentenced, however, § 412 of Article 27 governed the statutory short form indictment.

The State in *Greco* agreed that a fifty-year term-of-years sentence for first degree murder was illegal. *Id.* It contended, however, that where a sentence is illegal, the court is permitted to correct the illegality even where that would mean imposing an increased sentence. *Id.* at 506-07. It asked the Court to remand the case for the imposition of a sentence of life imprisonment or life imprisonment with a fixed unsuspended portion, to be followed by a term of probation. *Id.*

The Court of Appeals agreed that appellant’s sentence was illegal and held that Rule 4-345(a) is exceptional in that a court may increase a sentence under Rule 4-345(a) even though, under other subsections, it may not. *Id.* at 508. The Court continued as follows:

“We conclude that Maryland law does not set a previously imposed, illegal sentence as the upper bound for the sentence that a trial court may impose to correct an illegal sentence after remand from the Court of Special Appeals or this Court. Rather, the sentencing court must look through the illegal sentence to a previous lawful sentence imposed, if any, to determine the maximum sentence that may be imposed on remand. Alternatively, the trial court must remove the illegality, with the resulting legal sentence serving as the maximum for the purposes of resentencing.”

Id. at 509. The proper limit on the discretion of the sentencing court is not the illegal sentence imposed, but “what the prior maximum legal sentence *would have been . . .*” *Id.* at 511 (emphasis added).

In the case *sub judice*, appellee was convicted of first degree murder, bringing him within the ambit of § 412. The minimum term to which appellee could have been sentenced legally was life imprisonment or life imprisonment with some fixed unsuspended portion

followed by a term of probation. His sentence to a flat term of incarceration of twenty-five years is illegal. *Greco* makes clear that the appropriate remedy for this illegality is to resentence appellee to a term of not less than life imprisonment.

Appellant argues that his case is distinguishable from *Greco* for two reasons, neither of which are persuasive. First, appellant argues that *Greco* “declares a new principle of law in the criminal law context and therefore this decision applies prospectively only” *Greco* was not new law.

Whether a constitutional or statutory decision is retroactive depends on whether “the decision declares a new principle of law, as distinguished from applying settled principles to new facts.” *Allen v. State*, 204 Md. App. 701, 721 (2012). A decision which does not declare a new principle of law is fully retroactive and applies to all cases. *Id.* *Greco* interpreted Rule 4-345 and § 412, both of which were in existence well before appellee was indicted. It relied on a “line of cases concerning the sentencing court’s power with respect to correcting illegal sentences” with which it was fully consistent. *Greco*, 427 Md. at 507. For example, the Court quoted approvingly a passage from its previous opinion in *Dixon v. State*, 364 Md. 209, 230 (2001), which reads as follows:

“The sentence actually imposed by the trial court cannot operate as a sentencing cap under § 12-702(b) if it is more severe than the maximum sentence authorized by law or less severe than the minimum sentence required by law, regardless of whether the illegality favors the State or the defendant.” (emphasis removed)

See Greco, 427 Md. at 511. *Greco* did not establish a new principle of law, but rather clarified the interpretation of statutes and cases.

Second, appellee argues that his case is factually distinct from *Greco*. The circuit court did not have discretion to sentence appellee to anything less than the statutory minimum sentence created by § 412, regardless of the underlying facts. That appellant was a principle in the second degree while the appellant in *Greco* was a principle in the first degree is irrelevant. *See Greco*, 427 Md. at 482-83. Likewise, it is of no import that appellee did not request a reduction in his sentence. Appellant's request in *Greco* to have his sentence reduced from a term of incarceration of fifty years to thirty had to do with the *remedy* for a conceded illegality, not with the legality of the sentence. *See id.* at 506.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY REVERSED. CASE
REMANDED TO THAT COURT FOR
RESENTENCING IN ACCORDANCE
WITH THIS OPINION. COSTS TO
BE PAID BY APPELLEE.**