Circuit Court for Baltimore City
Case No. 100098002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1811, 2255

September Term, 2019

LOUIS PIERRE EASTER

v.

STATE OF MARYLAND

Nazarian,
Gould,
Wright, Alexander
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: June 16, 2021

* 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 23, 2001, fifteen-year-old Louis Pierre Easter was tried and convicted in the Circuit Court for Baltimore City for the murders of Al Dante Brown and Clarence Miller. After the trial, Mr. Easter was sentenced to life-plus-thirty-years in prison. Mr. Easter sought to challenge his sentence as illegal in light of *Carter v. State*, 461 Md. 295 (2018), and after some procedural turns we'll detail below, the circuit court denied it. He also filed a motion to modify his sentence that the court denied as untimely. He appeals both decisions.

We agree with Mr. Easter that when considering the legality of his sentence, we measure the sentence the court imposed without regard to whether or to what extent diminution credits might ultimately reduce the time he would serve. Even so, his sentence is legal, and we affirm the circuit court's denial of his motion to correct it. We affirm as well the court's denial of his motion to modify, although impending changes in the law may afford him a new opportunity to seek that form of relief.

I. BACKGROUND

A. The Incident And The Trial.

On December 30, 1999, Mr. Easter, then fifteen years old, and his friend, Gerard Hudson, then sixteen, searched Baltimore City looking for Mr. Brown, who earlier that day had "disrespected" Mr. Easter's grandmother by calling her a name. Both Mr. Easter and Mr. Hudson were armed with handguns. Upon finding Mr. Brown, Mr. Easter and Mr. Hudson each opened fire and shot Mr. Brown fatally in the chest. A bystander who came to Mr. Brown's defense, Mr. Miller, also was shot thirteen times and killed. On June 12, 2001, Mr. Easter was convicted of first-degree murder, conspiracy to commit first-

degree murder, second-degree murder, two counts of use of a handgun in commission of a crime of violence, and two counts of wearing, carrying, or transporting a handgun. That same day he was sentenced to a life term for first-degree murder, a concurrent life term for conspiracy, a concurrent twenty-year term for use of a handgun, and a consecutive term of thirty years for second-degree murder. Mr. Easter began serving his sentences on March 8, 2000. His life sentences did not preclude the possibility of parole.

B. The Appeal.

Mr. Easter appealed his convictions to this Court, and we affirmed them in an unreported opinion. *Easter v. State*, No. 991, Sept. Term 2001 (Md. App. July l, 2002). On March 20, 2017, Mr. Easter filed a Petition for Post-Conviction Relief in which he argued that his trial counsel had been ineffective and that his sentence was illegal. On June 17, 2018, the circuit court denied the illegal sentence claim and declined to reach the ineffective assistance claim because it had been filed after the ten-year filing deadline prescribed in Md. Code (2001, 2018 Repl. Vol), § 7-103(b) of the Criminal Procedure Article. Mr. Easter filed an application for leave to appeal, and on March 7, 2019, we remanded the case to the circuit court to consider the petition in light of the Court of Appeals's then-recent decision in *Carter*. On remand, the circuit court issued an opinion finding that Mr. Easter's sentence was not illegal. He noted a direct appeal from that order.

In parallel, Mr. Easter filed a motion for modification of sentence, under Maryland Rule 4-345(e), on October 30, 2019. The circuit court denied the motion without a hearing. Mr. Easter noted a direct appeal from that order as well, and the two cases were

consolidated. We supply additional facts as necessary below.

II. DISCUSSION

Mr. Easter raises two issues on appeal[1] that boil down in large measure to whether his life-plus-thirty-years sentence is the functional equivalent of life without the possibility of parole. If it is, the sentence would qualify as cruel and usual punishment and violate Mr. Easter's rights under the Eighth Amendment to the Constitution of the United States because Mr. Easter was a juvenile at the time the crime was committed. *See Montgomery v. Louisiana*, 577 U.S. 190 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012). Although Mr. Easter wasn't sentenced to life without the possibility of parole, the Court of Appeals

[1] Mr. Easter phrased the Questions Presented in his brief as follows:

> A. CSA-REG-1811-2019
>
> Whether the Circuit Court erred in holding that Mr. Easter's sentence was not illegal, in light of *Carter, Bowie & McCullough v. State*, 461 Md. 295 (2018), where Mr. Easter was sentenced to life plus thirty years' imprisonment for acts allegedly committed when he was 15 years old?
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> B. CSA-REG-2255-2019
>
> Whether the Circuit Court erred in denying Mr. Easter's Motion for Modification of Sentence based upon the expiration of the five-year time limitation, where that limitation does not apply to his 2001 sentence?

The State phrased the Questions Presented in their brief as follows:

> 1. Did the circuit court correctly rule that Easter's sentence is not illegal under Maryland Rule 4-345(a)?
>
> 2. If considered, was the circuit court correct for a different reason to deny Easter's motion to reconsider his sentence under Maryland Rule 4-345(e)?

recognized in *Carter* that under certain circumstances, a term-of-years sentence could effectively be indistinguishable from a life–without–parole sentence. 461 Md. at 295. The eventual possibility of parole isn't enough in itself to save an excessively long term-of-years sentence, nor is the long-standing (if now discontinued) practice of Maryland governors not to approve parole for lifers enough to render parole a nullity. Instead, *Carter* directs courts to examine a variety of factors to assess whether the individual has a meaningful hope of release. We know from *Carter* that a series of four consecutive twenty-five-year sentences didn't afford the defendant a meaningful hope of release, and Mr. Easter asks us to extend the same principles from *Carter* to find that his life-plus-thirty-years sentence leaves him similarly without hope. He also asks us to reverse the circuit court's decision not to modify his sentence.

When reviewing a motion to correct an illegal sentence, "appellate review deals only with legal questions . . . . [T]he 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). Under Maryland Rule 4-345(a), the court may correct an illegal sentence at any time, but only if, the sentence is one "not permitted by law." *State v. Wilkins*, 393 Md. 273, 273 (2006) (*quoting Walczak v. State*, 302 Md. 422, 427 (1985)). "[W]hether [the] sentence illegality is cognizable under Rule 4-345(a) depends *solely* on whether the illegality inheres in the sentence itself, and *not* on the timing of the claim of illegality or the procedural posture of the case." *Matthews v. State*, 424 Md. 503, 519 (2012) (emphasis in original).

A. Mr. Easter's Sentence Was Not Illegal When Analyzed At The Time Of Sentencing.

Mr. Easter challenges the circuit court's decision that his sentence of life-plus-thirty-years was not illegal, and he takes issue specifically with the way in which the circuit court included the diminution credits he has earned while incarcerated to calculate the time he would serve before becoming eligible for parole. We agree with Mr. Easter on this latter point—the sentence is illegal (or not) when the court imposes it, and the opportunity (or not) to reduce executed time with diminution credits doesn't alter that. Even so, we disagree that Mr. Easter's life-plus-thirty-years sentence was illegal, and we hold that the court didn't err in denying the motion to correct it.

An illegal sentence is a sentence that, when issued by the court, was "not permitted by law." *Walczak,* 302 Md. at 424. Assessing the legality of a sentence requires the court to partake in the exercise of finding and addressing illegality that inheres in a sentence, not finding issues or errors in "the judge's actions" that may be "*per se* illegal." *Wilkins*, 393 Md. at 284. Motions to correct illegal sentences under Rule 4-345(a) are not appropriate vehicles to address procedural issues relating to a sentence, such as a failure to add or subtract credits. *See Bratt v. State*, 468 Md. 481, 499 (2020) (*quoting Cocoran v. State*, 67 Md. App. 252, 255 (1986)) (holding that a procedural defect of not awarding credits did "not render the sentence itself inherently illegal"; that defect is not one of substantive error because "there is no 'obvious reference to a sentence which is beyond the statutorily granted power for the judge to impose'"). Instead, we look at whether "the substance of the sentence itself was unlawful." *Id*.

Mr. Easter was a juvenile when he committed the acts underlying his convictions.

> A sentence of life in prison without parole may be just for certain adult offenders, but the Eighth Amendment's proscription against cruel and usual punishments precludes that sentence for a juvenile offender unless the defendant is an incorrigible murderer. Although there need not be a guarantee of release on parole, a sentence imposed on a juvenile offender must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Carter, 461 Md. at 306 (*quoting Graham v. Florida*, 560 U.S. 48, 75 (2010)). Ultimately, then, the legality of Mr. Easter's sentence turns on when he becomes eligible for parole and the resulting meaningfulness of his release opportunity.

The Court of Appeals also recognized in *Carter* that a term-of-years sentence can, if long enough, effectively require someone to serve for life without a meaningful possibility of parole. *Id.* at 346–65. One of the parties before the Court in *Carter* was convicted of a series of non-homicide crimes and sentenced to four consecutive twenty-five-year sentences, an aggregate of one-hundred years. *Id.* at 331. In assessing whether the aggregate sentence functioned as life without parole, the Court looked at several benchmarks other courts had used to measure a person's opportunity for release and whether that opportunity was meaningful, including the person's natural life expectancy, their parole date, the observations of other courts that fifty years seemed to serve as a natural Eighth Amendment threshold, legislation adopted elsewhere, and the typical retirement age. *Id.* at 351–54. In that particular party's case, the Court began with his initial parole eligibility—half of his stacked sentences, or fifty years—and compared it to the various benchmarks. His parole eligibility came far later than it would for a life sentence

under Maryland law (fifteen years), long after the thresholds established by many other states' legislatures, and long after the typical retirement date for someone his age. *Id*. at 362. And as such, his term-of-years sentence was equivalent to life without parole and, therefore, prohibited by the Eighth Amendment. *Id*. at 365.

In this case as well, the starting point is Mr. Easter's parole eligibility date. Mr. Easter was sentenced on June 12, 2001. On the face of his life-plus-thirty-years sentence, he would become eligible for parole in March 2030.[2] At that point, he will be forty-five years and nine-months old and will have served about thirty years. This case, however, involves a wrinkle not considered in the relevant portion of *Carter*. While he has been incarcerated, Mr. Easter has earned diminution credits. If we factor those credits into the calculation, his parole eligibility date advances to February 2026, when he would be forty-one years and nine-months old and will have served about twenty-five years in prison.

[2] Md. Code (1999, 2017 Repl. Vol.) § 7-301(c)(1)(i) of the Correctional Services Article ("CS") (emphasis added) reads:

> [A]n inmate who has been sentenced to the Division of Correction after being convicted of a violent crime committed on or after October 1, 1994, is not eligible for parole until the inmate has served the greater of: 1. *one-half of the inmate's aggregate sentence for violent crimes*; or 2. one-fourth of the inmate's total aggregate sentence.

CS § 7-301(d)(1) (emphasis added) reads:

> [A]n inmate who has been sentenced to life imprisonment is not eligible for parole consideration until the inmate has served 15 years *or the equivalent of 15 years considering the allowances for diminution of the inmate's term of confinement* under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article. (emphasis added).

There is no dispute as to how many diminution credits Mr. Easter has accumulated. The dispute lies in whether the court should have considered the fact and impact of diminution credits when determining his parole eligibility date for purposes of the *Carter* analysis.

We hold that a court assessing the legality of a sentence should not factor diminution credits into the calculation of the person's parole eligibility date when analyzing the legality of a sentence under Rule 4-345. A sentence is the punishment pronounced by the court at the time of judgment. *See Douglas v. State*, 130 Md. App. 666, 673 (2000). It takes the form of the words stated by the sentencing court on the record during the sentencing hearing. *See id.* A sentence pronounced in open court controls over any conflicts with or ambiguities in documents memorializing it. *Id.* Once entering incarceration, the person accumulates diminution credits and other forms of credit that might accelerate their opportunity for parole or reduce the ultimate time they serve, at least so long as they aren't lost. *See generally* Md. Code (1999, 2017 Repl. Vol.), § 3-704 of the Correctional Services Article ("CS"). But the opportunity for credits is exactly that—an opportunity—and there is no guarantee that the person will earn them, retain them, or be able to use them to reduce the time they serve. CS § 3-704. The ultimate accumulation and application of diminution credits to reduce a sentence depends on behavior, avoiding violations of prison rules, and all sorts of other contingencies that can't be foreseen, including, as Mr. Easter notes, changes in the law (in either direction). *See, e.g.*, 2016 Md. Laws, Chap. 515 ("The Justice Reinvestment Act") (increasing diminution credits available under CS§§ 3-707 to 708).

Moreover, "[a]n illegal sentence is one that is 'not permitted by law,'" *Bratt*, 468

Md. at 496 (*quoting Wilkins*, 393 Md. at 273), where "the illegality inheres in the sentence itself." *Chaney v. State*, 397 Md. 460, 466 (2007)). If a sentence is illegal by virtue of being constitutionally excessive, that excessiveness must inhere in the sentence, not in the administrative execution of that sentence over the years that follow. Mr. Easter argues that consideration of diminution credits in the *Carter* analysis punishes people who follow the rules while incarcerated and rewards those who never accumulate credits or who lose them along the way. The bigger problem, though, lies in the analytical uncertainty that the credits create.

In this case, we are considering Mr. Easter's sentence after many years have passed. But what if he had filed the motion shortly after sentencing? Should the possibility that he'd accumulate diminution credits make an otherwise illegal sentence legal? Or possibly legal, contingent on his future compliance with prison rules? Should a court facing that motion defer ruling on it to see how it goes? No, it shouldn't—if the sentence is illegal, it's illegal, and the passage of time and circumstances after sentencing can't cure an illegality that inheres in the sentence itself. Had Mr. Easter filed a motion before the passage of the Justice Reinvestment Act, a court considering his diminution credits would have calculated them under a formula that's now obsolete and that could change in either direction as political winds shift. Neither the timing of a motion to correct an illegal sentence nor the person's conduct while incarcerated should have any bearing on a court's analysis of the sentence's legality or the outcome of the motion.

The Court of Appeals's recent decision in *Bratt* bolsters this view. There, the Court

held that the failure to award time for credit served was not an illegality that could be corrected via Rule 4-345—the crediting of time served was a *procedural* defect that had no relevance to the substance of the sentence or whether it was permitted by law:

> Similar to *Wilkins*, the allegation that Petitioner was entitled to credit for time served, and that the trial judge failed to award credit when he issued the corresponding commitment record, is a defect in sentencing *procedure* that does not render the sentence itself inherently illegal. Although Crim. Proc. § 6-218 entitles Petitioner to credit for time served pre-trial, the allegation that the trial judge failed to award appropriate credit for time served is not an allegation that the *substance* of the sentence itself was unlawful. The defect is not substantive because there is no "obvious reference to a sentence which is beyond the statutorily granted power for the judge to impose." *Corcoran*, 67 Md. App. at 255[]. In the instant case, the sentence did not go beyond what was permitted by law. Stated differently, the sentence of two consecutive life terms was neither increased nor decreased beyond what is statutorily prescribed as a result of said failure to award credit. The credit for time served is functionally irrelevant to the legality of the sentence imposed, which was two consecutive life terms . . . . Because the "terms of the sentence itself [were not] legally or constitutionally invalid in any other respect[,]" the sentence imposed was not inherently illegal and Rule 4-345 was not an appropriate mechanism for challenging the failure to award credit for time served. *Hill* [*v. United States*], 368 U.S. [424,] 430 [] [(1962)].

Bratt, 468 Md. at 499–500 (emphasis in original) (ellipsis and citation brackets added).

To be fair to the circuit court, *Bratt* hadn't yet been released at the time the court issued its decision in this case. All the same, we can't square *Bratt*'s holding that credits are irrelevant to the legality of a sentence with a *Carter* analysis that considers diminution credits in calculating the person's initial parole date. The starting point for Mr. Easter's *Carter* calculus must start with the sentence itself, and the parole eligibility date calculated

without regard to diminution credits.

That analytical victory, however, does not alter the outcome of his appeal. We know from *Carter* that an aggregate sentence of one-hundred years is the functional equivalent of life without possibility of parole and, when imposed for crimes committed as a juvenile, is constitutionally excessive. But unlike the defendant in *Carter*, who would need to serve fifty years before any eligibility for parole, *see Carter*, 461 Md. at 362; *see also* CS § 7-301(c)(1)(i), Mr. Easter is eligible for parole after serving thirty years—fifteen years of his life sentence and fifteen years of his thirty-year sentence. After serving a full thirty years (and without regard to the effect of his diminution credits), Mr. Easter would be forty-five years and nine months old, well below the typical retirement age of sixty-five years old, *see United States v. Grant*, 887 F.3d 131, 150 (3d Cir. 2018) and *Carter*, 461 Md. at 362, yet the *Carter* defendant would not have had any opportunity for release until age sixty-seven. *Carter*, 461 Md. at 331. In contrast, Mr. Easter's eligibility date comes well before age sixty, the age when he would be eligible for geriatric release. Md. Code (2002, 2021 Repl. Vol.), § 14-101 of the Criminal Law Article ("CL"). To be sure, *Carter* leaves open the possibility that someone sentenced to fewer than one hundred years could have a sentence functionally equivalent to life without parole. Wherever the ultimate line might be, though, we hold that Mr. Easter's life-(with possibility of parole)-plus-thirty-years sentence affords him a meaningful hope of release, and therefore that his sentence is not illegal. We affirm the circuit court's decision denying his motion to correct his sentence.

B. The Circuit Court Did Not Err In Denying Mr. Easter's Motion for Modification.

Finally, Mr. Easter argues that the circuit court erred by denying his motion for modification of sentence under Maryland Rule 4-345(e).[3] The court stated in its order denying the motion that its "legal authority" to modify Mr. Easter's sentence had expired on June 12, 2006, five years after it had been imposed. Mr. Easter argues, the State agrees, and so do we, that the court was wrong on that point: the five-year limit in Rule 4-345(e) doesn't apply to sentences imposed before July 1, 2004, the effective date of the amendment that included the five-year limitation. *Bereska v. State*, 194 Md. App. 664, 688 (2010). But the court was right that it lacked authority to modify Mr. Easter's sentence for a different reason—the motion was untimely because it hadn't been filed within ninety days of sentencing:

> [R]ule [4-345(e)] requires a person wishing to challenge his sentence to file a motion to modify it within ninety days of imposition. If a court denies that motion, and more than ninety days have elapsed since the imposition of sentence, "the defendant is finished-he or she may not file another such motion for reconsideration," *Greco v. State*, 347 Md. 423, 436 [](1997), or, as we have referred to it, a "motion to modify," unless he can show fraud, mistake, or irregularity . . . . *Clark v.*

[3] Maryland Rule 4-345(e) reads:

> (1) Generally. Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

State, 348 Md. 722, 732 (1998).

Tolson v. State, 201 Md. App. 512, 517–18 (2011). Accordingly, we affirm the court's decision denying the motion to modify.

That all said, Mr. Easter may yet have an additional opportunity to seek a modification of his sentence. Senate Bill 494 from the 2021 General Assembly—which passed both houses, was vetoed, and the veto overridden on April 8, 2021—changed the law to allow a motion to modify by any individual who was convicted as an adult for an offense committed when the individual was a minor, sentenced before October 1, 2021, and who "has been imprisoned for at least 20 years for the offense." S.B. 494 of 2021, at 2 (amendments to Md. Code Ann., Crim. Proc. Art. § 8-110(a)). We express no view here on when he might become eligible to file a motion or on the merits of any motion he might file, but he seems squarely to be among the individuals whom this change in the law was designed to reach.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.