

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2678

September Term, 2015

KEVIN DARRELL VAUGHAN

v.

STATE OF MARYLAND

Arthur,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 14, 2016

*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.

Under Maryland Code (2002, 2012 Repl. Vol.), § 2-201(b)(1)(ii) of the Criminal Law Article, the minimum penalty for first-degree murder is imprisonment for life. A court, in its discretion, may suspend some portion of a life sentence – *e.g.*, it may sentence a defendant to life imprisonment, with all but 40 years suspended. If the court suspends some portion of the sentence, however, it must order a period of probation after the completion of the sentence. Md. Code (2001, 2008 Repl. Vol.), § 6-222(a) of the Criminal Procedure Article. Otherwise, the Court of Appeals held in *Greco v. State*, 427 Md. 477, 513 (2012), the sentence is illegal, because it converts a sentence of life imprisonment into a term-of-years sentence.

In this case, a jury convicted appellant Kevin Darrell Vaughan of first-degree murder in 2001, and the Circuit Court for Baltimore City sentenced him to a term of 40 years’ imprisonment, without a period of probation. In 2015, after the Court of Appeals’ decision in *Greco*, the State filed a motion to correct an illegal sentence, contending that the court had erroneously converted the statutorily-mandated life sentence into a sentence for a term of years. The circuit court granted the State’s motion and resentenced Vaughan to life imprisonment, with all but 30 years suspended, to be followed by 24 months of probation.

Vaughan appealed. He poses one question: “Did the circuit court err in resentencing appellant to life in prison with all but 30 years suspended and imposing 24 months of probation?”

Finding no error in the circuit court’s resentencing, we shall affirm.

DISCUSSION

Vaughan contends that the circuit court erred in granting the State’s motion to correct an illegal sentence because, he says, *Greco* established a novel remedy that should only be applied prospectively. In addition, Vaughan contends that the new sentence violates principles of fundamental fairness. We disagree on both counts.

In *Greco*, 427 Md. at 513, the Court of Appeals remanded for resentencing after it reversed an illegal term-of-years sentence for first-degree murder. On remand, the Court said, the circuit court could not impose a sentence in excess of what the maximum legal sentence would have been. *Id.* at 511. In other words, the court was “limited by the maximum legal sentence that could have been imposed, with the illegality” – the failure to order a period of probation – removed. *Id.* at 513. Because the circuit court had initially sentenced Greco to an effective term of 50 years, the court, on remand, “must impose a sentence of life imprisonment, all but fifty years suspended, to be followed by some kind of probation.” *Id.*¹

In complaining of the putative novelty of the *Greco* remedy, Vaughan focuses on the potential increase from a term of years to life imprisonment (albeit with all but a term of years suspended), followed by probation. In *Greco* itself, however, the Court quoted

¹ The words “must impose” might imply that the circuit court could not suspend any less than the specific number of years than it had originally suspended, but the State does not appear to adopt that interpretation in this case. Although the circuit court initially sentenced Vaughan to life imprisonment with all but 40 years suspended, the State does not complain that the court resentenced him to life with all but only 30 years suspended (followed by probation).

its earlier dictum that “[t]he correction of an illegal sentence may result in an increase over the erroneous sentence previously imposed on the defendant.” *Id.* at 508 (quoting *Hoile v. State*, 404 Md. 591, 620 (2008)). Moreover, the *Greco* Court recognized that it had previously required the reinstatement of mandatory sentences that circuit courts had declined to impose in favor of a lesser sentence. *Id.* at 513 (citing *State v. Hannah*, 307 Md. 390, 403 (1986) (remanding with instructions to impose mandatory-minimum sentence after circuit court had struck sentence and imposed probation before judgment); *State ex rel. Sonner v. Shearin*, 272 Md. 502, 526 (1974) (remanding with instructions to delete suspension of sentence so that sentence on handgun violation “will be for the mandatory term of five years”)). There is nothing particularly novel about *Greco*.

The sole basis for Vaughan’s fundamental fairness contention is the passage of time between his 2003 sentencing and the 2015 correction. Because an illegal sentence may be corrected “at any time” (Md. Rule 4-345(a)), Vaughan’s claim is without merit. Vaughan had no legitimate expectation in the continuation of an illegal sentence.

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