Circuit Court for Baltimore City
Case No. 198265028

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1150

September Term, 2016

DANIEL CARTER

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: August 11, 2017

On September 16, 1999, a jury in the Circuit Court for Baltimore City found appellant, Daniel Carter, guilty of first-degree murder as well as two related handgun offenses. On November 9, 1999, the trial court sentenced appellant to life for first-degree murder, and a consecutive twenty years for the use of a handgun in the commission of a felony. Roughly sixteen years later, on September 28, 2015, appellant filed a motion to correct illegal sentence in the circuit court, arguing that recent United States Supreme Court precedent rendered his sentence unconstitutional. After the trial court denied his motion, appellant timely appealed. He presents a single issue for our review,[1] which we rephrase as follows:

> Whether a life sentence for a juvenile offender is unconstitutional and therefore illegal, because Maryland law does not afford the offender a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

The State moved to dismiss, arguing that appellant's appeal is not ripe for review. We agree with the State.

DISCUSSION

Approximately eleven years after appellant was sentenced, the United States Supreme Court decided *Graham v. Florida*, where it held that it was unconstitutional for a state to sentence a juvenile nonhomicide offender to life without the possibility of parole,

[1] Appellant presents the following question, which we reprint verbatim:

> In light of the legal precedent set by the Supreme Court in Graham v. Florida, Miller v. Alabama, & Montgomery v. Louisiana "Is the life means life policy in Maryland unconstitutional for juveniles serving life imprisonment?

depriving that juvenile of a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. 48, 75 (2010). Two years later, the Supreme Court extended *Graham* and held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Miller v. Alabama*, 567 U.S. 460, 465 (2012). Although *Graham* addressed a juvenile nonhomicide offender's sentence, the Supreme Court in *Miller* explained that "*Graham*'s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses." *Id.* at 473. Finally, four years after *Miller*, the Supreme Court announced that *Miller* constitutes a substantive rule and applies retroactively. *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718, 734 (2016).

Appellant argues that due to the nature of Maryland's parole system, his life sentence is effectively a sentence of life without the possibility of parole, which the Supreme Court held in *Miller* may constitute an unconstitutional sentence for a juvenile homicide offender if the sentencing judge does not consider the differences between children and adults, and how those differences counsel against a lifetime sentence. 567 U.S. at 479-80.

Maryland's Parole System

Our analysis begins with a brief overview of the parole process for individuals sentenced to life. An inmate in prison on a life sentence does not become eligible for parole consideration until after serving fifteen years (or the equivalent of fifteen years after taking

applicable diminution credits into account). Md. Code (1999, 2008 Repl. Vol., 2016 Supp.), § 7-301(d)(1) of the Correctional Services Article ("CS"). However, individuals such as appellant, who are serving life sentences for first-degree murder, do not become eligible for parole until after serving twenty-five years (or the equivalent of twenty-five years after taking applicable diminution credits into account). CS § 7-301(d)(2).

In all cases, to determine whether an inmate is suitable for parole, the Maryland Parole Commission (the "Commission") considers a long list of factors, such as the circumstances surrounding the crime, the "physical, mental, and moral qualifications" of the inmate, and whether there is a substantial risk the inmate will not conform to the conditions of parole. COMAR 12.08.01.18A(1)-(2). When considering whether a juvenile offender is suitable for parole, the Commission also considers the following factors:[2]

> (a) Age at the time the crime was committed;
>
> (b) The individual's level of maturity and sense of responsibility at the time of [sic] the crime was committed;
>
> (c) Whether influence or pressure from other individuals contributed to the commission of the crime;
>
> (d) Whether the prisoner's character developed since the time of the crime in a manner that indicates the prisoner will comply with the conditions of release;
>
> (e) The home environment and family relationships at the time the crime was committed;

[2] On October 26, 2016, the Commission added these factors to the regulations in an apparent attempt to comply with *Graham* and its progeny.

> (f) The individual's educational background and achievement at the time the crime was committed; and
>
> (g) Other factors or circumstances unique to prisoners who committed crimes at the time the individual was a juvenile that the Commissioner determines to be relevant.

COMAR 12.08.01.18A(3).

Generally, the Commission "has the exclusive power to . . . authorize the parole of an individual sentenced under the laws of the State to any correctional facility in the State." CS § 7-205(a)(1). However, "an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor." CS § 7-301(d)(4). In these cases, the Commission can only review and make recommendations to the Governor, who ultimately decides whether to grant or deny parole.[3] CS § 7-206(3)(i).

Appellant's Claims

Appellant argues that because "on Sept. 21 1995 [former] Governor Glendening announced that he 'would not approve parole for any inmates sentenced to Life [sic] imprisonment unless they were very old or terminally ill,'" a life sentence—even if it allows for parole eligibility—is the equivalent of life without the possibility of parole.

While juvenile homicide offenders like appellant may still be sentenced to life without the possibility of parole, after *Miller* and *Montgomery*, the sentencing judge must

[3] If the Commission recommends parole for an inmate sentenced to life who has served twenty-five years, and the Governor does not disapprove of the Commission's decision within 180 days of receiving that decision, the parole decision "becomes effective." CS § 7-301(d)(5).

consider the differences between children and adults, and how those differences counsel against a lifetime sentence. 567 U.S. at 480. Here, appellant contends that the trial court did not consider the mitigating factors listed in *Graham* and *Miller* prior to sentencing him to what, in his estimation, amounts to life without the possibility of parole.

Appellant's Claims are Premature

Based on the record before us in the instant case, we conclude that appellant cannot show that he has suffered any legally cognizable harm, and therefore his complaint is premature. The United States Supreme Court has explained that, to have constitutional standing, a party "must have suffered an 'injury in fact'—an invasion of a legally protected interest which is . . . actual or imminent, not 'conjectural' or 'hypothetical[.]'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted).

Pursuant to Maryland's parole procedures, the Commission must first recommend appellant for parole before the Governor can consider whether to ultimately grant parole. Moreover, the Commission has articulated factors as set forth in COMAR 12.08.01.18A(3) in an apparent attempt to comply with *Graham* and its progeny, factors which the Commission has not yet applied to appellant's case.[4]

[4] Appellant has not yet served the twenty-five years necessary to become eligible for parole consideration under CS § 7-301(d)(2), and he makes no claim that he has accumulated enough diminution credits to be eligible at this point in time.

Appellant does not claim that the Commission has recommended him for parole, and it is unclear whether this will ever occur. It is possible that the Commission will apply the new factors set forth in COMAR 12.08.01.18A(3) and deny parole. Assuming the Commission's analysis complies with *Graham* and its progeny, appellant will have been afforded a meaningful opportunity for release based on demonstrated maturity and rehabilitation. It is also possible that the Commission will recommend parole and the Governor will grant it. Finally, it is possible that the Commission will recommend parole but the Governor will deny it after appropriately considering the standards articulated by the Supreme Court. In all of the above scenarios, appellant will have suffered no legally cognizable harm under *Graham* or its progeny.

Whether or not the Governor will deny parole based on statements made by a former governor more than two decades ago is a question we need not answer at this juncture. In short, appellant currently lacks standing to allege that his sentence functions as life without parole. Appellant's claims, in the parlance of *Lujan*, are "conjectural" or "hypothetical."

Appellant also lacks standing to argue that Maryland's parole system is unconstitutional as applied to all juvenile nonhomicide offenders serving life sentences. "As a general rule, if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations." *Cty. Court of Ulster Cty. v. Allen*, 442 U.S. 140, 155 (1979).

The Court of Appeals "has emphasized, time after time, that [its] strong and established policy is to decide constitutional issues only when necessary." *VNA Hospice of Md. v. Dep't of Health and Mental Hygiene*, 406 Md. 584, 604 (2008) (internal quotation marks omitted) (quoting *Burch v. United Cable*, 391 Md. 687, 695 (2006)). Here, we believe it unnecessary to address the constitutional issues raised by appellant.

We find support for our conclusion in the relevant case law. In *People v. Franklin*, 370 P.3d 1053, 1054 (Cal. 2016), the Supreme Court of California addressed an appeal pursuant to *Graham* and its progeny regarding a juvenile homicide offender. There, in addition to addressing other issues, the *Franklin* court considered an argument by amicus curiae that the parole board's regulations concerning a juvenile offender's suitability for parole did not effectively provide those offenders a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" as required by *Graham*. *Id*. at 1065. Declining to address the issue, the *Franklin* court held,

> As of this writing, the Board [of Parole Hearings] has yet to revise existing regulations or adopt new regulations applicable to youth offender parole hearings. In advance of regulatory action by the Board, and *in the absence of any concrete controversy in this case* concerning suitability criteria or their application by the Board or the Governor, it would be *premature* for this court to opine on whether and, if so, how existing suitability criteria, parole hearing procedures, or other practices must be revised to conform to the dictates of applicable statutory and constitutional law.

Id. at 1066 (emphasis added).

Like the California Supreme Court, many appellate courts, including the Supreme Court of the United States, have routinely declined to consider premature allegations of constitutionally recognized harm in a variety of contexts. *See Williamson Cty. Reg'l*

Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 186 (1985) (declining to consider constitutional issue, stating that "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue"); *Hodel v. Indiana*, 452 U.S. 314, 335-336 (1981) (dismissing a due process challenge as premature because "appellees [had] made no showing that they were ever assessed civil penalties under the [Surface Mining] Act, much less that the statutory prepayment requirement was ever applied to them or caused them any injury"); *U.S. v. Foundas*, 610 F.2d 298, 301 (5th Cir. 1980) (declining to consider whether application of the Federal Parole Commission guidelines was invalid where defendant had not yet begun to serve her sentence, and it was possible that the guidelines could change before she became eligible for parole); *Pyles v. State*, 25 Md. App. 263, 269 (1975) (rejecting as premature appellant's due process claim regarding post-sentencing procedures when "it [would] be a long time before the appellant's sentence expire[d] and the principle [complained of] . . . [would come] into play").

We find this authority persuasive. Based on the record in the instant case, we perceive no concrete controversy that would require us to opine on the constitutionality of Maryland's parole system or appellant's sentence.

CONCLUSION

For the reasons stated, we decline to decide whether Maryland's parole system is unconstitutional. Until the Commission recommends appellant for parole, the

constitutional defect he alleges will be purely hypothetical. Accordingly, we grant the State's motion to dismiss the appeal.

STATE'S MOTION TO DISMISS APPEAL IS GRANTED. COSTS TO BE PAID BY APPELLANT.