

Circuit Court for Baltimore City
Case No. 192321019

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2428

September Term, 2017

OMAR JOHNSON

v.

STATE OF MARYLAND

Nazarian,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 8, 2019

*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.

Omar Johnson, appellant, filed an appeal from an order of the Circuit Court for Baltimore City denying his motion to correct an illegal sentence. We shall affirm.

BACKGROUND

In 1993, Mr. Johnson was convicted of first-degree murder, use of a handgun in the commission of a crime, and wearing, carrying and transporting a handgun. He was 17 years old when he committed the crimes. The court imposed a sentence of life in prison, with the possibility of parole, for first-degree murder, and a concurrent term of 20 years in prison for use of a handgun in the commission of a crime.¹ Mr. Johnson’s convictions were affirmed on direct appeal.²

Thereafter, the United States Supreme Court issued a series of decisions addressing the constitutionality of sentencing juvenile offenders to life without the possibility of parole. In *Graham v. Florida*, 560 U.S. 48, 74 (2010), the Supreme Court held that the Eighth Amendment prohibition on cruel and unusual punishment forbids a sentence of life without parole for a juvenile offender convicted of a crime other than homicide. The Court observed that, “[t]o justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible[.]” *id.* at 72, and held that such a judgment “is not appropriate in light of a juvenile nonhomicide offender’s capacity for change and limited moral

¹ The remaining conviction was merged for sentencing purposes.

² *Brown and Johnson v. State*, No. 1529, Sept. Term 1993 (Md. App. August 9, 1994).

culpability.” *Id.* at 74. The Court explained that, although “[a] State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime[,]” it must impose a sentence that provides “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.* at 75.

In 2012, the Supreme Court held that mandatory sentences of life without the possibility of parole for juvenile offenders were unconstitutional. *Miller v. Alabama*, 567 U.S. 460, 479 (2012). The Court clarified that it was not “foreclos[ing] a sentencer’s ability” to make a judgment, in a homicide case, that a juvenile offender’s crime “reflects irreparable corruption[,]” but was requiring the sentencing court to “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a life in prison.” *Id.* at 479-80. In 2016, the Supreme Court held that *Miller* applies retroactively. *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct 718, 736 (2016).

In 2017, Mr. Johnson filed a motion to correct what he alleged to be an illegal sentence, citing *Graham*, *Miller*, and *Montgomery*, and asserting that, although he was eligible for parole, “[i]n Maryland, a sentence of life imprisonment is *de facto* that of life without parole[.]” The circuit court denied the motion, and this appeal followed.

Mr. Johnson’s appeal was stayed pending the decision of the Court of Appeals in *Carter v. State*, No. 54, Sept. Term 2017; *Bowie v. State*, No. 55, Sept. Term 2017; and *McCullough v. State*, No. 56, Sept. Term 2017, because those cases raised issues relating to whether a life sentence with the possibility of parole amounted to an unconstitutional *de facto* life without parole sentence. On August 29, 2018, the Court of Appeals issued an opinion in *Carter v. State*, 461 Md. 295 (2018), *reconsideration denied*, October 4, 2018.

The Court’s consolidated opinion resolved the cases of *Carter*, *Bowie*, and *McCullough*, and held that sentencing a juvenile offender to life with the possibility of parole is legal because “the laws governing parole of inmates serving life sentences in Maryland, including the parole statute, regulations, and a recent executive order adopted by the Governor, on their face allow a juvenile offender serving a life sentence a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’” *Id.* at 307. The Court observed that, as the Supreme Court made clear in *Graham* and *Miller*, a court cannot sentence a juvenile defendant convicted of homicide to life without the possibility of parole without first holding “an individualized sentencing hearing to consider whether the defendant is incorrigible.” *Id.* at 333-34. Following the issuance of the opinion in *Carter*, the stay of Mr. Johnson’s appeal was lifted.

Mr. Johnson asserts that, although he is eligible for parole, his life sentence does not afford him a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” First, he contends that, although the Parole Commission and the Governor are required to consider the offender’s youth and related matters, there is no meaningful limit on “the parole authorities’ discretion to deny release on parole for any reason.” He asserts that the holding in *Carter* incorrectly determined that the laws governing parole “sufficiently channel[.]” the discretion of parole authorities. As Mr. Johnson acknowledges, however, this Court is bound to adhere to the holdings of the Court of Appeals. *See Marlin v. State*, 192 Md. App. 134, 151 (“opinions assented to by a majority of the Court [of Appeals], unless subsequently overruled in another case or by

statute, are the law, and must be followed by this Court.”), *cert. denied*, 415 Md. 339 (2010)). Accordingly, we do not address this claim.

Mr. Johnson asserts that *Carter* did not address his alternative claim, which is that the laws governing parole do not provide a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation because “they fail to direct the parole authorities to take into account” the impact of untreated mental illness.³ Assuming, without deciding, that the Eighth Amendment requires consideration of the effects of untreated mental illness on a juvenile offender being considered for parole, we note that Md. Code, Correctional Services Article § 7-305(2) requires that the Parole Commission consider “the physical, mental, and moral qualifications of the inmate.” In addition, COMAR 12.08.01.18A(3) sets forth additional factors to be considered if the inmate was a juvenile at the time of the offense, including “factors or circumstances unique to prisoners who committed crimes at the time the individual was a juvenile that the [Parole] Commissioner determines to be relevant.” COMAR 12.08.01.18A(3)(g). Any mental health issues that bear on an inmate’s suitability for parole would likely be considered under either or both provisions

Mr. Johnson’s final contention is that his sentence of life with the possibility of parole is illegal because “the sentencing court did not determine that [he] was incorrigible (i.e. irreparably corrupt) or adequately take into account his youth and its significance for the sentencing decision” (capitalization omitted). As we have recently stated, however, the

³ Mr. Johnson states that he suffered mental health problems as a juvenile.

requirement of an individualized sentencing hearing that takes into account a juvenile offender's youth and considers whether he or she is incorrigible applies only to juvenile offenders sentenced to life without parole. *Hartless v. State*, ___ Md. App. ___, No. 123, Sept. Term 2017 (filed May 30, 2019), sl. op. at 14-15.

In sum, Mr. Johnson has not identified any illegality in his sentence. Accordingly, we conclude that the circuit court did not err in denying his motion to correct illegal sentence.

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