Circuit Court for Prince George's County
Case No.: CT 95-0146A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3001

September Term, 2018

LESLIE EUGENE WILLIAMS

v.

STATE OF MARYLAND

Meredith,
Wells,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: November 8, 2019

In the Spring of 1996, a jury sitting in the Circuit Court for Prince George's County convicted Leslie Eugene Williams, appellant, of first-degree felony murder, robbery with a deadly weapon, and use of a handgun in the commission of a felony or crime of violence. Williams was a juvenile at the time he committed the offenses. The court sentenced Williams to imprisonment for life without the possibility of parole for the felony murder conviction. The court also imposed two concurrent 20-year terms of imprisonment: one for robbery with the deadly weapon, and one for the handgun offense.

In 2018, Williams filed a motion to correct an illegal sentence, based upon an evolving body of caselaw addressing the lawfulness of the imposition of life sentences without possibility of parole on offenders who were juveniles at the time they committed their offenses.[1]

[1] *See Roper v. Simmons*, 543 U.S. 551 (2005) (holding that juvenile offenders may not be sentenced to the death penalty); *Graham v. Florida*, 560 U.S. 48 (2010) (holding that a sentence of life without parole ("LWOP"), or its functional equivalent, for a juvenile who committed a non-homicidal crime violates the 8th Amendment's ban on cruel and unusual punishment. A sentence imposed on a juvenile offender must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*. at 75); *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that the 8th Amendment (1) forbids a *mandatory* LWOP sentence for a juvenile offender convicted of a homicidal offense, and (2) permits a *discretionar*y LWOP sentence for a juvenile offender convicted of a homicidal offense, but only after an individualized sentencing proceeding which takes "into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id*. at 480); *Montgomery v. Louisiana*, 577 U.S. __ (2016), 136 S. Ct. 718 (2016) (holding that *Miller* is retroactive, and that compliance with *Miller* could be accomplished either by re-sentencing the defendant or by permitting that defendant to be considered for parole); *Rummel v. Estelle*, 445 U.S. 263 (1980)*; Solem v. Helm*, 463 U.S. 277 (1983) (indicating that, in the context of an 8th Amendment proportionality challenge to a sentence, the availability of release by executive clemency where an official exercises unfettered discretion in making a clemency decision is not the functional equivalent of the

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At the hearing on Williams's motion, the court made the following comments:

> Well, Mr. Williams, I've reviewed the entire transcript through the couple years that I've been preparing for this hearing ultimately. I reviewed all the material here and it's clear to me this wasn't an accident. This wasn't a robbery gone bad. This was an execution style murder of the shopkeeper, who was on his knees, cooperating, not threatening. Had already given up his property. So it was a senseless act. It was unnecessary, senseless. It was . . . a heinous act.
>
> And, frankly, it may very well be that the nature of that act did reflect, does reflect, irreparable corruption or incorrigibility which is what the Supreme Court says. You can't just have a flat-out life without parole sentence as a mandatory sentence for a juvenile. A juvenile ought to have an opportunity to show their crime did not reflect irreparable corruption or incorrigibility.
>
> The nature of that crime may very well have but I'm not going to impose, re-impose a sentence of life without the possibility of parole. Under the circumstances, I am going to sentence you to life imprisonment on count 1 with the possibility of parole but I do find you present a danger to the community. It's necessary to deter others from this kind of behavior and I disagree with [defense counsel] that giving you a sentence of what you had already [served] would be satisfactory to deter people. I don't think so.

The circuit court granted the motion, vacated the original sentence, and then re-sentenced Williams to imprisonment for life with the possibility of parole for the felony murder conviction.

Williams noted a timely appeal from that re-sentencing and presents us with the following question: "Is Appellant's life sentence illegal?"

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availability of release pursuant to a parole scheme); *Carter v. State*, 461 Md. 295, 365 (2018) (holding that Maryland law governing parole does provide a juvenile offender serving a life sentence with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation).

For the reasons set forth below, as explained more fully by our Court in *Holly v. State*, 241 Md. App. 349 (2019), *cert. petition pending*, Petition Docket No. 232 (filed August 14, 2019), we shall affirm the judgment of the circuit court.

DISCUSSION

Williams claims that his sentence of life with the possibility of parole, which was imposed on him for a crime committed when he was a juvenile, is illegal because Maryland's parole system does not provide a *meaningful* opportunity to obtain release based upon demonstrated maturity and rehabilitation, as it is required to do pursuant to the Supreme Court's opinions in *Graham v. Florida*, 560 U.S. 48, 75 (2010), *Miller v Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718 (2016). More specifically, Williams opens the argument in his brief by making the following assertions:

> This case is a direct appeal in which Appellant challenges the constitutionality of his life sentence. *Teasley v. State*, 298 Md. 364, 370 (1984) (grounds of appellate review include that the sentence constitutes cruel and unusual punishment or otherwise violates constitutional requirements). Review is *de novo*. *See Khalifa v. State*, 382 Md. 400, 417 (2004) (discussing *de novo* review of constitutional challenges to sentences).
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> The substance of Appellant's challenge to his sentence derives primarily from *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718 (2016). A life without parole sentence is disproportionate and thus constitutes cruel and unusual punishment for all juvenile offenders, except for a juvenile homicide offender who has been determined to be irreparably incorrigible. As a juvenile homicide offender who has not been determined to be irreparably incorrigible at sentence, Appellant is entitled to a parole proceeding in which he receives what *Graham* calls a "meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation." 560 U.S. at 75. Absent such "meaningful

> opportunity," Appellant's life sentence is a *de facto* and disproportionate life-without-parole sentence.
>
> Integral to this "meaningful opportunity" requirement is the right to counsel and fees for experts to assist in demonstrating maturity and rehabilitation as well as the right to judicial review. Because Maryland's parole system does not provide these rights, it does not provide juvenile offenders with the requisite "meaningful opportunity" for release. Because Maryland's parole system does not provide juvenile offenders with the requisite "meaningful opportunity" for release, Appellant's sentence is a *de facto* and disproportionate life-without-parole sentence.

Williams summarizes the relief he is seeking as follows:

> Without the rights (1) to state-furnished counsel and to representation in which counsel is permitted to (a) represent Appellant at his parole hearing by presenting evidence of Appellant's maturity and rehabilitation on the record, (b) review and dispute all evidence considered by the Commission on the record, and (c) be present when Appellant addresses the Commission on the record, (2) to funds for experts, and (3) to meaningful judicial review, Appellant does not have a "meaningful opportunity" to demonstrate maturity and rehabilitation and obtain release. As a result, his life sentence is a disproportionate *de facto* life-without-parole sentence. The proper remedy is for this Court to remand Appellant's case for a resentencing at which the circuit court will be required to impose a life sentence with all but a term of years suspended that ensures Appellant a meaningful opportunity for release and is not tantamount to a sentence of life without parole. *See Carter*, 461 Md. at 365.

(Footnote omitted.)

But Williams concedes in his brief that the arguments he makes in this case were rejected by this Court in *Holly*, 241 Md. App. 349. Williams states in his brief:

> The argument Appellant makes in this brief was recently rejected by this Court in a reported opinion, *Aaron Dwayne Holly v. State*, ___ Md. App. ___ (2019), No. 1720, Sept. Term, 2017 (June 26, 2019). However, counsel for Mr. Holly has informed counsel for Appellant that Mr. Holly intends to petition the Court of Appeals for a writ of certiorari.

The State agrees with Williams's concession that his arguments are the same as those we rejected in *Holly*, and states in its brief:

> On appeal from resentencing, Will[ia]ms asserts that his newly-imposed life sentence does not afford him the "meaningful opportunity" for release required by *Graham v. Florida*, 560 U.S. 48, 75 (2010)—and so is unconstitutional—because Maryland's parole system does not provide a right to state-furnished counsel, public funds for experts, or judicial review. "The substance" of this challenge, according to Williams, "derives primarily from" *Graham*, *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Williams's claim should be rejected because, as he acknowledges, his arguments were "recently rejected by this Court" in *Holly v. State*, 241 Md. App. 349 (2019), *petition for cert. filed* (Md. Aug. 14, 2019) (Pet. Dkt. No. 232, Sept. Term, 2019).
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> Responding to arguments identical to those made by Williams here, this Court in *Holly* first held that *Carter v. State*, 461 Md. 295 (2018), was controlling because it "expressly held that the 'laws governing parole of inmates serving life sentences in Maryland . . . on their face allow' a juvenile lifer 'a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."'" *Holly*, 241 Md. App. at 355-56 (quoting *Carter*, 461 Md. at 307). This Court next held, that "[e]ven if *Carter* were not dispositive," Holly's claim still failed because the authority he cited did not "provide support for the constitutional rights he demand[ed]." *Id*. at 356. As detailed in the opinion, the Court found "no basis for the rights asserted by Holly under the United States Constitution or Maryland Declaration of Rights." *Id*. Finally, this Court "rejected Holly's invitation to adopt the reasoning" of *Diatchenko v. District Attorney for Suffolk District*, 27 N.E. 3d 349 (Mass. 2015), because that decision "was premised not on federal law, but on the Massachusetts Declaration of Rights." *Holly*, 241 Md. App. at 372.
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> Because *Holly* addresses and rejects all of the points raised by Williams, his life sentence should be upheld.

(Citations to Appellant's brief omitted.)

Both Williams and the State correctly recognize that this case is controlled by our decision in *Holly v. State*, 241 Md. App. 349. *See Archers Glen Partners, Inc. v. Garner*,

176 Md. App. 292, 325 (2007), *aff'd*, 405 Md. 43 (2008). Accordingly, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.