

Circuit Court for Wicomico County
Case No. 22-K-04-000917

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3316

September Term, 2018

BRIAN MICHAEL DUTTON

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 5, 2020

*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.

In 2004, Brian Michael Dutton, appellant, entered an *Alford* plea in the Circuit Court for Wicomico County to one count of first-degree murder and one count of use of a handgun in the commission of a crime of violence. The court imposed a sentence of life with the possibility of parole on the murder count and a concurrent sentence of fifteen years' imprisonment on the handgun count.

In 2018, Mr. Dutton filed a motion to correct illegal sentence, asserting that his life sentence was illegal because it was an indefinite sentence that lacked a “mandatory release date and/or maximum expiration date[.]” Following a hearing, the court determined that Mr. Dutton’s sentence was not illegal and denied his motion. On appeal, Mr. Dutton now raises the same claim that he raised in his motion to correct illegal sentence, specifically that his life sentence “is illegal as it cannot be determined and/or reached[.]” Because Mr. Dutton’s life sentence is legal, we affirm.

The Court of Appeals has held that “[t]he imposition of a life sentence for first-degree murder is a sentence permitted by law.” *State v. Wilkins*, 393 Md. 269, 276 (2006). To be sure, Mr. Dutton’s sentence is “indefinite” in the sense that his life expectancy is unknowable and there is no guarantee when he will be paroled or if he will even be paroled before the end of his life. However, that does not mean that it cannot be executed by the Department of Public Safety and Correctional Services. And even if the policies of the Governor and the Parole Commission make it unlikely that he will be granted parole, as he claims, that does not render his sentence inherently illegal. *See State v. Kanaras*, 357 Md. 1170 185 (1999) (rejecting the claim that an inmate’s life sentence had become illegal as a result of Governor Glendening’s “Life Means Life” parole policy).

In claiming otherwise, appellant relies on *Coley v. State*, 76 Md. App. 731 (1988), wherein this Court noted that a “life sentence with fifteen years of it suspended” was an illegal sentence because the “very indefiniteness of a life expectancy . . . would make it impossible for the parole authorities to calculate backward from an uncertain date” to determine when the suspended portion of the sentence should begin. *Coley* is inapplicable to the instant case, however, as Mr. Dutton did not receive a suspended sentence and it is not impossible to calculate the date after which he would be eligible for parole.

Finally, Mr. Dutton makes the conclusory assertion that the sentencing judge “intended that [his] term of actual imprisonment to be less than a full life sentence[.]” However, there is no indication in the record that the sentencing court intended to impose a sentence different from the one that it imposed or that its sentencing decision was based on a belief that Mr. Dutton would eventually be paroled. In fact, the sentencing judge was provided with an opportunity to clarify his intent at the hearing on the motion to correct illegal sentence when Mr. Dutton asked the court to impose a new sentence based on the fact that it was unlikely he would ever be paroled.¹ However, the judge specifically declined to do so and noted that a sentence for a definite term of years would be a “radical departure” from the sentence he had imposed. In short, Mr. Dutton has not identified any

¹ The judge who presided over the hearing on Mr. Dutton’s motion to correct illegal sentence was also the judge who imposed his life sentence.

illegality in his life sentence. Consequently, the circuit court did not err in denying his motion to correct illegal sentence.

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