UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1788

September Term, 2014

MAURICE HUTTON

v.

STATE OF MARYLAND

Krauser, C. J.
Berger,
Reed,

JJ.

Opinion by Krauser, C. J.

Filed: November 24, 2015

*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 2000, Maurice Hutton, appellant, pleaded guilty in the Circuit Court for Prince George's County to first-degree murder and was sentenced by that court to life imprisonment. The court thereafter modified his sentence to life imprisonment, with all but forty-five years suspended. Later, in response to appellant's motion to correct an illegal sentence, the court added a three-year period of probation to that sentence. From that last imposition of sentence, appellant noted this appeal, contending the circuit court erred by, in effect, improperly increasing his sentence. For the reasons that follow, we affirm.

BACKGROUND

On March 14, 2000, appellant entered a guilty plea to one count of first-degree murder. The next day, appellant sent a handwritten letter to the court requesting that he be allowed to withdraw his plea. After denying that motion, the court sentenced him to life in prison.[1] Appellant then filed an application for leave to appeal. When that application was denied, appellant filed a motion for review of sentence. After conducting such review, a three judge panel in the circuit court "confirmed without change" his sentence of life imprisonment.

Then, in 2009, appellant filed a petition for post-conviction relief, whereupon the court granted him the right to file a belated motion for reconsideration of his sentence. On

[1] Appellant also pleaded guilty to conspiracy to commit robbery which was charged in a separate indictment, but which involved the same set of circumstances and facts. He received a sentence of ten years imprisonment, to be served concurrently with his life sentence for first degree murder charge.

April 7, 2010, appellant filed a motion seeking to reduce his sentence. On November 24, 2010, the circuit court granted that motion to modify his sentence and re-sentenced appellant to "natural life, suspend all but forty-five years," but no period of probation was ordered.

Two months later, appellant filed a motion challenging his revised sentence, claiming, in part, that the court erred in failing to include a period of probation. In response, the court re-sentenced appellant to life, with all but forty-five years suspended, to be followed by three years of supervised probation. Appellant then noted this appeal.

DISCUSSION

Appellant contends that the circuit court erred in attempting to correct the sentence it imposed on November 24, 2010, by adding a three-year period of probation upon release, and thereby rendered it an illegal sentence. He claims that he had "a reasonable and settled expectation that the severity of his sentence would not be increased" and that "[f]undamental fairness demands that this legitimate expectation of finality be respected." He suggests that the court could correct the illegal sentence *and* comport with the principles of fundamental fairness by reducing his sentence even further so that the unsuspended portion of his sentence and the probationary period equal forty-five years, that is, to an active and unsuspended sentence of forty-two years with a probationary period of three years, or, in the alternative, to an active and unsuspended sentence of forty-four years and 364 days with a probationary period of one day. The State responds that the circuit court "correctly re-sentenced appellant pursuant to *Greco v. State*, 427 Md.

477 (2012), by imposing a period of probation to effectuate the suspended portion of [appellant's] modified life sentence for murder."

The minimum sentence for first-degree murder is life imprisonment, but "the court may exercise its discretion and suspend any portion thereof." *Id.* at 505; *see* Crim. Law § 201)(b)(2)(2013) (formerly Md. Code Ann., Art. 27, § 412(b) (1997 Supp.)). Although a "split sentence approach may be used in connection with a life sentence," the Court of Appeals has held that, "'there must be a period of probation attached to the suspended part of the sentence.'" *Greco,* 427 Md. at 504-05 (2011) (quoting *Cathcart v. State*, 397 Md. 320, 327 (2007)).

The Court of Appeals decision in *Greco* resolves this issue. In that case, the defendant was convicted of first-degree murder and sentenced to life, with all but fifty years suspended. Later he challenged the validity of that sentence on the grounds that it did not include a period of probation.[2] The Court of Appeals held as follows:

> In sum, Petitioner's previously imposed sentence for first degree premeditated murder of life, suspend all but fifty years, was converted by operation of law into a term-of-years sentence of fifty years imprisonment. That converted sentence was not authorized by statute; therefore, it was illegal. **On remand**, the Circuit Court is limited by the maximum legal sentence that could have been imposed, with the illegality removed. That is, **the Circuit Court must impose a sentence of life imprisonment, all but fifty years suspended, to be followed by some period of probation.**

[2] Generally, the "failure to impose a period of probation" to a sentence suspended in part, precludes the sentence "from having the status of a split sentence," and the "effect of the omission is to limit the period of incarceration to the unsuspended part of the sentence," and "that becomes, in law the effective sentence." *Cathcart v. State*, 397 Md., 320, 330 (2007).

427 Md. at 513 (emphasis added).

Here, the circuit court's initial failure to include a period of probation in modifying appellant's sentence to life, with all but forty-five years suspended, limited the effective sentence to forty-five years and thereby rendered the sentence illegal, as it was less than the minimum life sentence required for first-degree murder. The circuit court was permitted to correct the illegality and did so in the manner prescribed by *Greco*.

Appellant, nonetheless, contends that, under the doctrine of fundamental fairness, the circuit court should have resentenced him to a total term of imprisonment that did not exceed forty-five years. We disagree. The *Greco* court specifically addressed and rejected a similar contention and concluded "that Maryland law does not set a previously imposed, illegal sentence as the upper bound for the sentence that a trial court may impose to correct an illegal sentence." 427 Md. at 509. Moreover, at the modification hearing, defense counsel requested that the court "consider suspending a portion of a life sentence." That was the only modification the court could consider, given that the minimum sentence required for first-degree murder is life imprisonment.

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