

Circuit Court for Baltimore City
Case Nos.: 193195005, 008, 014

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1342

September Term, 2020

HERBERT WILSON

v.

STATE OF MARYLAND

Shaw Geter,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 2, 2021

*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.

Following a 1994 trial in the Circuit Court for Baltimore City, a jury found Herbert Wilson, appellant, guilty of first-degree felony murder, use of a handgun in the commission of a crime of violence, attempted robbery with a deadly weapon, and conspiracy to commit robbery with a deadly weapon. The court sentenced appellant to life imprisonment, with the possibility of parole, for first-degree felony murder, twenty consecutive years' imprisonment for the handgun offense, and twenty concurrent years' imprisonment for the conspiracy offense. The court merged the remaining conviction for sentencing.

From the available record,¹ it appears that appellant (then seventeen years old) and two co-felons attempted to rob an off-duty police officer. A shoot-out broke out and the police officer was killed.

In December of 2020, appellant, representing himself, filed a paper titled “Motion to Correct an Illegal Sentence with Incorporated Memorandum in Support Thereof, and Request for a Hearing” in which he contended that his sentence is illegal because he did not receive an individualized sentencing hearing during which the court expressly considered his youth and related circumstances as required, according to appellant, by

¹ Notwithstanding that it is evident from his briefs before this Court that appellant has a copy of his trial transcript, he did not produce any of it for this appeal. As is explained in the circuit court's opinion denying his motion to correct an illegal sentence, apparently due to an error, appellant's sentencing proceeding was not audio recorded. That error was noticed immediately, and the court called the parties back into court to make a record about what occurred during the sentencing proceeding, which they did. The transcript of that proceeding likewise was not produced for this appeal.

Miller v. Alabama, 567 U.S. 460 (2012) and its progeny.² In a written memorandum opinion and order, the circuit court denied the motion without a holding a hearing on it. In part, the court denied appellant’s motion because the same argument that appellant made had been rejected by this Court in *Hartless v. State*, 241 Md. App. 77 (2019).³ Thereafter, appellant noted an appeal from that denial. For the reasons that follow, we shall affirm.

Maryland Rule 4-345(a) permits the court to “correct an illegal sentence at any time.” A sentence that is illegal is one that is not permitted by law. *See Greco v. State*, 427 Md. 477, 508 (2012). Whether such an illegality exists is a question of law reviewed *de novo*. *Carlini v. State*, 215 Md. App. 415, 443 (2013).

On appeal, appellant makes the following series of arguments concerning the lawfulness of his sentence:

1. [Appellant’s] sentence is illegal because the sentencing court did not consider the adolescent brain science and the hallmark characteristics of youthfulness before sentencing [him].
 - A. [Appellant] has a constitutional right to have been treated as a child at the time of sentencing.

² In *Miller* the Supreme Court held that the 8th Amendment (1) forbids a *mandatory* life without parole (LWOP) sentence for a juvenile offender convicted of a homicidal offense, and (2) permits a *discretionary* 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. In *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Court held 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.

³ The Court of Appeals granted certiorari in *Hartless*, 465 Md. 664 (2019) and transferred the case to its regular docket as No. 37, Sept. Term, 2019. The Court then dismissed the appeal on May 27, 2021.

B. [That the] penological justifications for a life sentence apply [to him] with lesser force than to adults.

C. The principle of *Roper*'s⁴ and *Miller*'s⁵ constitutional requirement applies to all sentences regarding adolescent offenders not only life without parole sentences or *de facto* life without parole sentences.

As can be seen, the bottom line of appellant's argument is that *all* juvenile offenders are entitled to an individualized sentencing hearing during which the court expressly considers the youth and related circumstances of the defendant no matter the crime or the sentence imposed. In other words, he asserts that *Miller*, which, as noted above is fully retroactive, applies to all juvenile offenders, including him.

Standing directly in the path of appellant's assertion are this Court's decisions in *Hartless v. State*, 241 Md. App. 77 (2019) and *Harris v. State*, __Md. App.__, No. 1515, Sept. Term 2019, Slip Op. at 30-41, (filed July 28, 2021) where we held that the requirement of an individualized sentencing hearing that takes into account a juvenile offender's youth and related circumstances applies only to juvenile offenders sentenced to life without the possibility of parole (or its functional equivalent), and not to juvenile offenders sentenced to life with the possibility of parole like appellant, Hartless, and Harris. *Id.* at 91-92. We find the facts and circumstances in *Hartless* and *Harris* to be analytically indistinct from those in the present case. *Hartless* and *Harris* therefore control.

⁴ *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that juvenile offenders may not be sentenced to the death penalty).

⁵ *Miller v. Alabama*, 567 U.S. 460 (2012).

In sum, appellant 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. Consequently, we affirm.

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