

Circuit Court for Baltimore County
Case No. 03-K-94-004474

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1781

September Term, 2022

CLARENCE CONYERS, JR.

v.

STATE OF MARYLAND

Beachley,
Zic,
Getty, Joseph M.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: August 7, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Clarence Conyers, Jr., was convicted of multiple crimes related to the murders of Wanda Johnson and Lawrence Bradshaw in 1994. *Conyers v. State*, 345 Md. 525, 534 (1997) (“*Conyers I*”). Ms. Johnson was the mother of Mr. Conyers’ “estranged girlfriend.” *Id.* Mr. Bradshaw was Mr. Conyers’ “alleged accomplice in the crimes against Ms. Johnson.” *Conyers v. State*, 367 Md. 571, 576 (2002) (“*Conyers III*”). The details of Mr. Conyers’ sentencing history are complex, as outlined briefly here, and more thoroughly in the opinion below.

In 1996, Mr. Conyers was sentenced to death for Ms. Johnson’s murder and to life without the possibility of parole for Mr. Bradshaw’s murder. *Id.* at 575-76. In 1997, the Supreme Court of Maryland vacated Mr. Conyers’ initial death sentence due to the circuit court’s error during the sentencing hearing, but at his later resentencing in 1998, he was again sentenced to the death penalty. *Conyers I*, 345 Md. at 575; *Conyers III*, 367 Md. at 576-77. Then, in 2002, the Supreme Court of Maryland granted him a new trial due to the State’s suppression of material evidence during trial, constituting a *Brady* violation. *Conyers III*, 367 Md. at 614-15. This new trial, in 2003, resulted in several convictions and a sentencing of two life sentences without the possibility of parole for the murder convictions. Mr. Conyers filed a petition for post-conviction relief, and in 2019, the circuit court ruled that Mr. Conyers’ sentence without the possibility of parole was inherently illegal because the State failed to provide timely written notice of its intention to seek an enhanced sentence. In 2022, he was resentenced to two consecutive life sentences with the possibility of parole. This appeal followed.

Section 12-702(b) of the Courts & Judicial Proceedings Article states that a court “may not impose a sentence more severe than the sentence previously imposed.” Md. Code Ann., Cts. & Jud. Proc. § 12-702(b) (1973, 2020 Repl. Vol.).¹ Mr. Conyers asks whether his 2022 resentencing offends § 12-702(b) because it is “more severe” than his previously imposed 2003 sentence. Mr. Conyers argues that had he been legally sentenced at the time of his 2003 sentencing hearing, the sentence would have been two *concurrent* life sentences *with* the possibility of parole. The 2022 sentence of two *consecutive* life sentences *with* the possibility of parole violated § 12-702(b) because it is more severe than the 2003 sentence, with the illegality removed, of two *concurrent* life sentences *with* the possibility of parole.

BACKGROUND

1996 Trial, Sentencing, and Corresponding Appeals

In 1996 Mr. Conyers was convicted in the Circuit Court for Wicomico County² for two murders and other related offenses as follows: “premeditated murder, felony murder, first-degree burglary, robbery with a deadly weapon, attempted robbery with a deadly weapon, robbery, attempted robbery, and use of a handgun in the commission of a crime of violence with respect to [Ms.] Johnson.” *Conyers I*, 345 Md. at 534. “He was also

¹ All statutory references are to the Cts. & Jud. Proc. Article unless otherwise noted.

² Mr. Conyers was charged in the Circuit Court for Baltimore County, but his case was transferred to the Circuit Court for Wicomico County for trial.

convicted of premeditated murder and use of a handgun in the commission of a crime of violence with respect to” the second victim, Mr. Bradshaw. *Id.*

Mr. Conyers was sentenced to death for the killing of Ms. Johnson and to life without the possibility of parole for the killing of Mr. Bradshaw.³ *Id.* On appeal, the Supreme Court of Maryland “reversed the burglary conviction, [but] affirmed the murder and other convictions.” *Conyers III*, 367 Md. at 576 (discussing procedural history). The Court also vacated the death sentence and granted a new sentencing hearing because the circuit court improperly admitted a “portion of the pre-sentence investigation report [which referred to Mr. Conyers’] prior juvenile charges that had not resulted in a finding of delinquency.” *Id.*; *Conyers I*, 345 Md. at 563-65 (holding there was a potential prejudicial effect upon a jury and that “[t]hese mere arrests [were] not probative of any issue and should not have been permitted to influence the jury.”).

1998 Resentencing and Corresponding Post-Conviction Petitions

At Mr. Conyers’ new sentencing hearing in the Circuit Court for Wicomico County in January 1998, he was again sentenced to death. Mr. Conyers appealed, and the Court affirmed the sentence. *See Conyers v. State*, 354 Md. 132, 200 (1999) (“*Conyers II*”). Mr. Conyers then petitioned for post-conviction relief, which was denied by the circuit court in January 2001. In *Conyers III*, the Supreme Court of Maryland reversed the circuit court’s denial and remanded the case for a new trial finding that the State had committed a *Brady* violation in a capital murder case. *Conyers III*, 367 Md. at 578, 600

³ While the sentencing details for the other convictions at this point are not well-documented, they are not at issue in this case.

(referring to *Brady v. Maryland*, 373 U.S. 83 (1963) and defining it as “[t]he State’s duty to disclose exculpatory evidence”). The Supreme Court of Maryland held that the State failed to disclose impeachment evidence concerning a key witness’ testimony of Mr. Conyers’ jailhouse confession. *Conyers III*, 367 Md. at 607-15.

2003 New Trial, Resentencing, Corresponding Appeals, and Post-Conviction Petitions

In 2003, Mr. Conyers was retried in the Circuit Court for Baltimore County.⁴ He was convicted again and sentenced to two concurrent⁵ sentences of life without the possibility of parole for the killings. For the other related offenses, he was sentenced to a 20-year sentence for use of a handgun in commission of a crime to run consecutively to the sentence imposed on the murder charge; a 20-year sentence for robbery with a dangerous and deadly weapon to run concurrently to the sentence imposed for the handgun charge, but consecutively to the sentence imposed for the murder charge; and a 10-year sentence for use of a handgun in commission of a crime to run consecutively to the sentence imposed in the murder charge, but concurrently to the other charges.

Mr. Conyers appealed the convictions. In an unreported opinion, this Court affirmed. *Conyers v. State*, No. 1254, September Term, 2003 (Md. Ct. Spec. App. Apr.

⁴ Neither party’s brief addresses the procedural background underlying venue selection for this trial in Baltimore County nor do they address the reasons for the prior trial’s transfer to Wicomico County.

⁵ Although the 2003 sentence did not explicitly state that the two life sentences were to run concurrently, it is not in dispute that the sentences were imposed concurrently. Furthermore, “[t]here is a presumption that if the court does not specify that a subsequently imposed sentence is to be consecutive to an earlier imposed sentence, the latter is concurrent.” *Gatewood v. State*, 158 Md. App. 458, 482 (2004) (citations omitted).

14, 2005). Mr. Conyers then filed a petition for post-conviction relief, in part appealing the legality of his 2003 sentence.⁶ In 2019, the circuit court found that Mr. Conyers' 2003 two sentences of life without parole were indeed illegal because the State did not provide timely written notice of its intention to seek an enhanced sentence as required under Md. Code Ann., Crim. Law ("CL") § 2-203 (2002, 2012 Repl. Vol.). The circuit court cited to *Johnson v. State*, 362 Md. 525, 529 (2001), and wrote, "Our [Supreme Court of Maryland] has stated that life without the possibility of parole is an 'enhanced sentence' that was created for 'special cases—and special defendants'" and must be "strictly construed." Because the "State failed to serve [Mr. Conyers] with written notice[,] . . . the court simply did not have the authority to sentence Mr. Conyers to life without the possibility of parole." The circuit court vacated the concurrent sentences of life without the possibility of parole under Md. Rule 4-345(a) and granted Mr. Conyers a new sentencing hearing.

2022 Resentencing

At the resentencing hearing in June 2022, the circuit court resented Mr. Conyers to two consecutive life sentences with the possibility of parole.

Mr. Conyers filed this timely appeal of the circuit court's resentencing decision.

⁶ Mr. Conyers provided various petitions and supplements "directly to the Court" after the 2003 sentence, but they were not properly "filed and/or docketed." Accordingly, "counsel, upon being informed of this discrepancy, filed the Supplements on August 6, 2018."

QUESTIONS PRESENTED

Mr. Conyers presents two questions for our review, which we have recast and rephrased as follows:⁷

1. In imposing two consecutive life sentences, did the resentencing court impermissibly increase Mr. Conyers' previous sentence of two concurrent life sentences, in violation of Courts & Judicial Proceedings § 12-702(b)?
2. Must Mr. Conyers' commitment record be corrected to reflect the sentence imposed by the resentencing court?

For the following reasons, we answer the first question in the affirmative and need not answer the second question because we remand for a new hearing.

The first issue on appeal asks whether, for purposes of § 12-702(b), a consecutive sentence is “more severe” than a concurrent sentence. We hold, for the reasons explained below, that in this case, the consecutive life sentences with the possibility of parole are more severe than the previously imposed concurrent life sentences corrected to be with the possibility of parole. Accordingly, we vacate Mr. Conyers' sentence and remand to the circuit court for a new hearing.

The second issue of this case pertains to the circumstances of correcting a commitment record upon resentencing. While Mr. Conyers' current commitment record

⁷ Mr. Conyers phrased the questions as follows:

1. In imposing two consecutive life sentences, did the resentencing court increase Mr. Conyers's sentence, in violation of Courts & Judicial Proceedings § 12-702(b)?
2. Must Mr. Conyers's commitment record be corrected to reflect the sentence imposed by the resentencing court?

is erroneous because it has not been properly updated, upon Mr. Conyers’ now-required resentencing hearing, an updated commitment record should be created as required under Md. Rule 4-351.

STANDARD OF REVIEW

“Whether a sentence is legal is a question of law and, accordingly, we consider that question anew, without any special deference to the views of the Circuit Court[.]” *State v. Thomas*, 465 Md. 288, 301 (2019) (citing *Bonilla v. State*, 443 Md. 1, 6 (2015) and *Blickenstaff v. State*, 393 Md. 680, 683 (2006)).

DISCUSSION

I. THE RESENTENCING COURT VIOLATED COURTS & JUDICIAL PROCEEDINGS § 12-702(B) BY IMPOSING A “MORE SEVERE” SENTENCE THROUGH MODIFICATION OF A CONCURRENT SENTENCE TO A CONSECUTIVE SENTENCE.

In 2019, Mr. Conyers’ 2003 sentence (two concurrent life sentences without the possibility of parole) was declared illegal because he was not provided proper notice of the State’s intention to pursue a sentence which would preclude him from seeking parole. At the subsequent resentencing hearing, the circuit court, therefore, could not resentence Mr. Conyers to a sentence that was without the possibility of parole. The resentencing court included the possibility of parole in imposing two life sentences; however, the circuit court revised the concurrency of the sentences and resenteded Mr. Conyers to consecutive life sentences. Mr. Conyers argues that this change constitutes an illegal enhancement of his sentence.

Pursuant to § 12-702(b), “when a trial court resentences a defendant in a criminal case after remand following a successful appeal by the defendant, the court ‘may not impose a sentence more severe than the sentence previously imposed’ unless three criteria^[8] are satisfied.” *Thomas*, 465 Md. at 301 (citing § 12-702(b)). Section 12-702(b) provides:

(b) If an appellate court remands a criminal case to a lower court in order that the lower court may pronounce the proper judgment or sentence, or conduct a new trial, and if there is a conviction following this new trial, the lower *court may impose any sentence authorized by law to be imposed as punishment for the offense. However, it may not impose a sentence more severe than the sentence previously imposed for the offense* unless:

- (1) The reasons for the increased sentence affirmatively appear;
- (2) The reasons are based upon additional objective information concerning identifiable conduct on the part of the defendant; and
- (3) The factual data upon which the increased sentence is based appears as part of the record.

(emphasis added). The “underlying purpose” of § 12-702(b) “is to allow a defendant convicted in a criminal case to seek appellate review without concern that he or she will pay a price, in terms of a more severe sentence, for exercising that right.” *Thomas*, 465 Md. at 303. This legislation codified the Supreme Court of the United States’ opinion *North Carolina v. Pearce*, 395 U.S. 711 (1969). *Pearce* held that a resentencing court

⁸ There is no argument by either party that the three criteria are satisfied. Therefore, we assume the criteria were not met and the sole issue on appeal is whether the resentencing constitutes a more severe sentence.

cannot impose “a heavier sentence after a successful appeal by a defendant.” *Thomas*, 465 Md. at 304.⁹

The first step in deciding whether a sentence is “more severe than the sentence previously imposed” is addressing which sentence is the “sentence previously imposed” for purposes of § 12-702(b). The second step is analyzing whether the current at-issue sentence is “more severe” than the previous sentence.

Mr. Conyers argues that the “previous” sentence is his 2003 sentence and that because it was declared illegal, this Court must follow *Greco v. State*, 427 Md. 477 (2012), and remove the illegal portion of the sentence. He argues that removing the illegality means removing life *without* the possibility of parole which “leaves life *with* the possibility of parole as the maximum sentence for each of the murder counts.” Mr. Conyers, relying on *Brown v. State*, ultimately argues that modifying his sentence from the upper sentencing bound of two concurrent life sentences with the possibility of parole to two consecutive life sentences with the possibility of parole constitutes a sentence increase. 153 Md. App. 544, 583-86 (2003). He argues that this increase violates § 12-702(b), requiring this Court to vacate Mr. Conyers’ sentence and remand the case so that

⁹ The Supreme Court of Maryland also clarified that § 12-702(b) applies “regardless of whether the new trial resulted from a direct appeal or from a post-conviction proceeding.” *Davis v. State*, 312 Md. 172, 180 (1988). The Court explained that the underlying policies of § 12-702(b) support applying the statute regardless of the procedural posture. *Id.* The Court added that “[t]here can be no doubt that the principles of [*Pearce*] are fully applicable to a resentencing following a post conviction-proceeding, because *Pearce* itself was such a case.”

the circuit court can impose a new sentence not more severe than two concurrent life sentences.

In contrast, the State relies on *Twigg v. State*, 447 Md. 1 (2016) where the Supreme Court of Maryland concluded that when assessing if a sentence increase occurred, an appellate court should compare “the total aggregate sentence after remand . . . to the total aggregate sentence prior to remand (as opposed to comparing sentences for each individual count).” *Thomas*, 465 Md. at 295 (discussing *Twigg*). The State argues that Mr. Conyers’ total aggregate sentence has not numerically increased because he still has two life sentences just as prior to resentencing, and *Twigg* instructs that “a defendant’s sentence will be considered to have increased under § 12-207(b) only if the total sentence imposed after retrial or on remand is greater than the originally imposed sentence.” 447 Md. at 30.

A. “The Sentence Previously Imposed”

Including the sentence currently on appeal in this case, Mr. Conyers has been sentenced and resentenced a total of four times. Therefore, the first step is to assess which sentence is the “sentence previously imposed” for purposes of § 12-702(b). Maryland caselaw states that under § 12-702(b), an appellate court cannot compare a current sentence to an illegally imposed previous sentence. *Greco*, 427 Md. at 509. Therefore, in order to compare Mr. Conyers’ current sentence of two consecutive life sentences, we must compare it to a previous legal sentence, if any exists. In *Greco* the Supreme Court of Maryland stated:

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 after remand from the [Appellate Court of Maryland] or this Court. Rather, the *sentencing court must look through the illegal sentence to a previous lawful sentence imposed, if any*, to determine the maximum sentence that may be imposed on remand.

427 Md. at 509 (emphasis added). The Court in *Greco* explained that if there are no past legal sentences, “the trial court must remove the illegality, with the resulting legal sentence serving as the maximum for purposes of resentencing.” *Id.* Pursuant to the guidelines set forth in *Greco*, we are bound by the instruction to compare Mr. Conyers’ current sentence to a previous *legal* sentence. If there is no previous legal sentence in the procedural history, we must, according to *Greco*, create a hypothetical legal sentence by removing the illegal part of a previous sentence. The newly constructed sentence must replicate the originally imposed sentence in all respects except for the elimination of the illegal component of the sentence. We then compare Mr. Conyers’ current sentence to this constructed sentence.

The statute and caselaw do not make it completely clear whether this Court should look to Mr. Conyers’ sentence from his original 1996 trial, subsequent 1998 resentencing, or the subsequent 2003 sentencing hearing following his new trial.¹⁰ Both parties’ briefs,

¹⁰ Compare *Greco*, 427 Md. at 485-86, 509 (This case instructs courts to “look through” any previous illegal sentence and find a “previous lawful sentence” to compare to the contested sentence. This leaves the impression that a court does not necessarily need to compare the very first sentence given to a defendant for purposes of § 12-702(b). Furthermore, in *Greco* the Court compared the defendant’s current contested sentence to a previous resentencing and not the very first sentence given to defendant.), with *Dixon v. State*, 364 Md. 209, 228 (2001) (comparing for purposes of § 12-702(b) defendant’s very

(continued)

however, compare Mr. Conyers’ current sentence to the previous 2003 sentencing hearing of two concurrent life without parole sentences. In accordance with caselaw and the underlying policy behind § 12-702(b) of not hindering individuals who exercise their right to appeal,¹¹ and in consideration of the complexity of Mr. Conyers’ sentencing

first sentence to defendant’s subsequent new trial’s sentencing hearing; however, defendant only was sentenced a total of two times); *and Thomas*, 465 Md. at 291 (defendant only sentenced twice so the Court compared defendant’s previous sentence, which was defendant’s very first sentence, to the contested sentence). *See also Gardner v. State*, 420 Md. 1, 14 (2011) (holding that the sentence previously imposed for purposes of § 12-702(b) is not necessarily the original sentence because when a sentence review panel reviews a sentence, the new sentence “substitute[s]” the original sentence. Thus, the review panel’s decision becomes the new original sentence). Here, uniquely, Mr. Conyers was sentenced and resentenced four times.

¹¹ *Thomas* explains the “underlying purpose” of § 12-702(b) as follows:

The history of [] § 12-702(b) demonstrates that its underlying purpose is to allow a defendant convicted in a criminal case to seek appellate review without concern that he or she will pay a price, in terms of a more severe sentence, for exercising that right. The history of the statute reveals that it was designed to prevent both the reality and the “apprehension” of judicial “vindictiveness” in response to a defendant’s exercise of the right to appeal.

* * *

[Section] 12-702(b) derives from the United States Supreme Court’s decision [in *Pearce*]. . . . The Supreme Court observed that it would be a “flagrant violation” of the Due Process Clause of the Fourteenth Amendment for a trial court to adopt a policy of imposing a heavier sentence after a successful appeal by a defendant. The Court noted that the possibility of a harsher sentence on remand would have a chilling effect on the exercise of a right of appeal and that a retaliatory motive by a sentencing judge could be extremely difficult to prove. The Court stated that “vindictiveness against a defendant for having successfully attacked [the

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history, including prior death sentences, we will compare Mr. Conyers’ current sentence to the least severe sentence previously imposed. This approach aligns with the principle underlying § 12-702(b), *Pearce*, and Maryland jurisprudence that a defendant should not face harsher penalties for exercising the right to appeal. Accordingly, we compare Mr. Conyers’ least severe sentence—his most recent previous sentence of two concurrent life sentences with the illegality of without the possibility of parole removed, so that it is a sentence on the murder charges of two concurrent life sentences with the possibility of parole—to his current sentence of two consecutive life sentences with the possibility of parole.

In 2002, Mr. Conyers was granted a new trial. In 2003, he was tried in the Circuit Court for Baltimore County and was convicted and sentenced to two concurrent life sentences without the possibility of parole. In 2019, the circuit court found that because the State failed to properly notify Mr. Conyers of its intent to seek enhanced sentencing, the enhanced portion of the sentence—“without possibility of parole”—was illegal. Following the instruction in *Greco* to “remov[e] the illegality” in order to find the upper bounds of the maximum sentence, the resentencing court could not sentence Mr. Conyers with a sentence that prevented possibility of parole. If we take the original illegal sentence of two concurrent life sentences without the possibility of parole, and remove

defendant’s] first conviction must play no part in the sentence [the defendant] receives after a new trial” and that a defendant should be free from “the fear of such vindictiveness.”

Thomas, 465 Md. at 303-04 (citations omitted).

the illegality, we are left with two concurrent life sentences with the possibility of parole. Therefore, the maximum sentence on the murder charges is two concurrent life sentences with the possibility of parole.

The issue then becomes whether the resentencing from the concurrent sentences with the possibility of parole to the consecutive sentences with the possibility of parole is a more severe sentence in violation of § 12-702(b).

B. “More Severe”

1. *Parole Date Eligibility*

In 2016, the Court in *Twigg* stated that a sentence is considered more severe under § 12-702(b) “only if the total sentence imposed after retrial or on remand is greater than the originally imposed sentence.”¹² *Twigg*, 447 Md. at 30.

In 2019, the Supreme Court of Maryland in *Thomas* conducted statutory interpretation of § 12-702(b) and seemingly clarified *Twigg*. *Thomas*, 465 Md. at 301-07. The Court in *Thomas* stated that *Twigg* held that “the total aggregate sentence after remand should be compared to the total aggregate sentence prior to remand (as opposed to comparing sentences for each individual count).” *Thomas*, 465 Md. at 295. In a footnote, the Court in *Thomas* added that *Twigg* “further held that, on remand, the circuit

¹² The chief issue resolved in the *Twigg* decision was not whether a numerical increase is the only way to constitute a sentencing increase, but whether “the total aggregate sentence after remand should be compared to the total aggregate sentence prior to remand (as opposed to comparing sentences for each individual count).” *Thomas*, 465 Md. at 295. The Court in *Twigg* stated, “We conclude that, as the word is used in § 12–702(b), ‘offense’ means not simply one count in a multi-count charging document, but rather the entirety of the sentencing package that takes into account each of the individual crimes of which the defendant was found guilty.” *Twigg*, 447 Md. at 26-27.

court could resentence the defendant on the other counts that were not merged without violating [] § 12-702(b), so long as the new aggregate sentence did not exceed the original sentence of 40 years imprisonment.” *Id.* at 293 n.3. Notwithstanding *Twigg*, the Court in *Thomas* stated, “The benchmark is not whether a sentence is “longer” or states more years of imprisonment.” *Thomas*, 465 Md. at 301-02. The Supreme Court explained:

The point of comparison in [] § 12-702(b) is whether one sentence is “more severe” than another. *The benchmark is not whether a sentence is “longer” or states more years of imprisonment. It would, of course, be easier if one could simply compare two numbers. But a sentence may include elements besides a period of incarceration – e.g., a fine, an order of restitution, a period of probation, and so on. Indeed, a sentencing court may impose no period of incarceration at all or may suspend a period of incarceration that is imposed. The use of the phrase “more severe” in the statute appears to recognize that the constraint imposed by [] § 12-702(b) may involve more than simply consideration of a stated period of incarceration.*

Thomas, 465 Md. at 301-02 (emphasis added). Therefore, while,

[c]onsideration of the other elements that affect the severity of a sentence may occasionally be more difficult and require considered judgment, [] it is also more realistic and consistent with the underlying policy of [] § 12-702(b). Given a choice between easy but unrealistic on the one hand and the exercise of judgment to be fair and true to the statute on the other, we choose the latter.

Thomas, 465 Md. at 307-08. Accordingly, we interpret *Thomas* as clarifying *Twigg* because when applying § 12-702(b), according to the most recent Supreme Court of Maryland caselaw, we must “recognize that the constraint imposed by [] § 12-702(b) may involve more than simply consideration of a stated period of incarceration.” *Id.* at 302.

The Court in *Thomas* held that a defendant who was originally sentenced to “15 years for kidnapping, and three years consecutive for second-degree assault”—a total of 18 years in the aggregate—and then later resentenced “to 18 years in prison for the kidnapping offense alone” was “more severe” than the original sentence because the defendant’s eligibility for parole would take a longer period of time. *Id.* at 302. The original sentence provided for parole eligibility after seven and a half years, while the resentence provided for parole eligibility after nine years. *Id.* at 292. Focusing on the “practical perspective of one who must serve such a sentence[,]” the Court held that “[i]f, following a successful appeal, a defendant in a criminal case is resentenced to a term of imprisonment of equal length to the original sentence but with a later parole eligibility date, the new sentence is ‘more severe’ than the original sentence for purposes of [] § 12-702(b).” *Id.* at 310.

Here, we compare the parole eligibility of two life sentences which run concurrently to two life sentences which run consecutively. Parole eligibility is later for consecutive rather than concurrent life sentences. The Code of Maryland Regulations (“COMAR”) 12.02.06.02 articulates that an individual serving consecutive life sentences is not eligible for parole until he has “served the sum of the number of years required by” each life sentence. Parole eligibility for one sentence of life imprisonment requires the individual to serve either 15 or 25 years, depending on the specific sentence. COMAR 12.02.06.02. Therefore, when the circuit court modified the life sentence from concurrent to consecutive, Mr. Conyers’ parole eligibility date doubled in length. *Thomas* is clear in its instruction that “a later parole eligibility date” constitutes a

sentence that is “‘more severe’ . . . for purposes of [] § 12-702(b).” *Thomas*, 465 Md. at 310.

2. *Consecutive Sentence versus Concurrent Sentence*

In 2019, the Supreme Court of Maryland in *Nichols v. State* held that an original sentence of life imprisonment with all but 50 years suspended was less severe than a resentencing of 80 years of imprisonment. 461 Md. 572, 608 (2018). Even though a sentence of life imprisonment is in the aggregate longer than an 80-year prison sentence, practically, the individual “will not necessarily serve a sentence of life imprisonment” but the individual “is essentially guaranteed to serve [a certain number of years of imprisonment].” *Id.* at 607. Therefore, the Court found that it violated § 12-702(b) to resentence the individual to an 80-year term of imprisonment from a life imprisonment suspend all but 50 years, “even though the defendant could theoretically serve a longer maximum period of incarceration under a suspended life sentence.” *Thomas*, 465 Md. at 303 (discussing *Nichols*). The Court in *Thomas* characterized *Nichols* as the Court “view[ing] the sentence from the practical perspective of one who must serve such a sentence.” *Id.*

The practical perspective in Mr. Conyers’ case is that two concurrent life sentences are less severe than two consecutive life sentences. The latter sentence extends Mr. Conyers’ term of confinement which affects his parole eligibility, as discussed above. Intertwined with parole eligibility is his diminution credit eligibility for good conduct. For example, two concurrent life sentences mean serving at least 15-25 years in prison minus any diminution credits before becoming parole eligible, while two

consecutive life sentences can mean serving 30-50 years in prison minus any diminution credits before becoming parole eligible. *See generally* COMAR 12.02.06.02. Mr. Conyers' parole eligibility date is extended and, consequently, the effect of any diminution credits is lessened.

Furthermore, this Court in *Brown v. State* stated that resentencing an individual from a concurrent sentence to a consecutive sentence “constitute[s] an illegal enhancement of sentence.” 153 Md. App. 544, 584 (2003) (referring to *Wilson v. State*, 45 Md. App. 675, 676-77 (1980)).¹³ Therefore, applying *Thomas*' and *Nichols*' analytical lens of a practical perspective coupled with this Court's holding that a consecutive-to-concurrent resentence is an enhancement, it follows that Mr. Conyers' resentencing is impermissibly “more severe.” Accordingly, in 2022, the circuit court sentenced Mr. Conyers to a more severe sentence in violation of § 12-702(b).

We vacate Mr. Conyers' sentence and remand to the circuit court for a new hearing with a sentence not more severe than two concurrent life sentences with the possibility of parole.

¹³ To note, *Brown* and *Wilson* both held, now incorrectly, that all of a defendant's sentences should not be “lump[ed] . . . together and treat[ed] . . . as a single sentence.” *Brown*, 153 Md. App. at 585 (quoting *Wilson*, 45 Md. App. at 677). The *Twigg* case makes clear that the aggregate sentence as a whole should be considered, and not individual offenses. *Twigg*, 447 Md. at 26-27.

II. CREATING AND CORRECTING A COMMITMENT RECORD

Upon resentencing, a new commitment record will be created reflecting the new sentence. Maryland Rule 4-351 states that after sentencing, “the clerk shall deliver or transmit to the officer into whose custody the defendant has been placed a commitment record.” Accordingly, Mr. Conyers’ commitment record should replicate the sentence of the circuit court after a resentencing hearing.

CONCLUSION

We hold that Mr. Conyers’ two consecutive life sentences are vacated because they were imposed in violation of § 12-702(b). Accordingly, his case is remanded for a new sentencing hearing. Mr. Conyers’ new sentence for the murder convictions shall not be “more severe” than two concurrent life sentences with the possibility of parole. While not at issue in this appeal, we recognize that Mr. Conyers’ total sentencing package includes additional sentences beyond the two at issue here. As guidance to the circuit court on remand for Mr. Conyers’ resentencing, the total sentencing package cannot be more severe than Mr. Conyers’ 2003 sentencing package, with the illegality of without the possibility of parole removed.

Mr. Conyers’ commitment record shall be fashioned in accordance with Md. Rule 4-351.

**CONSECUTIVE LIFE SENTENCES
VACATED. CASE REMANDED TO THE
CIRCUIT COURT FOR BALTIMORE
COUNTY FOR A NEW SENTENCE AND
COMMITMENT RECORD CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY BALTIMORE COUNTY.**