

Circuit Court for Baltimore County
Case No.: 03-K-93-000526

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2060

September Term, 2019

ROBERT LEE BERRY

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: November 5, 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 1993 trial in the Circuit Court for Baltimore County, a jury found Robert Lee Berry, appellant, guilty of first-degree felony murder, use of a handgun in the commission of a crime of violence, multiple robbery counts, and manslaughter. The court sentenced him to life imprisonment for felony murder, and to twenty consecutive years' imprisonment for the handgun offense. The court merged the remaining convictions for sentencing purposes. This Court affirmed the judgments on direct appeal. *Berry v. State*, No. 1731, September Term, 1993 (filed August 22, 1994).

In the ensuing decades, appellant has mounted various attacks on his convictions and sentences. The most recent came in the form of a motion to correct an illegal sentence¹ which the circuit court summarily denied without holding a hearing. That denial prompted this appeal. All of appellant's arguments dealing with the legality of his sentence relate to the method used to award him credit for the time he spent in custody prior to his sentencing proceeding. The sentencing court awarded appellant credit for the 287 days he had spent in custody prior to sentencing, which was reflected in the fact that his sentence was ordered to begin on January 14, 1993 (287 days before the sentencing date).²

¹ Maryland Rule 4-345(a), permits a court to “correct an illegal sentence at any time.”

² The pertinent statute related to awarding credit for time spent in custody which was in effect at the time of appellant's sentencing proceeding, Art. 27 § 638C(a) of the Code of Maryland (1992), provided, in pertinent part:

Any person who is convicted and sentenced shall receive credit against the term of a definite or life sentence or credit against the minimum and maximum terms of an indeterminate sentence for all time spent in the custody of any state, county or city jail, correctional institution, hospital, mental hospital or other agency as a result of the charge for which sentence is

(continued)

He claims that pursuant to Art. 27 § 638C(a), the court was required to “diminish” his life sentence by 287 days, *i.e.* subtract 287 days from his life sentence. He asserts that by moving the start-date of his sentence 287 days prior to the sentencing, the court illegally increased his sentence. This is so, according to appellant, because now he must serve a sentence of life plus 287 days, instead of a mere life sentence. He next claims that his parole eligibility should not be calculated based on the adjusted start-date of his sentence. Rather, he contends that it should be calculated based on the date he was sentenced. His final contention is, in essence, that, because it is not clear how to subtract 287 days from a life sentence, his sentence is illegal because it is ambiguous.³

As an initial matter, we believe that appellant’s contentions are barred by the law of the case doctrine. “Once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.” *Scott v. State*, 379 Md. 170, 183 (2004). Moreover, absent certain exceptions not here relevant, “[d]ecisions rendered by a prior appellate panel will generally govern the second appeal at the same appellate level as well[.]” *Id.* at 184.

In March 2017, appellant filed a motion to correct an illegal sentence in the circuit court, which denied it. He noted an appeal to this Court wherein he asserted that “pretrial

imposed or a result of the conduct on which the charge is based, **and the term of a definite or life sentence or the minimum and maximum terms of an indeterminate sentence shall be diminished thereby.**

(Emphasis added).

³ Appellant did not make this last argument in the motion to correct an illegal sentence he filed in the circuit court.

credits cannot be placed in front of a life sentence or any other sentence that falls under Art. 27 § 638C(a).” He argued that the application of his “pretrial credits” to the beginning of his term of incarceration failed to “diminish” his life sentence, thus creating “a serious due process violation.” *Berry v. State*, No. 315, Sept. Term 2017 (filed unreported May 7, 2018).

We determined that none of appellant’s contentions made his sentence “inherently illegal” within the meaning of Maryland Rule 4-345 and therefore no relief could be provided pursuant to that Rule. In addition, we determined that “the sentencing court made no error in the manner in which it applied the credit for the time [appellant] was in custody prior to sentencing.” *Berry*, Slip Op. at 2. Thus, law of the case entirely disposes appellant’s claims in this appeal because the method of awarding him credit for time spent in custody prior to trial is a fundamental premise of all of his claims. With that premise removed, all of his arguments collapse under their own weight.

In any event, after appellant’s prior appeal, but before he filed the motion to correct an illegal sentence that is the subject of the instant appeal, the Court of Appeals decided, in *Bratt v. State*, 468 Md. 481 (2020), that a failure to properly award pretrial credit does not render a sentence illegal within the meaning of Maryland Rule 4-345 and, therefore, such claims are not cognizable in such a motion. *Id.* at 496.

Even if appellant’s claims were not disposed of by law of the case and *Bratt*, his claims are meritless. His contention that his sentence was increased, while clever, borders on the frivolous as all life sentences are precisely the same duration – life – no matter when they begin. His claim that his parole eligibility should be calculated from the date he was

sentenced does not make his sentence inherently illegal within the meaning of Maryland Rule 4-345. In addition, if it is true that his eligibility for parole is being calculated that way, appellant is benefitted because that means that he became eligible for parole 287 days earlier than he would have otherwise.⁴ Finally, his claim that his sentence is ambiguous also borders on the frivolous. His sentence, unambiguously, is for him to be imprisoned for the remainder of his life.

Consequently, we affirm the judgment of the circuit court.

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

⁴ We observe that appellant has not proved what date was used to calculate his parole eligibility. We also observe that this claim is likely moot as it appears that, pursuant to Section 7-301 of the Correctional Services Article of the Md. Code, appellant became eligible for parole sometime prior to 2018.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2060s19cn.pdf>