

SUPREME COURT OF GEORGIA

Humphrey v. State

297 Ga. 349 (2015) · No. S15A0588 · Decided June 15, 2015

SUMMARY

The Georgia Supreme Court held that a murder sentence imposing parole ineligibility for 25 years was void to the extent it restricted the State Board of Pardons and Paroles beyond the period authorized by statute. The court overruled Baker v. State to the extent it permitted such a restriction by agreement and held that the parties' consent could not validate the illegal sentence. The court reversed and remanded for the trial court to vacate only the unlawful parole-eligibility provision.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Justice Blackwell
JURISDICTION	Georgia
DECIDED	June 15, 2015
DOCKET	S15A0588
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Humphrey appealed the Clarke Superior Court's denial of his motion to vacate his murder sentence as void.
STANDARD OF REVIEW	The validity of a sentence as a question of law, including whether the sentence is void because it imposes punishment unauthorized by law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia.
PARTIES	Jamel Humphrey v. The State

TOPICS

- sentencing
- parole
- post-conviction relief
- separation of powers
- statutory interpretation

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- post-conviction relief
- constitutional law

QUESTIONS PRESENTED

1. Whether a murder sentence imposing life imprisonment with parole eligibility only after 25 years was authorized by Georgia law when the applicable statute permitted parole eligibility after 14 years.
2. Whether Humphrey's consent to the sentence through a plea agreement waived his ability to challenge the unauthorized parole restriction.
3. Whether the unauthorized parole restriction invalidated the entire sentence or only the restriction itself.

HOLDINGS

1. Georgia law authorized only death, life imprisonment without parole, or life imprisonment with parole eligibility at the earliest time permitted by law; it did not authorize a sentence restricting parole eligibility to 25 years when the statutory eligibility period was 14 years.
2. A defendant's consent to a plea agreement does not waive or validate a challenge to an illegal and void sentence.
3. A court may not judicially restrict the constitutional parole and clemency authority of the State Board of Pardons and Paroles beyond limitations authorized by statute.
4. Only the provision purporting to limit Humphrey's parole eligibility was void and subject to vacatur; the remainder of the life sentence remained valid.

KEY QUOTATIONS

“But when a court imposes a criminal punishment that the law does not allow, the sentence is not just an error, it is void.” (297 Ga. at 350)

“the consent of the parties cannot validate a void sentence.” (297 Ga. at 350)

“the Constitution gives the courts no such authority.” (297 Ga. at 351)

“The sentence that the trial court imposed in this case is void to the extent that it purports to limit the power of the Board to parole Humphrey as soon as the statutory law permits.” (297 Ga. at 352)

FACTUAL BACKGROUND

In July 1998, Jamel Humphrey negotiated a plea agreement, pleaded guilty but mentally ill to murder, and was sentenced to life imprisonment with eligibility for parole only after serving 25 years. At the time, Georgia law permitted a life sentence with parole eligibility after 14 years, but did not authorize a judicially imposed 25-year restriction. Humphrey later moved to vacate the sentence, contending that the restriction rendered the sentence void.

PROCEDURAL HISTORY

In 1998, Humphrey pleaded guilty but mentally ill to murder under a plea agreement and received life imprisonment with parole eligibility after 25 years. Nearly sixteen years later, he moved to vacate the sentence, arguing that the 25-year parole restriction was unauthorized by law. The trial court denied the motion, and the Supreme Court of Georgia reversed and remanded with direction to vacate the unauthorized parole restriction.

DISPOSITION

REMAND INSTRUCTIONS

The trial court must vacate the provision of Humphrey's sentence that purports to limit his eligibility for parole; the remainder of the sentence remains in effect.

CASES CITED

- Crumbley v. State, 261 Ga. 610, 611 (1) (409 SE2d 517) (1991)
- Moore v. State, 293 Ga. 705, 706 (1) (749 SE2d 660) (2013)
- Bell v. State, 294 Ga. 5, 8 (2) (749 SE2d 672) (2013)
- von Thomas v. State, 293 Ga. 569, 573 (2) (748 SE2d 446) (2013)
- Nazario v. State, 293 Ga. 480, 487 (2) (c) (746 SE2d 109) (2013)
- Terry v. Hamrick, 284 Ga. 24, 25 (2) (663 SE2d 256) (2008)
- Perez v. State, 254 Ga. App. 872, 873 (1) (564 SE2d 208) (2002)
- Baker v. State, 284 Ga. 280, 281 (2) (663 SE2d 261) (2008)
- Brown v. State, 246 Ga. 251, 253 (5) (271 SE2d 163) (1980)

OPINION

PER CURIAM.

297 Ga. 349 FINAL COPY S15A0588. HUMPHREY v. THE STATE. BLACKWELL, Justice. In July 1998, Jamel Humphrey negotiated a plea agreement with the State, entered a plea of guilty but mentally ill, was convicted of murder upon his plea, and was sentenced to a term of imprisonment for life with the provision that he would be eligible for parole, but only after he served 25 years of his sentence.

Almost sixteen years later, Humphrey filed a motion to vacate his sentence, alleging that the sentence is void because murder is punishable only by death, imprisonment for life without any possibility of parole ever, or imprisonment for life with the possibility of parole at the earliest point permitted by law, which would have been, in Humphrey's case, after fourteen years.¹ The trial court denied his motion, and Humphrey appeals.

For the reasons that follow, we reverse the judgment of the trial court and remand the case with direction. ¹ At the time Humphrey committed his crime, and at the time he was sentenced, the law provided that a person serving a life sentence with the possibility of parole for murder would be eligible for parole only after serving fourteen years. See Ga. L. 1994, p. 1959, § 11 (former OCGA § 17-10-6.1 (c) (1)).

The law now provides that such a person generally is eligible for parole after serving 30 years. See OCGA § 17-10-6.1 (c) (1). To begin, we agree with Humphrey that the law only authorized the trial court to sentence him to death, imprisonment for life without any possibility of parole ever, or imprisonment for life with the possibility of parole as soon as permitted by law.

See OCGA § 16-5-1 (e) (1). The applicable law offered the trial court no other sentencing options. It is true that Humphrey consented to his sentence, including the provision that he would be ineligible for parole for the first 25 years of that sentence. But when a court imposes a criminal punishment that the law does not allow, the sentence is not just an error, it is void.

See *Crumbley v. State*, 261 Ga. 610, 611 (1) (409 SE2d 517) (1991) (“A sentence is void if the court imposes punishment that the law does not allow.” (Citation omitted.)). And as we have indicated in a number of cases, the consent of the parties cannot validate a void sentence. See, e.g., *Moore v. State*, 293 Ga. 705, 706 (1) (749 SE2d 660) (2013) (“[A] defendant who knowingly enters into a plea agreement and accepts the benefit of that bargain does not waive or ‘bargain away’ the right to challenge an illegal and void sentence.” (Citations omitted.)); *Bell v. State*, 294 Ga. 5, 8 (2) (749 SE2d 672) (2013) (“A defendant who knowingly enters into a plea agreement does not waive the right to challenge an illegal and void sentence.” (Citation omitted.)); *von Thomas v. 2 State*, 293 Ga. 569, 573 (2) (748 SE2d 446) (2013) (“[A] sentence which is not allowed by law is void, and its illegality may not be waived.” (Citations, punctuation and emphasis omitted.)); *Nazario v. State*, 293 Ga. 480, 487 (2) (c) (746 SE2d 109) (2013) (“Void convictions and illegal sentences have never been subject to general waiver rules.”).

These principles seem especially sound when applied to a sentence that purports to limit eligibility for parole in a way that is not authorized by statutory law. By imposing such a sentence, a court intrudes upon the constitutional prerogative of the State Board of Pardons and Paroles to extend clemency to persons under sentence. See Ga. Const. of 1983, Art. IV, Sec. II, Par.

II (a) (“[T]he State Board of Pardons and Paroles shall be vested with the power of executive clemency, including the powers to grant reprieves, pardons, and paroles....”). Although the Constitution permits the General Assembly by statute to limit this prerogative in certain respects, see Ga. Const. of 1983, Art. IV, Sec. II, Par. II (b), (c), the Constitution gives the courts no such authority.

For that reason, a judicial incursion upon the constitutional prerogative of the Board “violates the constitutional provision regarding the separation of powers.” *Terry v. Hamrick*, 284 Ga. 24, 25 (2) (663 SE2d 256) (2008). And whatever the 3 prosecuting attorneys and defendant in a criminal case might agree to, they cannot simply by agreement confer upon the judicial branch an extraconstitutional power to limit the constitutional prerogatives of another branch of the government.

See *Perez v. State*, 254 Ga. App. 872, 873 (1) (564 SE2d 208) (2002) (“The authority to grant parole or other relief from the sentence imposed by the trial court rests with the State Board of Pardons & Paroles, not the district attorney’s office.” (Citation omitted.)).

To the extent that we held otherwise in *Baker v. State*, 284 Ga. 280, 281 (2) (663 SE2d 261) (2008), we overrule that decision. The sentence that the trial court imposed in this case is void to the extent that it purports to limit the power of the Board to parole Humphrey as soon as the statutory law permits. That provision of the sentence — but only that provision — must be vacated.

See *Bell*, 294 Ga. at 8 (2) (“When a defendant is sentenced in a murder case to life imprisonment plus probation, only the portion of the sentence imposing probation is invalid.” (Citation omitted.)). Accordingly, we reverse the denial of the motion to vacate the sentence, and we remand for the trial court to vacate the provision of the sentence that purports to limit Humphrey’s eligibility for parole.² See *Terry*, 284 Ga. at 25 (2); *Brown v. State*, 246 Ga. 251, 253 (5) (271 SE2d 163) (1980).

Judgment reversed and case remanded with direction. All the Justices concur. ² In his plea agreement, Humphrey not only consented to the imposition of a sentence that purports to limit the power of the Board to parole him, he also promised that he would not seek parole for 25 years. No one should misunderstand our decision as holding that his promise not to seek parole is unenforceable.

When a defendant promises the State that he will not ask for parole, his promise is a personal one. It does not require a court to do anything, and it does not purport to limit the constitutional power of the Board. If Humphrey breaks his promise and applies to the Board for parole before he has served 25 years, the State may ask the Board itself or a court to enforce the promise.

We express no opinion today about the availability of a remedy for the State, but our decision does not foreclose the possibility of such a remedy. ⁵ Decided June 15, 2015. Murder. Clarke Superior Court. Before Judge Stephens. Jamel Humphrey, pro se. Kenneth W. Mauldin, District Attorney; Samuel S. Olens, Attorney, Patricia B. Attaway Burton, Deputy Attorney General, Paula K. Smith, Senior Assistant Attorney General, for appellee.