In the
Court of Special Appeals of Maryland
September Term , 2004

No. 00938

RALPH EDWARD WILKINS,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

Appeal from the Circuit Court for Prince George's County
(Hon. Graydon S. McKee, Chief Judge)

Reply Brief of Appellant Ralph Edward Wilkins

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I. The Holdings in *Wooten* and *Williamson*, Which Require Reversal If a Trial Judge Fails to Exercise Discretion at Sentencing, Cannot Be Distinguished Because the Record Clearly Reflects That Defense Counsel Asked the Lower Court to Sentence Ralph Wilkins to Something Less than Life in Prison (replying to Appellee's Brief at 7).

Appellee first seeks to defend the error below by suggesting that the

holdings in *State v. Wooten*, 277 Md. 114, 117 (1976), and *Williamson v. State*, 284 Md. 212, 215 (1979), are inapplicable because Ralph Wilkins failed to expressly request suspension of his life sentence. (Brief of Appellee at 7). However, Appellee's attempt to distinguish *Wooten* and *Williamson* must be rejected where the record clearly reflects that counsel did ask the lower court to sentence Ralph Wilkins to something other than life in prison.

During the sentencing hearing, defense counsel specifically requested a sentence less than life imprisonment. For example, during the sentencing proceeding, Feissner purposely expressed to the trial judge that Ralph Wilkins would be unable to offer anything positive to society unless he were sentenced to a "period of incarceration less than life." (T. 411).

In addition to plainly requesting a sentence less than life, defense counsel also repeatedly pointed the sentencing court to Sections 641A and 643 of the Maryland Code, and explained that these sections authorized the court to suspend all or part of Mr. Wilkins' sentence. *Id.* Specifically, counsel noted

> Your Honor, under the provisions of Article 27, Section 641A and 643 this Court has the discretion, if it sees fit to exercise that discretion, to give a sentence less than that called for of life imprisonment with a conviction of first degree murder.

(T 408).

Apart from suggesting that defense counsel did not seek a suspension of Ralph Wilkins' sentence, Appellee's has offered no other plausible reason why the holdings of *Wooten* and *Williamson* should not be applied. Consequently, where

the record clearly reflects that defense counsel did seek a suspension of Ralph Wilkins' sentence, *Wooten* and *Williamson* are controlling.

In *Wooten*, the trial court sentenced the defendant to life imprisonment, pursuant to § 413, but then looked to § 641A, and suspended all but eight years of that time. 277 Md. 114, 115 (1976). Explaining that the plain language of § 413 does not foreclose a court's right to suspend sentence, the Court of Appeals stated, "there is simply nothing in the section which in any way indicates that a sentence imposed under it is to be exempt from the sweep of § 641A [which provides courts with a general power to suspend sentences]." *Wooten*, 277 Md. at 117-18 (1976). Furthermore, the court expressly stated that "§ 641A does not in any manner attempt to list the sentences to which it applies, but rather, in clear, unambiguous and unqualified language, bestows upon courts the power to suspend completely or partially any and all sentences over which they have jurisdiction." *Wooten*, 277 Md. at 117. Thus, the court inevitably concluded that nothing in the plain language of either statute precluded application of the suspension authority of § 641A to a sentence imposed under § 413. In effect, the *Wooten* court established "that life sentences were subject to possible subsequent suspension." *State v. Chaney*, 375 Md. 168, 184 (2003)(the court discussing the impact of *Wooten* on life sentences).

Just three years after *Wooten*, the Court of Appeals decided *Williamson*. In that case, the Court of Appeals reversed and remanded the case after the trial judge refused to consider suspending Williamson's life sentence based upon the

erroneous assumption that he did not have the authority to do so. 284 Md. at 215; *see also* (Brief of Appellee at 6).

In the instant case, the trial judge expressly rejected the notion that he had the discretion to suspend part of Ralph Wilkins' sentence. (T. 412-13). For example, just prior to sentencing, the trial court declared "once the jury has come up with first degree murder without capital punishment . . . there is only one penalty the Court can give." (T. 413) (emphasis added). The holdings in *Wooten* and *Williamson* make clear that the trial court's belief in a lack of discretion was erroneous. Moreover, Appellee has suggested no valid reason why these holdings should not be applied. Consequently, Ralph Wilkins' life sentence should be vacated and his case remanded for re-sentencing.

II. The Generic Presumption That Trial Judges Know the Law Is Rebutted in the Instant Case by a Clear Record, Which Reflects That the Judge Below Mistakenly Believed His Discretion Was Limited to Only One Sentencing Option (replying to Appellee's Brief at 8).

The Appellee next seeks to defend the error below by asking this Court to ignore the plain record and apply instead a generic presumption that judges know the law. In particular, the Appellee puts great weight on the language in *State v. Chaney* "that trial judges know the law and apply it properly." 375 Md. 168, 181 (2003); *see also* Appellee's Brief at 8.

In *Chaney*, the Court of Appeals found that reversal was not required because the defendant could not produce evidence sufficient to overcome a presumption that his sentencing court was aware of its discretion but simply chose to exercise it in a manner unfavorable to him. *Chaney*, 375 Md. at 184. In the instant case, Appellee's reliance on *Chaney* is misplaced because the record clearly rebuts any presumption that the court below was aware of its sentencing discretion.

Throughout Mr. Wilkins' sentencing proceedings the trial court made it abundantly evident that it did not know it had the discretion to suspend part or all of Mr. Wilkins's sentence. (T. 412, 413, 417). Judge Bowie began the sentencing hearing by announcing his erroneous belief that only one sentence was applicable to § 413 convictions:

> Now, I would think that where you have got a conviction of first degree murder, the mere fact that it has life or death there does not take it away from the fact that it only has that penalty. And I wouldn't think that we would have a right under a penalty that says you either give them death or life. If the jury says without capital

> punishment, then the only penalty that can be imposed is life. But it has always been my impression – and I will touch on that point later, but I just want to say that this is my impression – that the sentence in this case being first degree murder, and being found guilty of first degree murder without capital punishment, that there is only one penalty provided under the statute as a result of the verdict of the jury, and that is that it be life.

(T. 412) (emphasis added). Moments later, the judge reaffirmed his belief that he had no sentencing discretion, stating "even though your counsel has argued that the Court could give something else than life imprisonment, we don't agree with this." (T. 417) (emphasis added).

As the record in this case clearly reflects, the lower court did not believe it had the discretion to sentence Ralph Wilkins to anything other than life in prison. Consequently, the presumption of knowledge discussed in *Chaney* is not applicable, and the Appellee's attempt to force its application should be rejected.

III. The Court of Appeals' Holdings in *Wooten* and *Williamson* Require a New Sentencing Hearing Where, as Here, the Generic Presumption That Judges Know the Law Has Been Firmly Rebutted (replying to Appellee's Brief at 13).

The Appellee finally suggests that re-sentencing is not required because even if the lower court failed to recognize its sentencing discretion this lack of knowledge did not render Ralph Wilkins' sentence "illegal." *See* Appellee's Brief at 13. Appellee's final claim must be rejected as it stands in direct opposition to the Court of Appeals' holdings in *Wooten* and *Williamson*.

As discussed in greater detail in Appellant's principal brief, *Wooten* and *Williamson* stand for the proposition that where the record clearly reflects the

sentencing court's failure to exercise discretion, reversal and re-sentencing is warranted. *Cf. Wooten*, 277 Md. at 119; *see also Williamson*, 284 Md. at 214-15.

Seemingly ignoring *Wooten* and *Williamson*, the Appellee instead invites this Court to rely upon *Randall Book Corp. v. State*, 316 Md. 315, 323 (1989), and find that improper motivation on the part of the trial judge does not render a sentence illegal within the meaning of Rule 4-345. *See* Appellee's Brief at 13-14. The Appellee is missing the point. Though *Randall Book Corp.* is good law, it has no application here.

Put simply, the Appellee's reliance on that case ignores the fact that no claim of improper motivation has been made in the instant case. Ralph Wilkins does not suggest that Judge Bowie acted upon impermissible considerations at the time of sentencing. Rather, the focus of the claim on appeal is that the sentencing court was unaware of its discretion and, therefore, denied Mr. Wilkins' the necessary consideration of suspending all or part of his life sentence. *Wooten v. State*, 284 Md. 212, 215 (1979); *see also* Appellant's Brief of Appellant at 11.

Indeed, had the lower court acknowledged its discretion, it is likely the consideration of several mitigating factors would have compelled the judge to suspend at least part of Mr. Wilkins' sentence. Among these factors, was Mr. Wilkins' youthful age at the time of the crime, the fact that he turned himself in to the authorities, as well as his willingness to voluntarily cooperate with prison officials during his pre-trial detention. *See* Appellant's Brief at 16-17. However, because the court was unaware of its discretion none of this evidence was

considered. The trial court's failure to recognize and exercise its discretionary authority to suspend all or part of Mr. Wilkins' life sentence requires that the sentence be vacated and a new sentencing hearing, where such mitigating factors may be addressed, be granted.

CONCLUSION

For the reasons set forth herein, and for all the reasons stated in the Appellant's principal brief, the Appellant respectfully requests that this Court vacate his life sentence and remand his case for re-sentencing.

Respectfully submitted,

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