



1994

Recent Developments: Taylor v. State: Sentencing Restrictions for Repeat Offenders under Article 27, § 643 Are Mandatory Only for Twenty-Five Years

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Recommended Citation

Kelly, Kimberly A. (1994) "Recent Developments: Taylor v. State: Sentencing Restrictions for Repeat Offenders under Article 27, § 643 Are Mandatory Only for Twenty-Five Years," *University of Baltimore Law Forum*: Vol. 24 : No. 3 , Article 9.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol24/iss3/9>

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Taylor v. State:

**SENTENCING
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YEARS.**

In *Taylor v. State*, 333 Md. 229, 634 A.2d 1322 (1993), the Court of Appeals of Maryland held that under Maryland's three time recidivist statute, sentencing restrictions on suspension and eligibility for parole are only mandated for the first twenty-five years of the offender's sentence. Accordingly, under Article 27, § 643B of the Annotated Code of Maryland, the court granted trial courts the broad discretion to suspend sentences and grant parole after the required twenty-five years of imprisonment. In so holding, the court explicitly overruled the decision of the Court of Special Appeals in *Leggett v. State*, 79 Md. App. 170, 556 A.2d 289, cert. denied, *Leggett-El v. State*, 317 Md. 70, 562 A.2d 718 (1989).

In the Circuit Court for Baltimore County, a jury convicted Donald Wayne Taylor of first degree murder, five counts of forgery, and five counts of theft. Taylor's criminal history revealed that he was a habitual offender who had prior convictions for assault with intent to rob and robbery with a deadly weapon. Due to Taylor's prior convictions, the State filed notice of its intent to seek the enhanced punishment of life imprisonment without the possibility of parole for the first degree murder conviction, under Article 27, § 643B of the Annotated Code of Maryland ("§ 643B").

The trial court sentenced Taylor to life imprisonment without the possibility of parole for the murder conviction, five years for each of the forgeries, and one year for each theft, to be served concurrently. Taylor appealed to the Court of Special Appeals of Maryland which affirmed his convictions and sentences. The Court of Appeals of Maryland granted certiorari.

Before beginning its analysis, the court reviewed the language of § 643B(c) and the trial court's interpretation of that section in imposing sentence on Taylor. The relevant language of the section provides that upon the third conviction for certain crimes of violence, including murder, the offender shall be sentenced "to imprisonment for the term allowed by law, but, in any event, not less than twenty-five years." *Taylor*, 333 Md. at 232, 634 A.2d at 1323, n. 1. Furthermore, under § 643B "[n]either the sentence nor any part of it may be suspended, and the person shall not be eligible for parole," except as provided by other statutory sections. *Id.*

In sentencing Taylor under § 643B, the trial court had relied upon *Leggett v. State*, 79 Md. App. 170, 556 A.2d 289, cert. denied, *Leggett-El v. State*, 317 Md. 70, 562 A.2d 718 (1989), a court of special appeals decision factually similar to *Taylor*, and thus, the trial court had not used discretion in imposing the sentence of life imprisonment without the possibility of parole. *Taylor*, 333 Md. at 233, 634 A.2d at 1323-34. Like Taylor, the defendant in *Leggett* had been convicted of first degree murder and sentenced to life imprisonment without the possibility of parole. *Id.*, at 233, 634 A.2d at 1324. On appeal, *Leggett* argued that the trial court erred by failing to use its discretion in imposing the sentence under § 643B(c). *Id.* Nevertheless, the Court of Special Appeals of Maryland held that the trial court, under the clear language of § 643B, had no discretion to impose any sentence other than life imprisonment without the possibility of parole with no part of that sentence suspended. *Id.* at 233-34, 634 A.2d at 1324.

The court began its analysis by reviewing the statutory sentencing requirements for first degree murder. The court recognized that unless a death sentence is sought, first degree murder carries a sentence of life imprisonment which may be imposed in the trial court's discretion with or without parole and with all or part of that sentence suspended. *Id.* at 234, 634 A.2d at 1324. Next, the court analyzed whether this discretion was limited by § 643B's restriction. The court relied on *Malcolm v. State*, 314 Md. 221, 550 A.2d 670 (1988), in finding that § 643B's restriction on parole eligibility and sentence suspension is only applicable to the first twenty-five years of a repeat offender's sentence. *Malcolm* involved a habitual offender sentencing statute which set a minimum ten year sentence for repeat drug offenders. *Taylor*, 333 Md. at 235, 634 A.2d at 1325. The statute in *Malcolm* mirrored the statute in *Taylor* because no parole or suspension of the sentence could be imposed for the minimum sentenc-

ing period. *Id.* The *Malcolm* court found the language of the sentencing statute ambiguous and construed it in favor of the defendant by finding that only the first ten of the twenty years of the sentence were restricted. *Id.*

In *Taylor*, the court found § 643B to be similarly ambiguous and applied the canons of statutory construction to interpret its application. *Id.* at 235-36, 634 A.2d at 1325. The court acknowledged that the purposes of penalty enhancement statutes are to protect the public and deter crime. *Id.*, citing *State v. Taylor*, 329 Md. 671, 621 A.2d 424 (1993). Nevertheless because of the ambiguity, the court adopted a lenient reading of § 643B and permitted the trial court to use discretion in allowing parole and suspension of the sentence after the first twenty-five years of imprisonment. *Taylor*, 333 Md. at 236, 634 A.2d at 1325. Accordingly, Taylor's sentence was vacated and the case was remanded for resentencing. *Id.* at 237-38, 634 A.2d at 1326.

A dissent by Judge Bell, in which Judge Chasanow joined, rejected the majority's decision to overturn *Leggett* and suggested that the majority had improperly substituted its judgment for that of the legislature by creating an ambiguity in the language of § 643B which did not exist. *Taylor*, 333 Md. at 242-44, 634 A.2d at 1328-29. The dissenting opinion reviewed both the rules of statutory construction and the language of § 643B, and unlike the majority, found § 643B to be unambiguous. *Id.* at 238-39, 634 A.2d at 1326-27. Accordingly, the dissent reiterated that § 643B must be interpreted according to its plain language. *Id.* The dissent found that the crystal clear language of § 643B mandated that a third time recidivist offender convicted of first degree murder be sentenced to life imprisonment without the possibility of parole or suspension of the sentence. *Id.* at 239-42, 634 A.2d at 1327-1328. In so finding, the dissent distinguished the *Malcolm* decision relied upon by the majority and reaffirmed its support for the *Leggett* decision. *Id.* at 243, 634 A.2d at 1329.

In *Taylor v. State*, the Court of Appeals of Maryland held that the restriction on sentence suspension and parole eligibility under the three times recidivist statute, § 643B, is only applicable to the first twenty-five years of a life imprisonment sentence. In so holding, the court declined to follow rigid legislative sentencing guidelines, and instead, granted trial courts broad discretion in imposing enhanced sentences on repeat offenders. In effect, the court has granted the judiciary legislative power to create sentencing guidelines on a case-by-case basis.

- Kimberly A. Kelly

