**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: July 1, 2021)**

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| **CEDRIC DALOMBA** | **:** | |
| | **:** | |
| **VS.** | **:** | **PM/20-00491** |
| | **:** | **(P1/18-1260 AG)** |
| **STATE OF RHODE ISLAND** | **:** | |

**DECISION**

**KRAUSE, J.** On November 25, 2017, Cedric Dalomba shot and killed Marcelino Debarros, an aspiring professional boxer. He also wounded Jalin Braxton, Debarros' cousin. A grand jury returned a seven-count indictment in May 2018, charging Dalomba with murder, burglary, conspiracy, firearms offenses, and assaulting Braxton with a dangerous weapon. On January 18, 2019, Dalomba pled guilty to three counts and agreed to accept two consecutive parolable life terms to an amended charge of second degree murder (Count 1), discharging a firearm resulting in Debarros' death (Count 4), and a concurrent twenty-year term for the felony assault upon Braxton (Count 6). The state dismissed the remaining charges.

On January 22, 2020, Dalomba filed a *pro se* postconviction relief (PCR) application, and counsel was subsequently appointed to represent him. On August 27, 2020, he filed a memorandum in support of the petition contending (1) that the felony assault charge in Count 6 is constitutionally flawed because the penalty for committing that crime was not expressly included in G.L. 1956 § 11-5-2; and (2) that his guilty plea is constitutionally infirm because his attorney did not alert him to the potential privations of this state's "Civil Death Act," G.L. 1956 § 13-6-1, which applies to inmates who are serving life sentences. The state filed a reply brief on March 2,

2021, and the parties have agreed that the matter may be decided by the Court based upon their written submissions, without the necessity of a hearing or argument.

**1. The Felony Assault**

Prior to September 2017, § 11-5-2 did not expressly include the statutory penalty for felony assault. Instead, that penalty (up to twenty years in jail) was set forth elsewhere in the chapter of criminal offenses. Dalomba claims that his conviction on this charge is defective because, he says, the penalty provision was not contained within the four corners of § 11-5-2 when he pled guilty to that offense. He is mistaken.

On September 28, 2017, two months *prior* to Dalomba's November 25, 2017 criminal conduct, the General Assembly amended § 11-5-2 and expressly included all of the penalty provisions for violating that assault statute. In pertinent part, that statute, as amended in September 2017, provided:

> "(a) Every person who shall make an assault or battery, or both, upon the person of another, with a dangerous weapon, … or an assault or battery that results in serious bodily injury shall be guilty of a felony assault. If such assault results in serious bodily injury, it shall be punished by imprisonment for not more than twenty (20) years. Every other felony assault which results in bodily injury or no injury shall be punished by imprisonment for not more than six (6) years.
>
> "* * *
>
> "(c) "Serious bodily injury" means physical injury that:
> "(1) Creates a substantial risk of death;
> "(2) Causes protracted loss or impairment of the function of any bodily part, member, or organ[.]"

Since the amended statute was in effect at the time Dalomba committed the offenses, Dalomba's entreaty is moot. *Blais v. Rhode Island Airport Corporation*, 212 A.3d 604, 612 (R.I. 2019) (citing, among other authorities, *Boyer v. Bedrosian*, 57 A.3d 259, 272 (R.I. 2012) ("A case is moot if there is no continuing stake in the controversy, or if the court's judgment would fail to have any practical effect on the controversy.")).

Moreover, on November 19, 2019, the Rhode Island Supreme Court disallowed all such claims, collectively known as "*Maxie* cases,"[1] observing that, with respect to criminal statutes relating to, *e.g.*, murder, sexual assault, and other felony assaults, which identified the unlawful conduct without specifying therein the respective punishment, a defendant was nonetheless on notice of the prescribed penalties because they were clearly set forth in subsequent sections of the criminal code. *In re Petitions for Writ of Certiorari Seeking Review of Denials of Applications for Postconviction Relief*, 219 A.3d 320 (R.I. 2019).

For both of those reasons, Dalomba's complaint must fail. Failure on that claim, however, simply moves us to the next square on the board, because the Court believes that the sentence on Count 6 should be revised.

**A. Sentence Recalibration**

Not raised by Dalomba, but nonetheless significant to his interests, is the twenty-year sentence which was imposed for the felony assault charged in Count 6. Subsection (a) of the September 2017 amendment to § 11-5-2 bifurcates the allowable jail term. The Legislature restricted the twenty-year term to an assault which causes "serious bodily injury," *i.e*, "a substantial risk of death" or a "protracted loss or impairment of the function of any bodily part, member, or organ[.]" Absent such harm (or other specified injuries which do not apply here), the maximum penalty of incarceration under that statute is capped at six years.

Jalin Braxton did not appear at Dalomba's plea/sentencing proceedings on January 18, 2019, but his mother, Belinda Braxton, did. She principally spoke of the loss of Jalin's cousin, Marcelino Debarros, and made only a brief reference to Jalin when she addressed Dalomba,

[1] *See State v. Maxie*, 187 A.3d 330 (R.I. 2018) and *State v. Footman*, 196 A.3d 758 (R.I. 2018).

stating: "I can't even begin to explain how you impacted his life. He's forever changed and will probably never be the same loving, life-of-of-the party person he once was." (Tr. 5:15-18, Jan. 18, 2019.)

Reciting the statement of facts underlying Dalomba's assault upon Braxton, the prosecutor recounted, without elaboration, that after Dalomba drew his gun, "Braxton punched [Dalomba] in the face and turned to run. The defendant fired a single shot from his pistol and struck Jalin Braxton in the lower back causing injury." *Id.* at 7:3-6.

Thus, there is nothing in the reported record which adequately demonstrates, beyond a reasonable doubt, that the gunshot wound sustained by Jalin Braxton came within the defined scope of "serious bodily injury." Accordingly, the twenty-year sentence, although agreed to by the parties and the Court at the time of the plea, is nonetheless an illegal sentence, which the Court may correct "at any time." Rule 35(a), Super.R.Cr.P. *See State v. Linde*, 965 A.2d 415, 416–17 (R.I. 2009) (noting that an illegal sentence is one which "is not authorized under law. It includes, *e.g.*, a sentence in excess of that provided by statute[.]").

The Count 6 sentence must therefore be reduced from twenty to six years. Having imposed what was mistakenly believed to be the maximum statutory penalty of twenty years, as agreed to and *intended* by the parties and the Court on January 18, 2019 when Dalomba pled guilty, it is still appropriate to maintain the maximum statutory term. In any case, because the reduced six-year term is to be served concurrently with the life terms, no prejudice inures to Dalomba, as that comparatively short assault sentence will be easily subsumed by the two consecutive life sentences.

### 2. The Civil Death Act

Dalomba additionally claims that he was ill-served by his attorney, who did not make him aware that a life sentence implies that, while incarcerated, he will be within the ambit of this state's Civil Death Act, § 13-6-1. He therefore claims that his plea was not knowingly or voluntarily entered. The Court disagrees.

Civil death statutes, and those akin to them, have been repealed or rejected in all but two other jurisdictions. Aside from Rhode Island, they maintain vitality only in New York and the Virgin Islands. The Rhode Island Civil Death Act (the Act) "unambiguously declares that a person . . . who is serving a life sentence, is deemed civilly dead and thus does not possess most commonly recognized civil rights." *Gallop v. Adult Correctional Institutions*, 182 A.3d 1137, 1141 (R.I. 2018); 218 A.3d 543, 551 (R.I. 2019), *cert. denied*, 140 S.Ct. 1298 (2020); *Zab v. Zab*, 203 A.3d 1175, 1175 (R.I. 2019). The Act provides:

> "§ 13-6-1. Life prisoners deemed civilly dead. - Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction. However, the bond of matrimony shall not be dissolved, nor shall the rights to property or other rights of the husband or wife of the imprisoned person be terminated or impaired, except on the entry of a lawfully obtained decree for divorce." [2]

[2] Tracing the origins of such a statute, the *Gallop* Court explained:

> "The loss of civil status as a form of punishment is a principle that dates back to ancient societies. Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. Pa. L. Rev. 1789, 1795 (2012). The ancient Greeks were among the first to divest criminals of their civil rights, 'including the right to appear in court, vote, make speeches, attend assemblies, and serve in the army.' *Bogosian v. Vaccaro*, 422 A.2d 1253, 1255 n.1 (R.I. 1980). The rationale behind the enactment of civil death legislation was originally based on the principle that a person convicted of a crime was dead in the eyes of the law. *See* Chin, 160 U. Pa. L. Rev. at 1795. Rhode Island adopted its civil death statute in

Rule 11, Super.R.Cr.P., mandates that a trial court should not accept a guilty or *nolo contendere* plea unless the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea. *State v. Feng*, 421 A.2d 1258, 1266–67 (R.I. 1980); *see State v. Williams*, 122 R.I. 32, 35-42, 404 A.2d 814, 817-20 (1979). It is also settled, however, that a defendant need only be made aware of the direct, not collateral, consequences of his plea to ensure its validity. *Beagen v. State*, 705 A.2d 173 (R.I. 1998).

"A consequence is deemed collateral, rather than direct, if its imposition 'is controlled by an agency which operates beyond the direct authority of the trial judge.'" *Beagen*, 705 A.2d at 175 (quoting *State v. Figueroa*, 639 A.2d 495, 499 (R.I. 1994)). As further explained by the New Hampshire Supreme Court in *State v. Ortiz*, 44 A.3d 425, 429 (N.H. 2012):

> '"Direct consequences may be described as those *within* the sentencing authority of the trial court, as opposed to the many other consequences to a defendant that may result from a criminal conviction.' *Smith*, 697 S.E.2d at 181–82; *see United States v. Amador–Leal*, 276 F.3d 511, 514 (9th Cir. 2002) ("The distinction between a direct and collateral consequence of a plea turns on whether the result represents a definite, immediate and largely automatic effect on *the range* of the defendant's punishment." (quotations omitted)). In contrast, collateral consequences 'require[] application of a legal provision *extraneous to the definition of the criminal offense* and the provisions for sentencing those convicted under it.' *Diamontopoulas v. State*, 140 N.H. 182, 186, 664 A.2d 81 (1995) (quotation omitted); *see also Elliott*, 133 N.H. at 192, 574 A.2d 1378 (noting 'habitual offender act is a classic example of a ... collateral [consequence], in the sense that the consequence requires application of a legal provision extraneous to the definition of the criminal offense and the provisions for sentencing those convicted under it' (citation omitted))." (Emphasis added.)

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1909. *See* G.L. 1909, ch. 354, § 59. By 1939, eighteen states still had civil death statutes in effect. Chin, 160 U. Pa. L. Rev. at 1796; *see also Civil Death Statutes–Medieval Fiction in a Modern World*, 50 Harv. L. Rev. 968, 968 n.1 (1937). While statutes imposing collateral consequences for convicted persons have almost all but vanished, New York, the Virgin Islands, and Rhode Island still retain civil death statutes for persons sentenced to life imprisonment. Chin, 160 U. Pa. L. Rev. at 1798; *See* § 13–6–1; N.Y. Civ. Rights Law § 79–a(1); V.I. Code Ann. tit. 14, § 92. Repeal is the province of the Legislature." *Gallop*, 182 A.3d at 1140–41.

Manifestly, as explicated in *Ortiz*, Rhode Island's Civil Death Act is not part of Dalomba's "range" of punishment which a sentencing court may have discretion to impose, and it is unquestionably "extraneous to the definition of the criminal offense" of murder. *Ortiz*, 44 A.3d at 429. Where the consequences of a conviction are "controlled by an agency which operates beyond the direct authority of the trial judge," *Sanchez v. United States*, 572 F.2d 210, 211 (9th Cir. 1977), or "beyond the direct control of the court," *Meyer v. Branker*, 506 F.3d 358, 367-68 (4th Cir. 2007), those aftereffects, as *Sanchez*, *Meyer*, and other authorities hold, are *collateral*, not direct.

"'What renders a plea's effects collateral is not that they arise virtually by operation of law, but the fact that [the consequence] is not the sentence of the court which accepts the plea but of another agency over which the trial judge has no control and for which he has no responsibility.'" *United States v. Nicholson*, 676 F.3d 376, 381–82 (4th Cir. 2012) (quoting *United States v. Gonzalez*, 202 F.3d 20, 27 (1st Cir. 2000), *abrogated on other grounds* by *Padilla v. Kentucky*, 559 U.S. 356 (2010)).

If an entity other than the trial court is responsible for the termination of a defendant's benefits, and the trial court has no control or responsibility over that decision, then – even if the loss of government benefits is a consequence of his plea – "it was nevertheless collateral because it was beyond the district court's direct control." *Nicholson*, 676 F.3d at 381–82. *See Gallop*, 182 A.3d at 1141-42 (expressly referring to the Civil Death Act as a "*collateral*" consequence) (emphasis added)).

As aptly stated by the New York tribunal in *People v. Smith*, 227 A.D.2d 655, 657 (N.Y. App. Div. 1996): "Because civil death is a *collateral consequence* of a conviction carrying a life sentence, neither [the] Court nor defendant's attorney were [*sic*] required to advise defendant of

its implications prior to accepting his guilty plea." (Emphasis added.)[3] Rhode Island jurisprudence also reflects that principle. *Smith v. State*, 909 A.2d 40, 41-42 (R.I. 2006); Beagen, 705 A.2d at 175.

Summing up, Dalomba contends that had he known of the implications of the Civil Death Act, he would not have pleaded guilty and, instead, would have gone to trial; and he therefore insists that his guilty plea was not knowing and voluntary. However, as discussed, *supra*, a criminal defendant's awareness of consequences which are collateral to his guilty plea is not a prerequisite to a knowing and intelligent admission of guilt. Later application of the Act to a civil proceeding

[3] It should be noted that Dalomba has *not* challenged the Civil Death Act on constitutional grounds. His imprecation in this PCR application is limited solely to criticizing his attorney for not alerting him that implication of the Act is a byproduct of a life sentence. This Court is aware that the Act has undergone constitutional examination by the local federal district court, *Lombardi v. McKee*, ___ F. Supp. 3d ____ (D.R.I. Mar. 29, 2021), 2021 WL 1172715 (Smith, J.), which found some flaws in the process and statutory framework of the Act. This Court, however, shall, as it must, refrain from addressing, *sua sponte*, any such constitutional issue, as none has been raised by either party. *State v. Beaudoin*, 137 A.3d 717, 726 (R.I. 2016) (reaffirming the long-standing rule that a "trial justice was without authority to raise and decide, *sua sponte*, a constitutional issue that [is] not squarely placed before him by the parties"); *see Devane v. Devane*, 581 A.2d 264, 265 (R.I. 1990) ("Consequently it is clear and imperative that a trial justice, in the exercise of his or her judicial authority, not resolve a constitutional issue unless and until such issue is actually raised by the parties to the controversy and a necessity for such a decision is clear and imperative.").

Moreover, the *Lombardi* plaintiffs claim to have suffered actual personal injuries, not imagined or illusory harm, while serving their life terms. That is not the case here, as Dalomba has failed to demonstrate, and indeed has not even identified, any present privation, nor the requisite "concrete and particularized injury" by which to secure genuine standing to assert any such constitutional challenge. As a result of the clear disparity in circumstances between Dalomba and the *Lombardi* petitioners, the *Lombardi* decision has no application here, anyway. *See Morse v. Minardi*, 208 A.3d 1151, 1156 (R.I. 2019) ("The party asserting standing must have an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.") (quoting *Warfel v. Town of New Shoreham*, 178 A.3d 988, 991 (R.I. 2018)), and most recently, *California et al. v. Texas et al.*, 593 U.S. ___ (Nos. 19-840 and 19-1019, June 17, 2021), where the United States Supreme Court disallowed challenges to the Patient Protection and Affordable Care Act (colloquially referred to as "Obama-Care") because of the petitioners' lack of standing and inability to identify a "concrete and particularized injury." Slip op. at 3, 16.

– which Dalomba has not even identified (*see* footnote 3) – is simply neither a part of nor integral to his murder case. It is collateral to that criminal prosecution. While the Sixth Amendment assures an accused of effective assistance of counsel in *criminal prosecutions*, that assurance does not extend to collateral aspects of the prosecution.

This Court finds that the Civil Death Act is a subsidiary byproduct of Dalomba's life sentence for murdering Marcelino Debarros. Its nexus to Dalomba's guilty plea is a collateral, not a direct, consequence of it. Under such circumstances, the Rhode Island Supreme Court has explicitly held that "counsel was not required to inform [petitioner] about the collateral consequences of his plea, and thus [he] cannot succeed on his allegation of ineffective assistance of counsel." *Smith v. State*, 909 A.2d 40, 42 (R.I. 2006).

This Court is well satisfied that Dalomba's plea was entirely valid and that his lawyer did him no disservice under *Strickland v. Washington*, 466 U.S. 668 (1984) and its progeny.

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For all of the foregoing reasons, Dalomba's postconviction relief application is denied. Judgment shall enter in favor of the State of Rhode Island.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **ATTORNEYS:** | |
| **For Plaintiff:** | **John C. Krollman, Esq.** |
| **For Defendant:** | **Judy Davis, Esq.** |