

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1442

September Term, 2014

DARRYL MORGAN

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Woodward, J.

Filed: June 16, 2015

*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.

In 1992, appellant was convicted of felony murder, second degree murder, and related offenses in the Circuit Court for Montgomery County. His convictions were affirmed by this Court. On May 23, 2014, appellant filed a petition for writ of habeas corpus in the circuit court, which was denied on July 29, 2014.

On appeal, appellant challenges the circuit court's denial of his petition for writ of habeas corpus. The State, however, filed a motion to dismiss the appeal in this Court, contending that the appeal is not allowed by law. For reasons set forth *infra*, we agree with the State and shall dismiss this appeal.

BACKGROUND

Appellant was convicted in 1992 of felony murder, second degree murder, attempted first degree murder, two counts of attempted robbery with a dangerous or deadly weapon, and two counts of use of a handgun in the commission of a felony or crime of violence. Appellant was sentenced to a total term of life with the possibility of parole, plus forty years. This Court affirmed appellant's convictions in an unreported opinion on October 4, 1993.

On May 23, 2014, appellant filed a petition for writ of habeas corpus in the circuit court. The court denied appellant's petition on July 29, 2014. Appellant filed a timely notice of appeal on August 24, 2014.

DISCUSSION

Appellant argues that the circuit court erred or abused its discretion in denying his petition for writ of habeas corpus, because the petition complied with the Maryland Rules. According to appellant, the circuit court violated the Rules when it denied appellant's

petition without first (1) granting appellant an opportunity to reply, (2) issuing a show cause order, or (3) scheduling a hearing.

The State responds that the circuit court’s order is not an appealable order, because appellant’s petition challenges the legality of his conviction, not the legality of his confinement. We agree with the State and shall explain.

This Court recently discussed the appealability of a denial of a writ of habeas corpus in *Simms v. Shearin*:

Although the right to seek a writ of habeas corpus is constitutionally protected, the right to an *appeal* from the disposition of the habeas corpus petition is not. Indeed, the Court of Appeals has consistently held that the statutory provisions . . . generally authorizing an appeal from a final judgment entered in a civil or criminal case, do not apply to habeas corpus cases. **An appeal may be taken from a final order in a habeas corpus case only where specifically authorized by statute. The Court has identified four such statutes: (1) CP [(Criminal Procedure)] § 9-110, which authorizes appeals in extradition cases; (2) CJP [(Courts & Judicial Proceedings)] § 3-707, which authorizes an application for leave to appeal in cases involving right to bail or allegedly excessive bail; (3) CJP § 3-706, which provides for an appeal if a court issued a writ of habeas corpus based on the unconstitutionality of the law under which the petitioner was convicted; and (4) CP § 7-107, a provision in the UPPA [(Uniform Postconviction Procedure Act)], which permits an appeal if the writ was sought under CP § 9-110 or for a purpose other than to challenge the legality of a conviction or sentence.** Based on the legislative history of the UPPA . . . , the Court of Appeals has further concluded that the fourth provision, CP § 7-107, permits appeals where the UPPA does not otherwise provide a remedy.

221 Md. App. 460, 469-70 (2015) (*italics in original*) (*alterations and bold emphasis added*) (footnote omitted) (citations and internal quotation marks omitted).

In his petition, appellant contends that “remarks made by the State’s prosecutor during closing argument abridged [appellant’s] fundamental right to due process of the law and the right to a fair trial.” Thus appellant’s petition, like the petition in *Simms*, does not involve extradition, bail, or the unconstitutionality of the law under which he was convicted. *Id.* at 470. Accordingly, the “only possible statute under which we could entertain this appeal is CP § 7-107; therefore, we narrow our discussion accordingly.” *Id.*

Section 7-107(b), titled “Appeals,” provides:

- (1) **In a case in which a person challenges the validity of confinement under a sentence of imprisonment by seeking the writ of habeas corpus or the writ of coram nobis or by invoking a common law or statutory remedy other than this title, a person may not appeal to the Court of Appeals or the Court of Special Appeals.**
- (2) **This subtitle does not bar an appeal to the Court of Special Appeals:**
 - (i) in a habeas corpus proceeding begun under § 9-110 of this article; or
 - (ii) **in any other proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime,** including confinement as a result of a proceeding under Title 4 of the Correctional Services Article.

(Emphasis added).

As we stated in *Simms*:

The Court of Appeals has construed [Section 7-107(b)] to grant a right of appeal in a habeas corpus case not involving a challenge to the criminal conviction and sentence or the Art. 31B proceeding which led to the prisoner’s confinement. . . .

Applying CP § 7-107, Maryland appellate courts have entertained appeals from rulings on habeas corpus petitions only when the petitioner challenged the legality of confinement based on collateral post-trial influences and not the legality of the underlying conviction or sentence, and where the UPPA does not otherwise provide a remedy. . . .

221 Md. App. at 472-73 (emphasis added) (citations and internal quotation marks omitted).

We conclude in the instant case that appellant does not have the right to appeal the circuit court’s denial of his habeas corpus petition, because appellant’s petition challenges his conviction based on remarks made by the prosecutor during closing argument at trial. Appeals of denials of writs of habeas corpus based on the legality of the underlying conviction are not permitted under Section 7-107 or any other statute. *See* CP § 7-107; *Simms*, 221 Md. App. at 472-73; *see also Green v. Hutchinson*, 158 Md. App. 168, 174-75 (2004) (dismissing an appeal of a circuit court’s denial of an inmate’s petition for writ of habeas corpus where the inmate alleged ineffective assistance of counsel, as well as errors in admission of evidence, jury instructions, and the counts submitted to the jury, because these claims “went directly to the legality of [the inmate’s] convictions”). Moreover, the UPPA provides a remedy to appellant to challenge the legality of his convictions based on

the grounds raised in his petition. *See* CP § 7-104 (providing that “[t]he court may reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interests of justice”). Accordingly, this appeal must be dismissed.

**APPEAL DISMISSED; APPELLANT TO
PAY COSTS.**