

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2316

September Term, 2015

STEVEN ANTHONY POWELL

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Nazarian,

JJ.

PER CURIAM

Filed: December 13, 2016

*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.

Steven Anthony Powell, an inmate, filed this appeal from the denial, by the Circuit Court for Baltimore City, of his petition seeking an evaluation by the Department of Mental Health and Hygiene (the Department) to determine whether he is in need of treatment for drug or alcohol abuse. The State, in response, filed a motion to dismiss the appeal as not permitted by law. We agree and grant the State’s motion to dismiss this appeal.

In 2003, Powell was convicted of murder following a jury trial, and was sentenced to 30 years’ imprisonment. In September 2014, appellant filed a petition requesting an evaluation to determine if he could benefit from treatment for drug or alcohol abuse and, if treatment was recommended, to suspend his sentence and commit him to an inpatient drug treatment facility. *See* Md. Code Ann. Health-General Art. § 8-505(a) (2015 Repl. Vol.) (stating that “before or after sentencing . . . the court may order the Department to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is need of and may benefit for treatment if . . . [t]he defendant alleges an alcohol or drug dependency”); Md. Code Ann. Health-General Art. § 8-507(a) (2015 Repl. Vol.) (stating that if the circuit court determines that drug or alcohol treatment is warranted, it “may commit the defendant . . . to the Department for treatment that the Department recommends”). The circuit court denied Powell’s petition without a hearing.

In *Fuller v. State*, 397 Md. 372 (2007), the Court of Appeals was asked to determine whether a circuit court's denial of an inmate's request to be committed to a drug treatment program pursuant to Health-General Article § 8–507 was an appealable final order. The Court held that such an order was not appealable because § 8–507 provided that a petition for commitment to a drug treatment program could be filed “at any time the defendant

voluntarily agrees to participate in treatment.” *Id.* at 394. The Court therefore reasoned that, like a habeas petition, the order was not appealable as a final judgment because “petitions [for commitment to a drug treatment facility] may be filed repeatedly and the denial of a single petition does not preclude [the petitioner] from filing another.” *Id.* For the same reason, it also determined that the denial of the petition was not appealable under the collateral order doctrine. *Id.* at 395.

Applying the reasoning of *Fuller*, we hold that the denial of a petition for a drug and alcohol abuse evaluation, pursuant Health-General Article § 8-505, is not an appealable order. Consequently, the appeal must be dismissed.

**APPELLEE’S MOTION TO DISMISS
APPEAL GRANTED. COSTS TO BE PAID
BY APPELLANT.**