

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2842

September Term, 2014

DAVID BRIGHTWELL

v.

STATE'S ATTORNEY FOR SOMERSET
COUNTY

Eyler, Deborah S.,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: March 16, 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.

David Brightwell, an inmate who is currently incarcerated at the Jessup Correctional Institution, filed a Public Information Act request with the Somerset County State’s Attorney’s Office on May 20, 2014. Evidently dissatisfied with the response to his request, Brightwell, representing himself, petitioned for judicial review in the Circuit Court for Somerset County on August 3, 2014. At a hearing on November 6, 2014, the circuit court ordered the State to provide Brightwell with any responsive documents that it had not previously produced.

On December 29, 2014, Brightwell filed what he called a “Motion for Actual and Punitive Damages” in which he complained about the State’s alleged failure to produce those documents. As grounds for relief, Brightwell cited the provisions of the Public Information Act that authorized an award of “actual damages . . . if the court finds by clear and convincing evidence that any defendant knowingly and willfully failed to . . . disclose or fully to disclose a public record that the complainant was entitled to inspect,” Maryland Code (2014), § 4-362(d) of the General Provisions Article,¹ as well as criminal penalties against those who “willfully or knowingly violate” provisions of the statute. *Id.* § 4-402.

The circuit court denied Brightwell’s motion on January 14, 2015, and Brightwell took a timely appeal.

¹ In legislation that became effective on October 1, 2015, the General Assembly deleted the requirement of proof by clear and convincing evidence. 2015 Md. Laws ch. 136.

The State has moved to dismiss Brightwell’s appeal, contending that the denial of the “Motion for Actual and Punitive Damages” is not an appealable final judgment. *See generally* Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article. The State is correct that, in a petition for judicial review concerning a public information request, the final judgment would ordinarily be the circuit court’s decision that a person was or was not entitled to certain public documents, because that is the decision that puts the parties out of court and leaves them with no further means to prosecute their claims. *See, e.g., American Bank Holdings, Inc. v. Kavanagh*, 436 Md. 457, 463 (2013). Ordinarily, therefore, the final judgment would be the circuit court’s order of November 6, 2014, which finally determined Brightwell’s rights to the public information that he requested.

In his “Motion for Actual and Punitive Damages,” however, Brightwell complains of a continuing failure to produce the information to which the court said he was entitled. He requested statutory relief because of the alleged failure to produce that information, and it would be anomalous to hold that he has no right to appellate review of the denial of that relief. In substance, one could view his request for relief as an attempt to enforce the judgment (*e.g. Miller v. Rosewick Rd. Dev., LLC*, 214 Md. App. 275, 290-92 (2013); *Four Star Enters. Ltd. P’ship v. Council of Unit Owners of Carousel Ctr. Condo., Inc.*, 132 Md. App. 551, 560-61 (2000)), or as a request for a collateral, statutory remedy relating to a continuing failure to comply with the judgment. *E.g. Cnty. Exec. of Prince George’s Cnty. v. Doe*, 300 Md. 445, 451 & n.4 (1984); *see also Mullaney v. Aude*, 126 Md. App. 639, 650-53 (1999). In either case, the denial of his motion has sufficient

attributes of a final judgment to confer appellate jurisdiction upon us. Consequently, we deny the motion to dismiss the appeal.

Nonetheless, on the merits, we see no reason to disturb the judgment. The record establishes that in May 2014 the State delivered the requested documents to the head of case management at the prison where Brightwell is incarcerated. The record also establishes that, according to the head of case management, Brightwell had received those records by August 2014. On this record, the circuit court clearly did not abuse its discretion in concluding that Brightwell had failed to prove by clear and convincing evidence that a defendant had “knowingly and willfully failed to . . . disclose or fully to disclose a public record that the complainant was entitled to inspect,” within the meaning of § 4-362(d) of the General Provisions Article, or that criminal sanctions were warranted under § 4-402. *See Bricker v. Warch*, 152 Md. App. 119, 137 (2003) (“it is . . . almost impossible for a judge to be clearly erroneous when he is simply NOT PERSUADED of something”) (emphasis in original). Nor did the circuit court err or abuse its discretion in denying punitive damages, as they are not authorized by the Public Information Act.

**MOTION TO DISMISS DENIED.
JUDGMENT OF THE CIRCUIT
COURT FOR SOMERSET
COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**