

Circuit Court for Worcester County
Case No.: C-23-CR-17-000154

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 232

September Term, 2022

GLENN ALLEN CARMEAN

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2022

*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.

On September 14, 2017, Glenn Allen Carmean, appellant, appeared with counsel in the Circuit Court for Worcester County and, following a bench trial, was convicted of first-degree assault, second-degree assault, speeding, driving while impaired by alcohol, attempting to elude police by failing to stop, and reckless driving. On December 12, 2017, the court sentenced Carmean to 10 years' imprisonment for first-degree assault and to a consecutive term of three years for driving while impaired by alcohol. The court merged the remaining convictions for sentencing purposes.

In October 2019, Carmean filed a motion for evaluation and commitment for drug and/or alcohol addiction pursuant to § 8-505 and § 8-507 of the Health General Article of the Maryland Code. The court ordered the evaluation. On January 17, 2020, after the court received the evaluation, it denied the request for commitment “without prejudice,” stating that “after a reasonable passage of time [the] matter can be revisited.” A year later, Carmean filed another motion requesting the same relief and on March 1, 2021, the court denied the request, again without prejudice.

On December 19, 2021, Carmean filed his third motion for evaluation and commitment pursuant to Health General § 8-505 and § 8-507. The court granted the request for the evaluation. On February 7, 2022, after receiving the evaluation, the court convened a hearing on the motion for commitment to the Department for treatment, with Carmean participating from the Eastern Correctional Institution via ZOOM. That hearing has not been transcribed. The hearing sheet in the circuit court record reflects that, at the conclusion of the hearing, the court indicated that it would “take this matter under consideration.” On March 14, 2022, the court filed an order stating that, “having

considered” the motion and the Department of Health’s evaluation, the request for commitment is denied, without prejudice. Carmean, who was represented by counsel on all the motions for evaluation and commitment, appealed *pro se*.

DISCUSSION

On appeal, Carmean asserts that, at the hearing on his motion, the judge “indicated on open court record [that] he was going to grant” his request, but “in an unexpected decision” later denied it. He maintains that the denial “created ambiguity and denied [him] any transparency.” The State, citing Md. Rule 8-413(a), responds that it was Carmean’s obligation to produce the transcript from the February 7, 2022 hearing, which he failed to do. In reply, Carmean states that, due to the “time limits” to note an appeal, he “was unable to furnish” the transcript, but he makes no claim that he has ever requested that the hearing be transcribed.

Without the transcript, we cannot address this issue. Moreover, the court’s hearing sheet for February 7th states, in pertinent part: “Hearing re: 8-507, held. Court will take this matter under consideration.” In short, there is nothing in the record before us to support Carmean’s claim that at the February 7th hearing the court agreed to grant his request for commitment to the Department of Health for treatment. As for Carmean’s claim that the court’s denial of his request lacks transparency, we note that Health General § 8-507 does not require a court to set forth its reasons for its ruling on a request for commitment for treatment. Moreover, whether to grant or deny such a motion is a decision that the legislature has left to the court’s discretion. *See* Health General § 8-507(a)(i) (subject to

certain conditions, a court “may commit” a defendant to the Department of Health for treatment for an alcohol or drug dependency).

Carmean also asserts that the attorney representing him on his motion rendered ineffective assistance of counsel at the February 7th hearing by declining to speak on his behalf when the court asked counsel if she had anything to add. Assuming that such a claim is even proper in this context, the State urges this Court not to address the ineffective assistance of counsel claim given the lack of transcript and the fact that such claims are best left to the post-conviction court. We agree with the State that even if the claim may be raised, without the transcript we are unable to address this issue and, therefore, we shall not consider it.

Finally, the State moves to dismiss the appeal as not allowed by law. We shall grant the State’s motion.

In maintaining that the court’s denial of Carmean’s motion is not an appealable order, the State points out that neither Health General § 8-505 or § 8-507 provide for appellate review of a decision to deny a request for evaluation or commitment for treatment. Moreover, the State, relying on *Fuller v. State*, 397 Md. 372, 394-95 (2007), asserts that a motion for commitment for treatment pursuant to Health General § 8-507 is not a final order or an appealable collateral order because there is no limit on the number of motions a person may file, such that their rights cannot be completely settled.

The State further maintains that this Court’s decision in *Hill v. State*, 247 Md. App. 377 (2020), which addressed a decision denying relief under Health General § 8-507, is distinguishable. The State points out that here, unlike in *Hill*, the record does not reflect

that the circuit court believed it lacked authority to grant Carmean’s motion, as the order itself reflects that the court in fact considered it.

We agree with the State that *Hill* is distinguishable from the matter presently before us. In *Hill*, we held that there was appellate jurisdiction to consider the denial of an inmate’s Health General § 8-507 request where the circuit court ruled that it was precluded from authorizing treatment because the petitioner had been convicted of a crime of violence and was not yet parole eligible. *Id.* at 389. Although Hill had previously qualified for treatment and the court had indicated its willingness to authorize it, *id.* at 380-81, in 2018 the legislature amended the statute and disallowed commitment for drug treatment for prisoners convicted of crimes of violence until they became eligible for parole. *Id.* at 381-82. The circuit court rejected Hill’s contention that applying those amendments to him violated the *Ex Post Facto* Clause found in Article 1 of the United States Constitution and Article 17 of the Maryland Declaration of Rights because the statutory amendments were enacted after his 2011 conviction. *Id.* at 382.

When Hill appealed, the State argued that, pursuant to *Fuller, supra*, this Court lacked jurisdiction to consider the appeal. *Id.* at 383. We disagreed. In short, we noted that “the court’s express determination that application of the 2018 amendments to Hill do not violate the *Ex Post Facto* Clause is final in that it denies Hill any possibility of being granted an HG § 8-507 commitment until after he reaches parole eligibility.” *Id.* at 389. Hence, we concluded that the ruling in Hill’s case constituted a final judgment and, therefore, this Court had jurisdiction to consider his appeal. *Id.*

In contrast, the record in this case reflects that the court granted Carmen’s request for the Health General § 8-505 evaluation; the court received the Department’s January 12, 2022 report of its evaluation; the court then convened a hearing on Carmean’s motion pursuant to Health General § 8-507 for commitment to the Department for treatment; and thereafter, “having considered” both Carmean’s motion and the Department’s evaluation, the court denied the request “without prejudice.” There is nothing in the record before us to indicate that the court believed that it was prohibited from granting Carmean’s request. Accordingly, we hold that the court’s order denying Carmean’s request for commitment to the Department for treatment is not appealable. *See Fuller*, 397 Md. at 380 (“the denial of a petition for commitment for substance abuse treatment pursuant to Section 8-507 of the Health-General Article is not an appealable order.”).

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**