

Circuit Court for Wicomico County
Case No. 22-K-80-010454

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 241

September Term, 2022

CHARLES EDWARD SIMMS

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.

In 1980, Charles Edward Simms, appellant, was convicted of first-degree murder following a jury trial in the Circuit Court for Wicomico County. In 2013, he filed a motion to reopen postconviction proceedings raising a claim pursuant to *Unger v. State*, 427 Md. 383 (2012). The circuit court denied the motion and appellant filed an application for leave to appeal. We granted the application and remanded the case to the circuit court to vacate his conviction and award him a new trial. Following a 2017 re-trial, appellant was again convicted of first-degree murder and sentenced to life imprisonment. We affirmed his conviction on direct appeal. *Simms v. State*, No. 711, Sept. Term 2017 (filed April 5, 2018).

In 2019, appellant filed, *pro se*, a petition for post-conviction relief, claiming that his defense counsel was ineffective in failing to raise certain issues at trial. He also alleged that the “State failed to release ‘*Brady*’ material” and other discovery to his trial counsel. In 2021, appellant, now represented by counsel, filed a supplement to the post-conviction petition, further alleging that his trial counsel was ineffective in failing to file a motion for modification of sentence and to seek review of his sentence by a three-judge panel. Following a hearing, the court entered an order granting appellant the right to file a belated motion for modification of sentence and request for review of sentence by a three-judge panel. In the order, the court noted that appellant and the State had entered into a consent agreement wherein appellant agreed to “withdraw[] with prejudice any other post-conviction claims[.]”

Appellant subsequently filed a motion for modification of sentence and request for review of sentence by a three-judge panel. The motion for modification was denied without a hearing. The three-judge panel subsequently found that the sentence imposed was “fair

and just” and ordered that it remain unchanged. Following the entry of those orders, appellant filed a notice of appeal.

On appeal, appellant claims that his trial counsel was ineffective in failing to preserve certain legal issues and that his post-conviction counsel was ineffective in advising him to waive those claims of ineffective assistance of counsel in exchange for allowing him to file belated motions for review of his sentence. The State has moved to dismiss the appeal as not allowed by law.

The denial of a motion for modification of sentence pursuant to Maryland Rule 4-345 is not an appealable order unless the court concludes that it lacks jurisdiction to consider the motion, which it did not in this case. *See Hoile v. State*, 404 Md. 591, 615 (2008) (“[T]he denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable.” (citations omitted)). Similarly, section 12-302(f) of the Maryland Code, Courts and Judicial Proceedings Article, provides that the order of a sentence review panel of the circuit court is not appealable unless the panel increases the sentence. Finally, the issues raised by appellant related to the post-conviction process must be raised by way of an application for leave to appeal. *See* Md. Rule 8-204.¹ Consequently, we shall grant the State’s motion to dismiss.

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

¹ In any event, appellant’s claims that he received ineffective assistance of post-conviction counsel are not properly before us as they were not raised in the circuit court.