

Circuit Court for Wicomico County
Case No. 0K000501

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 478

September Term, 2019

BRIAN WATERS

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 8, 2020

*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 2000, Brian Waters, appellant, pleaded guilty to one count of third-degree sex offense in the Circuit Court for Wicomico County. In exchange, the State dismissed his remaining charges and recommended a suspended sentence. After the court found Mr. Waters guilty, it imposed the following sentence:

The Court is going to impose a sentence of four years in the jurisdiction of the Commissioner of Correction. I will suspend that sentence in accordance with the recommendation of the State. I will place you on 24 months of supervised probation. It will be a condition of your probation you have no contact whatsoever with the victim of this offense or her family, and pay the cost of this proceeding. If you have any more problems, then you have four years of prison to serve.

In March 2019, Mr. Waters filed a “Motion for Appropriate Relief” in his criminal case, wherein he alleged that the Department of Public Safety and Correctional Services “lacked the authority to place [him] on the Maryland Sex Offender Registry” because he had been granted a probation before judgment, he had complied with the terms of his probation, and the court had not specifically ordered him to register as a sex offender as part of his sentence. As relief, Mr. Waters requested that he be removed from the Maryland Sex Offender Registry and that all his information be removed from its website. The circuit court denied the motion without a hearing. This appeal followed.

Mr. Waters contends that the court erred in denying his motion for appropriate relief. However, because “registration remains a collateral consequence of criminal punishment, a person “can seek removal from the sex offender registry only through a civil action for declaratory judgment.” *Rodriguez v. State*, 221 Md. App. 26, 40 (2015). Because Mr. Waters filed the motion for appropriate relief in his criminal case and the motion did not

challenge the legality of his underlying sentence and conviction,¹ the circuit court lacked jurisdiction to address his claim. *Sinclair v. State*, 199 Md. App. 130, 140 (2011). Consequently, we shall vacate the order of the circuit court, without affirmance or reversal, and remand the case to the circuit court to dismiss Mr. Waters’s motion for appropriate relief without prejudice to his filing a civil action for declaratory judgment. *Id.*

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY VACATED.
CASE REMANDED TO THAT COURT,
WITHOUT AFFIRMANCE OR
REVERSAL, WITH INSTRUCTIONS TO
DISMISS, WITHOUT PREJUDICE,
APPELLANT’S MOTION FOR
APPROPRIATE RELIEF FILED MARCH
14, 2019. COSTS TO BE PAID BY
APPELLANT.**

¹ We note that Mr. Waters’s motion for appropriate relief did not request the court to amend his commitment record to reflect that he had been granted probation before judgment. However, if we were to construe his motion as a motion to correct the commitment record, Mr. Waters would not be entitled to relief as the transcript of the sentencing hearing demonstrates that the court did not grant him a probation before judgment. Moreover, nothing in court’s Order of Probation altered his sentence. To be sure, the “consent” section of the order includes information about all possible types of probation, including probation before judgment. However, in the upper section of the order, which has several check boxes to indicate the type of probation being ordered, the boxes relevant to probation before judgment are not checked.