

Circuit Court for Carroll County
Case No. C-06-CV-20-000427

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 632

September Term, 2021

IN THE MATTER OF KERRICK THOMAS

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 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 2018, the Maryland Department of Health (MDH)¹ filed an Application for Certification with the Maryland Police Training and Standards Commission (the Commission), seeking to have Kerrick Thomas, appellant, certified as a police officer.² The Commission denied that request based on “findings during the background investigation” but informed MDH that it could request a waiver of certification standards for Mr. Thomas which could be considered by the Commission at its next meeting. MDH filed a waiver request, which was added to the agenda for the Commission’s meeting on January 8, 2019. At that meeting, the Commission considered the waiver request during a closed door session wherein MDH staff and Mr. Thomas were questioned by the Commission and provided with an opportunity to explain why waiver of the certification standards was warranted. At the close of the meeting, the Commission voted to deny the waiver request and verbally informed Mr. Thomas and MDH of its decision. The next day the Commission also mailed a letter to MDH memorializing its decision.

On December 29, 2020, almost two years after the Commission denied MDH’s waiver request, Mr. Thomas filed a petition for judicial review in the Circuit Court for

¹ At the time of the request, MDH was known as the Maryland Department of Health and Mental Hygiene.

² Section 3-216(a) of the Public Safety Article provides that a law enforcement agency may not employ an individual as a police officer for a period of more than one year unless they are certified by the Commission. Certification by the Commission is contingent on the applicant satisfactorily meeting certain standards set forth by the Commission. *See* Public Safety Art. § 3-209(a). Those standards are fully set forth in the Code of Maryland Regulations (COMAR) 12.04.01 et seq.

Carroll County seeking review of the Commission’s decision. The Commission filed a motion to dismiss on the grounds that its decision was not subject to judicial review and that, even if it was, Mr. Thomas’s petition was untimely. Mr. Thomas did not file a response to the motion to dismiss but filed a motion to continue approximately three weeks before the hearing date that had been set by the court. The court deferred ruling on the motion to continue because, in his motion, Mr. Thomas had not stated the Commission’s position, had not included a new agreeable date for the hearing, and had not included a proposed order. Mr. Thomas did not file a new motion to continue and did not attend the scheduled hearing on the motion to dismiss. After hearing arguments from the Commission, the court entered an order dismissing the petition on the grounds that it lacked jurisdiction to hear the petition and, alternatively, that the petition was untimely. This appeal followed.

Mr. Thomas first contends that the court erred in dismissing his petition. We disagree. As an initial matter, we note that, “in order for an administrative agency’s action properly to be before . . . any court[] for judicial review, there generally must be a legislative grant of the right to seek judicial review.” *Harvey v. Marshall*, 389 Md. 243, 273 (2005). Thus, there is typically no right to judicial review of an administrative decision unless that right is established by statute. *Oltman v. Maryland State Bd. of Physicians*, 182 Md. App. 65, 73 (2008). Title 3, Subtitle 2 of the of the Public Safety Article sets forth the powers and duties of the Commission, including its powers of certification, recertification, and the suspension and revocation of certification of police officers. Notably, the only provision that allows for a contested case hearing and judicial review of a certification

decision of the Commission, is § 3-212 of the Public Safety Article, which only addresses actions by the Commission to suspend or revoke a certificate that has already been issued. Moreover, there is no provision for judicial review of a decision to issue a certificate in any of the regulations that have been adopted by the Commission. Although Mr. Thomas contends that judicial review is authorized by COMAR 12.04.03.12, that regulation does not apply to Commission actions on an application for certification or recertification of a police officer. *See* COMAR 12.04.03.01(B).

But even if we were to assume that judicial review was available to Mr. Thomas, his petition for judicial review was still untimely filed. Pursuant to Maryland Rule 7-203(a) a petition for judicial review must be filed within 30 days after the order or action from which review is sought unless notice is required by law to be sent to or received by the petitioner. *See* Maryland Rule 7-203(a). There is no statute or regulation that required the Commission to send a copy of its final decision to Mr. Thomas.³ And Mr. Thomas was aware of the Commission's decision as he was present when the waiver request was orally denied. Nevertheless, he waited almost two years from that date to file his petition. Consequently, the petition was untimely filed, and the court did not err in dismissing the petition. *See Calao v. County Council of Prince George's County*, 346 Md. 342, 364

³ Mr. Thomas contends that notice was required to be sent to him pursuant to COMAR 12.04.03.10. However, as previously set forth, that regulation does not apply to actions by the Commission regarding an application for certification.

(1997) (noting that the deadline for filing a petition for judicial review set forth in Rule 7-203(a) has consistently been treated as “an absolute statute of limitations”).⁴

Finally, Mr. Thomas contends that the court erred in not granting his motion to continue the hearing on the motion to dismiss. However, even if the court had granted the continuance, it would still have been required to dismiss the case as a matter of law. Because appellant has not otherwise indicated how he was prejudiced by the court’s ruling, any error in not granting the continuance was harmless and does not require reversal. *See Shealer v. Straka*, 459 Md. 68, 102 (2018) (“The party complaining that an error has occurred has the burden of showing prejudicial error.”).

**JUDGMENT OF THE CIRCUIT
COURT FOR CARROLL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁴ Even if we construed Mr. Thomas’s petition for judicial review as a petition for writ of administrative mandamus, it was untimely as such petitions must be filed within thirty days, the time period set forth in Maryland Rule 7-203(a). *See* Maryland Rule 7-402(a).