

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 639

September Term, 2014

TERRY HILL

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 15, 2015

*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.

Terry Hill, the appellant, appeals from an order entered by the Circuit Court for Prince George’s County denying his request for a writ of mandamus and dismissing his petition for judicial review. Hill’s action pertained to a request for documents pursuant to the Maryland Public Information Act (“MPIA”), Md. Code (2014), section 4-101 *et seq.* of the General Provisions Article (“GP”). The State is the appellee. Hill presents three questions for our review, which we have condensed and rephrased as one: Did the circuit court err by denying Hill’s request for a writ of mandamus and dismissing his petition for judicial review? For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On April 15, 2013, Hill filed an MPIA request with the custodian of records for the Prince George’s County Police Department (“PGCPD”). He sought “copies of all records/files [PGCPD] ha[d] in [its] possession relating to [him] and [his] [criminal] case” and provided the internal police case number, “94-225-1157.”

On December 20, 2013, the PGCPD responded to Hill’s request, providing a copy of the case file. In a cover letter, Lieutenant Shawné Waddy, the custodian of records for PGCPD, advised Hill that he had redacted and removed certain documents from the case file pursuant to Md. Code (2001, 2008 Repl. Vol., 2014 Supp.), section 10-219(a) of the Criminal Procedure Article limiting the disclosure of criminal history reports and pursuant to GP sections 4-351(b)(3) and (5), permitting the denial of a request for records if disclosure of the records would “constitute an unwarranted invasion of personal privacy” or would “disclose an investigative technique or procedure.” That letter also advised Hill that he could

“seek judicial review of this decision” pursuant to Md. Code (1984, 2009 Repl. Vol., 2012 Supp.), section 10-623 of the State Government Article, which has since been recodified at GP section 4-362(a).

On March 24, 2014, Hill filed a “Request for Writ of Mandamus or, Alternatively, Petition for Judicial Review” (“the Petition”) in the Circuit Court for Prince George’s County. He addressed an attached cover letter to the “Civil Division” of the circuit court and referenced the MPIA request number that had appeared on the PGCPD response. On the Petition itself, he named Lt. Waddy as the respondent, listed his criminal case number as the case number, and listed the internal police file number as the “Civil No.” Because he listed his criminal case number, the circuit court docketed the Petition within Hill’s existing criminal case.

In his Petition, Hill alleged that he had filed his MPIA request for his criminal case file with the PGCPD and that Lt. Waddy sent him a “redacted and/or edited copy” of his case file in response to that request. He further alleged that those case file documents revealed that in August or September of 1994, Detective Edwin Robertson had interviewed a witness with information about the criminal charges against Hill, but that the notes from that interview were not provided to him. Hill stated that he was not requesting the name of the witness, but was only requesting that PGCPD provide him the “gist of that interview (redacted or otherwise)” because it was “clear that th[at] person was in possession of information at the time of [Hill’s] trial which was both relevant and material to the charges

that were brought against [Hill] by the State.” Hill asserted that Lt. Waddy’s “denial” of his request to inspect the redacted and/or removed records amounted to an “unconstitutional suppression of evidence that [was] material to guilt or innocence or punishment; and that is exculpatory in nature.” Hill did not attach to his Petition copies of the records the PGCPD deemed responsive to his request or otherwise explain why he believed this interview was contained within his case file.

On April 24, 2014, the PGCPD filed an opposition to the Petition. It asserted that it had complied with the MPIA by mailing Hill his redacted case file. It further asserted that it had reviewed the case file and found “no record of an interview of a witness conducted by Edwin Robertson.” It determined, however, that it had “inadvertently failed to copy the second side of three pages of notes, which [were] unrelated to an interview of a witness conducted by Edwin Robertson.” It stated that it had redacted those notes pursuant to GP section 4-351(b)(3), and that it would mail the redacted records to Hill. It attached the notes to its opposition. The notes are handwritten. The second page of notes has the name “Robertson” at the top, and is dated “8/13/94.” It lists several names, and recounts information apparently provided to the police by certain witnesses. The third page of notes also has the name “Robertson” at the top. It details two phone calls made to witnesses and the response (if any) received.

The PGCPD asked the court to deny Hill’s request for a writ of mandamus and dismiss his Petition because the PGCPD had complied with the MPIA and was not in

possession of the requested record. Alternatively, it asked the court to dismiss Hill’s Petition because it was “inappropriately filed in this criminal matter,” rather than as a separate civil action.

On May 9, 2014, the circuit court entered an order denying Hill’s request for a writ of mandamus and dismissing his Petition.

On May 12, 2014, the court received from Hill a request for an extension of time to file a rebuttal to the PGCPD’s opposition to his Petition. On May 15, 2014, Hill filed a rebuttal. In it, he asserted that the PGCPD had violated the MPIA by, *inter alia*, failing to originally send him the three pages of notes attached to its opposition and by failing to advise him that a “record did not exist” of the interview conducted by Edwin Robertson.

On May 22, 2014, Hill noted the instant appeal.

DISCUSSION

Hill contends the trial court erred by denying his request for a writ of mandamus and by dismissing his petition for judicial review because it denied him an opportunity to rebut the PGCPD’s opposition to his Petition and because the PGCPD “admitted” in its opposition that by failing to copy the second side of three pages of notes from Hill’s case file it had not “complied with the MPIA.” He argues that the PGCPD’s admission that it “inadvertently” failed to copy those pages gives him “cause for further review of his records/files” because those notes “contained exculpatory evidence” and “magnifies the need” for a writ of mandamus.

The State responds that Hill’s Petition properly was denied and dismissed because it was filed within his criminal case instead of as a separate civil action pursuant to GP section 4-362(a).

We disagree that the captioning of Hill’s Petition required its dismissal. As mentioned, Hill’s cover letter attached to his Petition made plain that he was seeking judicial review of the PGCPD’s response to his MPIA request. He named Lt. Waddy as the respondent. PGCPD received notice of the filing and timely opposed it. The Petition was not subject to dismissal because the clerk’s office docketed it within Hill’s existing criminal case. *See Blythe v. State*, 161 Md. App. 492, 505-06 (2005) (MPIA request filed within a criminal case not subject to dismissal because of mislabeling).

We perceive no error in the denial of the Petition, however. Hill’s Petition alleged that although the PGCPD provided him a copy of his case file, it improperly withheld from him an interview conducted by Edwin Robertson. The PGCPD responded that it had searched the entire case file and had not discovered any such interview. It acknowledged, however, that it had inadvertently failed to copy the reverse sides of three pages of notes in Hill’s case file. It provided copies of those pages to Hill directly and attached them to its opposition.¹ Hill did not challenge the redactions made to the records or otherwise assert that documents were missing from his case file. The PGCPD timely responded to Hill’s

¹While the PGCPD alleged that these notes were “unrelated” to the interview Hill sought, as noted, some of these notes did appear to be interview notes compiled by a police officer with the last name Robertson.

MPIA request, provided him the records he requested in redacted form consistent with the exceptions set forth in GP section 4-351, and supplemented its disclosures upon determining that it had inadvertently failed to supply Hill with three pages of notes. Under the circumstances, there was no further relief the court could have granted Hill and his Petition properly was dismissed.²

**ORDER AFFIRMED. COSTS TO BE
PAID BY THE APPELLANT.**

²Hill did not request a hearing on his Petition.