Circuit Court for Baltimore City
Case No. 197241002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 731

September Term, 2019

TARRONE BARFIELD

v.

STATE OF MARYLAND

Meredith,
Wells,
Eyler, Deborah S.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Meredith, J.

Filed: July 9, 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.

Tarrone Barfield, appellant, was convicted of conspiracy to commit murder in 1998. The Circuit Court for Baltimore City imposed a life sentence, and Barfield is incarcerated at North Branch Correctional Facility in Cumberland, Maryland. In 2018, acting *pro se*, Barfield filed a motion to correct an allegedly illegal sentence based upon his assertion—first raised two decades after his conviction—that he was never charged with conspiracy to commit murder. The Circuit Court for Baltimore City denied his motion on November 7, 2018.

Barfield contends that he did not receive any notice of the ruling denying his motion, and that he did not learn of the court's decision until more than thirty days had elapsed. On January 7, 2019, he filed a motion in the circuit court requesting permission to file a notice of appeal "out of time," which the court denied. The circuit court ordered him to show cause why the court should not strike his notice of appeal—ostensibly referring to his motion to file a notice of appeal out of time—as untimely. Barfield then filed a motion to revise the enrolled judgment that had been entered on November 7, 2018. On April 11, 2019, the circuit court entered an order denying "the relief requested," and striking Barfield's "belated notice of appeal." Barfield filed a timely appeal from the order entered April 11, 2019.

QUESTIONS PRESENTED

Appellant raises three questions in his brief:

1. Did the Circuit Court err in denying Appellant's (a) Motion for Permission to file Notice of Appeal Out of Time [and/or] (b) Motion to Revise Enrolled Judgment?

2. Did the Circuit Court err in denying Appellant's Motion to Correct an Illegal Sentence based on the fact that appellant was not legally indicted for the crime he stands convicted and [was] sentence[d] for?

3. Does this Court have jurisdiction to decide a case, where the lower court passes upon a case dealing with a matter of jurisdiction?

We conclude that the circuit court did not abuse its discretion in striking the belated requests to appeal from the order entered November 7, 2018. We do not reach the merits of the other questions raised by appellant, and we shall affirm the judgment of the Circuit Court for Baltimore City.

FACTS AND PROCEDURAL HISTORY

The record in this case reveals the following. Shortly after midnight on June 30, 1997, fifteen-year-old Terrvon "Draino" Davis was shot twice in the back and killed in the 4700 block of Alhambra Avenue in Baltimore City. Through their investigation, police developed appellant as a suspect. On July 3, 1997, Detective David Neverdon of the Baltimore Police Department swore out an application for statement of charges before a District Court Commissioner. Appellant was arrested and formally charged with first-degree murder and use of a handgun in the commission of a felony or crime of violence.

On August 29, 1997, a Baltimore City Grand Jury returned a three-count indictment charging appellant with murder, use of a handgun in commission of a felony or crime of violence, and wearing, carrying, or transporting a handgun.

By the time appellant went to trial on April 21, 1998, there were two indictments, Case No. 197241001 and Case No. Case No. 197241002. Although a copy of the indictment in Case No. 197241002 does not appear in the record for this appeal, the first

page of the certified docket entries from 1998 reflects that appellant's "Charge(s)" were "Murder" and "Conspiracy to Murder." Because we are not addressing the merits of Barfield's 2018 motion to correct an illegal sentence, we will not list the numerous references made during his trial to the "charge" of "conspiracy"; suffice it to say there were many. And the conviction on the charge of conspiracy to murder was affirmed on appeal.

The docket entries reveal the following post-sentencing activity by appellant. On February 23, 1999, appellant filed an application for a panel review of his sentence; on April 14, 1999, the review panel ordered that his sentence "remain unchanged." On August 23, 2000, appellant filed a petition for post-conviction relief, which was dismissed without prejudice on the State's motion on July 2, 2001. On July 12, 2001, appellant filed another petition for post-conviction relief, which was denied on October 29, 2002. On December 2, 2002, appellant filed a motion for reconsideration, which was denied; he then filed an application for leave to appeal the denial of the motion for reconsideration, which was denied on April 4, 2007. *Tarrone Barfield v. State of Maryland*, No. 2897, Sept. Term 2005. On October 23, 2018, a petition to reopen post-conviction proceedings was denied, and an application for leave to appeal that denial was filed on November 11, 2018.

On August 7, 2018, appellant, acting pro se, filed a motion to correct an illegal sentence pursuant to Maryland Rule 4-345(a), arguing that his sentence for conspiracy to murder was illegal because "[t]he trial court was without power or authority to sentence

Defendant to a charge he was not legally indicted for." Appellant did not make clear in the motion the basis of his contention that he was "not legally indicted for" conspiracy to commit murder.[1]

Docket entries reveal that the State opposed appellant's motion to correct an illegal sentence, and that the motion was denied on November 7, 2018. Appellant asserts he never received notice of the denial, and did not learn that his motion had been denied until a family member contacted the circuit court on December 17, 2018, to check whether there had been a ruling. Because the 30-day time limit for filing a notice of appeal pursuant to Maryland Rule 8-202(a) had already expired, and appellant believed the court had not provided him notice of its November 7 ruling on his motion to correct,

[1] In footnote 2 of its brief, the State asserts:

> It appears that the basis for Barfield's illegal sentence claim is a letter dated May 14, 2007, that he received from the Office [of the] State's Attorney for Baltimore City. In that letter, the Deputy State's Attorney, Haven Kodeck, advises Barfield that the State's Attorney's Office had been unable to locate its file on Case #197241002. The inability of the State's Attorney's Office to locate its file, however, does not render Barfield's sentence for conspiracy in that case illegal. The docket entries for Case No. 197241002 show that Barfield was charged with conspiracy. At trial, counsel discussed the conspiracy charge and in his Brief of Appell[ant] filed in this Court [on direct appeal], Barfield's appellate counsel noted that Barfield had been charged with conspiracy to commit murder.

Our review of the online docket entries available at Maryland Judiciary Case Search reveals that Baltimore City Circuit Court Case No. 197241002 was the conspiracy case, and Case No. 197241001 was the case in which the remaining charges on which the jury was deadlocked were entered nolle prosequi. http://casesearch.courts.state.md.us/casesearch/inquiryByCaseNum.jis (last visited March 11, 2020).

appellant filed a Motion for Permission to File Notice of Appeal Out of Time, requesting that the circuit court permit him to file a notice of appeal more than 30 days after the order of denial became final. That motion was docketed on January 7, 2019.

On January 24, 2019, the court docketed a Show Cause Order, ordering appellant to show cause in writing within 15 days why the notice of appeal should not be stricken because it had "not been filed within the time prescribed by Rules 8-202 or 8-204 [which is applicable to applications for leave to appeal]." On February 14, 2019, appellant filed a motion to revise the enrolled judgment that had been entered on November 7, 2018, and submitted supporting documentation on March 7, 2019.

On April 11, 2019, the Circuit Court for Baltimore City entered an order stating: "Upon consideration of Defendant's lack of cause shown [in response to] the show cause order issued January 24, 2019," the court was acting pursuant to Maryland Rule 8-203(b), and found that it "lacks jurisdiction to grant the relief requested." The order explained that, "because Defendant's notice of appeal was filed more than thirty (30) days after a final judgment was reached, in violation of Maryland Rule 8-202(a), . . . Defendant's belated notice of appeal is STRICKEN."

Barfield then filed his notice of this appeal from the circuit court's order of April 11, 2019.

STANDARD OF REVIEW

A circuit court's order striking a notice of appeal pursuant to Maryland Rule 8-203(b) is an appealable order. *See Sullivan v. Insurance Com'r*, 291 Md. 277, 284 (1981)

(applying the predecessor to Rule 8-203). The appellate court reviews the dismissal for compliance with the grounds set forth in Rule 8-203. *County Com'rs of Carroll County v. Carroll Craft Retail, Inc.*, 384 Md. 23, 42 (2004) ("Maryland Rule 8–203 permits a Circuit Court to strike a notice of appeal to the Court of Special Appeals, but only for certain enumerated reasons . . . ."). *Cf. National Wildlife Federation v. Foster*, 83 Md. App. 484, 494-95 (1990) (reversing circuit court's striking of notice of appeal pursuant to Rule 8-203(a) where the notice of appeal was filed within 30 days after entry of an appealable final order).

Rule 8-203 provides, as pertinent to this case:

> (a) On motion or on its own initiative, the lower court may strike a notice of appeal or application for leave to appeal (1) that has not been filed within the time prescribed by Rules 8-202 or 8-204; . . . .[2]
>
> (b) Before the lower court strikes a notice of appeal or application for leave to appeal on its own initiative, the clerk of that court shall serve on all parties pursuant to Rule 1-321 a notice that an order striking the notice of appeal or application for leave to appeal will be entered unless a response is filed within 15 days after service showing good cause why the notice or application should not be stricken.

Because the rule provides that the circuit court "may strike" a notice of appeal for specified reasons, one of which is the failure to file a timely notice as in this case, we will review the court's ruling for abuse of discretion. *See Wilson-X v. Department of Human*

[2] Rules 8-202 and 8-204 require a notice of appeal (or application for leave to appeal when that is required to initiate an appeal to this Court) to be filed "within 30 days after entry of the judgment or order from which the appeal is being taken."

Resources, 403 Md. 667, 674-75 (2008) ("Appellant recognizes that the only timely appeal was from the denial of his motion for reconsideration, that the ruling on a motion for reconsideration is ordinarily discretionary, and that the standard of review in such a circumstance is whether the court abused its discretion in denying the motion."). In *Wilson-X*, *id*. at 677, the Court of Appeals described the "abuse of discretion" standard as follows:

> We have defined "abuse of discretion" in a variety of ways, all of them setting a very high threshold. In *Schade v. Board of Elections*, 401 Md. 1, 34, 930 A.2d 304, 323–24 (2007), quoting from several earlier cases, we defined abuse as occurring when the discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons," or when "no reasonable person would take the view adopted by the [trial] court." In *Touzeau v. Deffinbaugh*, 394 Md. 654, 669, 907 A.2d 807, 816 (2006), quoting *Jenkins v. State*, 375 Md. 284, 295–96, 825 A.2d 1008, 1015 (2003), we said that abuse occurs when the judge "exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." Citing *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312, 701 A.2d 110, 118–19 (1997), we added in *Touzeau* that abuse may be found "when the court acts 'without reference to any guiding rules or principles'" or where the ruling under consideration is "'clearly against the logic and effect of facts and inferences before the court,' or when the ruling is 'violative of fact and logic.'" *Touzeau*, 394 Md. at 669, 907 A.2d at 816.

DISCUSSION

It is clear that the first document appellant filed after the court denied his motion to correct on November 7, 2018, was his motion that the court received on January 7, 2019, requesting permission to file his notice of appeal "out of time." In other words, it is undisputed that no timely notice of appeal was filed in this case. Moreover, Barfield's motion to file an untimely notice of appeal was not supported by any affidavit or other

documentary support, and was received by the circuit court well beyond the 30-day deadline set forth in Rule 8-202(a).

Thereafter, in response to the court's order that he show cause why his requested appeal should not be stricken, Barfield submitted: (1) a letter from an attorney who had represented him regarding his petition to reopen post-conviction proceedings (but who did not file the motion to correct an illegal sentence); and (2) certain pages of the mail logs from North Branch Correctional Institution for December 2018 and January 2019. The post-conviction attorney's letter, dated January 18, 2019, informed appellant: "I have not received anything from the court or you concerning a Motion to Correct Illegal Sentence that you filed *pro se*." Appellant asserted that the attorney's letter and the prison mail logs from December and January were proof that he had never received notice that his motion was denied on November 7, 2018. The relative who allegedly was told by the court clerk that the denial order had been sent to the attorney was never identified.

At the time the circuit court concluded that appellant had not shown good cause for proceeding with an appeal in which the notice of appeal would have been filed well beyond the 30-day deadline, the prevailing view was that the filing deadline was jurisdictional. *See Rosales v. State*, 463 Md. 552, 557 (2019) ("in the past this Court has considered the thirty-day time limitation for noticing an appeal within Maryland Rule 8-202 as 'jurisdictional'"). Because that was the prevailing view of the 30-day time limit at time the circuit court signed its order on April 11, 2019, we see no abuse of discretion in

the court's assessment of the documentation that Barfield had submitted as lacking "good cause" for an untimely appeal to proceed.

We acknowledge that, in *Rosales*, filed just a few days after the circuit court entered its order in this case, the Court of Appeals recognized that, because the time limit for filing a notice of appeal is no longer imposed by any *statute*, the time limit is not in fact a *jurisdictional* requirement imposed by the General Assembly. 463 Md. at 563-64, 568. The Court explained:

> We now recognize that Maryland Rule 8-202(a) is a claim-processing rule, and not a jurisdictional limitation on this Court. **Despite this recognition, Maryland Rule 8-202(a) remains a binding rule on appellants**, and this Court will continue to enforce the Rule. **We are not concluding that it is inappropriate for a court to dismiss an untimely appeal.** Rather, we are stating that the appropriate grounds for dismissal of an untimely appeal is to dismiss for a failure to comply with the Maryland Rules, instead of for lack of jurisdiction. Further, as the Rule is not jurisdictional, a reviewing court must examine whether waiver or forfeiture applies to a belated challenge to an untimely appeal.

Id. at 568 (emphasis added).

Indeed, Maryland Rule 8-602(b)(2)—as revised April 9, 2018—*still* provides: "(b) **When Mandatory**. The Court shall dismiss an appeal if: . . . (2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202." Even though this time limit is no longer jurisdictional, it is still the time limit that will normally apply.

Consequently, it was not an abuse of discretion for the circuit court to conclude, pursuant to Rule 8-203(a)(1), that it was appropriate to strike appellant's untimely request to file a notice of appeal from the order the court had entered on November 7, 2018.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.