

Circuit Court for Baltimore City
Case No. 24-H-22-000100

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1074

September Term, 2022

ERNEST TYNDALE

v.

WARDEN, JCI

Kehoe,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 6, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

Appellant Ernest Tyndale, who is incarcerated in the Jessup Correctional Institution (hereinafter “JCI”) in Anne Arundel County, contends that the Circuit Court for Baltimore City erred in denying his petition for writ of habeas corpus. The Warden of JCI, appellee, moves to dismiss the appeal. For the reasons that follow, we shall deny appellee’s motion, but affirm the judgment of the circuit court.

We quote from the circuit court’s recitation of the pertinent facts:

On September 19, 1995, a jury in the Circuit Court for Baltimore City found [Mr. Tyndale] guilty of first-degree murder. On November 1, 1995, [Mr. Tyndale] appealed his conviction which the Court of Special Appeals affirmed on March 27, 1997. On November 17, 1999, [Mr. Tyndale] filed an initial petition for post-conviction relief and then a supplemental petition on March 5, 2001. However, on July 30, 2001, both petitions were subsequently withdrawn without prejudice. [Mr. Tyndale] refiled his petition for post-conviction relief on October 9, 2001. On March 7, 2005, a judge of the Circuit Court for Baltimore City (“the Postconviction Court”) granted [Mr. Tyndale’s] petition for post-conviction relief and ordered the State to either consent to a new trial or consent to re-sentencing on a second-degree murder charge.

On March 21, 2005, [Mr. Tyndale] filed a motion to alter or amend judgment. On April 6, 2005, the State appealed the Postconviction Court’s decision to grant post-conviction relief. On January 22, 2007, the Court of Special Appeals vacated the post-conviction relief and remanded the case to the circuit court. A Petition for Writ of Certiorari was denied on July 13, 2007. On January 20, 2011, [Mr. Tyndale’s] petition for post-conviction relief was heard. The petition was subsequently denied on November 15, 2014. On December 18, 2014, the Court of Special Appeals denied [Mr. Tyndale’s] appeal of his petition for post-conviction relief. On July 13, 2018, the circuit court considered [Mr. Tyndale’s] motion to reopen his post-conviction proceedings and subsequently denied that motion. On May 27, 2020, [Mr. Tyndale] filed a motion for modification of his sentence, but that was subsequently denied on June 23, 2020.

On February 8, 2022, Mr. Tyndale filed in the Court of Appeals a petition for writ of habeas corpus, which the Court subsequently referred to the Circuit Court for Baltimore

City. In the petition, Mr. Tyndale contended that the March 21, 2005 motion to alter or amend judgment, “which remained open and pending, had the legal effect of removing the finality of the circuit court’s judgment and rendered void any jurisdiction of the Court of Special Appeals and nullified any subsequent court decision based on it.” (Emphasis omitted.) Mr. Tyndale cited *Green v. Hutchinson*, 158 Md. App. 168 (2004), in which this Court stated that a timely filed motion to alter or amend the dismissal of a petition for writ of habeas corpus “was a proper ten-day motion under Md. Rule 2-534” and “caused the . . . judgment [of dismissal] to lose its finality.” *Id.* at 171.

On February 11, 2022, the court issued a “Show Cause Order,” in which it ordered that a copy of the order be served upon appellee, and that within thirty days of the date of service, appellee “show cause . . . why the Application for Issuance of a Writ of Habeas Corpus should not be granted.” On April 12, 2022, the State’s Attorney for Baltimore City filed a response in opposition to the petition. On May 31, 2022, the court issued a memorandum and order in which it denied the petition, stating in pertinent part:

[T]his [c]ourt will not rule on the merits of [the] Writ of Habeas Corpus because it is not an appropriate method for challenging the appellate court’s decision on January 22, 2007. It is not the function of a court, in a habeas corpus proceeding, to review alleged errors and irregularities, which should have been reviewed on appeal, and do not go to the jurisdiction of the trial court to try and pass judgment on the accused. In the present case, it is not alleged that the trial court lacked jurisdiction. Rather, [Mr. Tyndale] alleges that the appellate court lacked jurisdiction to rule on the merits of the State’s appeal filed on April 6, 2005.

While it is true that a Writ of Habeas Corpus is appropriate for jurisdictional irregularities, only irregularities related to the trial court’s jurisdiction are appropriate for a Writ of Habeas Corpus. It is not appropriate when a remedy of appeal is or was available to a confined individual. In the present case, remedy by appeal was available and the appropriate remedy.

When the Court of Appeals on July 13, 2007 denied [Mr. Tyndale’s] Petition for Writ of Certiorari, the issue of appellate jurisdiction was final. This [c]ourt would be interfering with the appellate process if it were to review the Court of Special Appeals[’s] jurisdiction. And again, a Writ of Habeas Corpus is only for irregularities of a trial court’s jurisdiction.

(Internal citations, quotations, and brackets omitted.)

Mr. Tyndale contends that, for four reasons, the court erred in denying the petition. Appellee moves to dismiss the appeal on the ground that Mr. Tyndale’s “claims of error are procedural challenges to components of the lower court’s decision-making process,” and hence, are “not permissible grounds for an appeal of the denial of a habeas petition.” We disagree with appellee. Md. Code (2001, 2018 Repl. Vol., 2021 Supp.), § 7-107(b)(2) of the Criminal Procedure Article, “does not bar an appeal to” this Court of a “proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime.” In his petition for writ of habeas corpus, Mr. Tyndale challenged not the legality of his conviction or sentence of imprisonment for that conviction, but whether this Court had “jurisdiction” to review the post-conviction court’s order of March 7, 2005, while Mr. Tyndale’s motion to alter or amend was pending. Hence, we deny the motion to dismiss.

Nevertheless, we shall affirm the judgment of the circuit court. Mr. Tyndale first contends that appellee, in failing to file a response to the petition by March 26, 2022, “failed to comply [with] Rule 15-303,” and hence, “was in contempt of court and . . . defaulted.” We disagree. It is true that Rule 15-303(d)(1)(B) requires that a show cause order “state a date by which the person having custody may file a response” to a petition for writ of a habeas corpus. But, the Rule does not hold a person who fails to file such a response to be

in contempt of court or default, nor does it require the court to grant a petition in the absence of such a response. On the contrary, Rule 15-303(e)(3)(A) explicitly authorizes a judge to deny a writ of habeas corpus if “the judge finds from the petition” or “any . . . public record that the individual confined or restrained is not entitled to any relief.” Hence, the court was not required to grant the petition due to appellee’s failure to file a timely response.

Mr. Tyndale next contends that Rule 15-308 allowed only the Attorney General to file a response to the petition, and hence, the court erred in accepting a response from the State’s Attorney for Baltimore City. We disagree. Rule 15-308 governs the circumstances under which the State’s Attorney and Attorney General are notified “of the time and place of [a] hearing” on a writ of habeas corpus “[i]f a judge grants a writ.” (Emphasis added.) Here, the court did not grant such a writ, and there is no authority that prohibited the State’s Attorney from filing a response to Mr. Tyndale’s petition. Hence, the court did not err in accepting the response.

Mr. Tyndale next contends that the court erred in failing “to decide the merits of the” petition, because Md. Code (1974, 2020 Repl. Vol., 2021 Supp.), § 3-701(a) of the Courts & Judicial Proceedings Article (“CJP”), states that a “judge of the circuit court for a county . . . has the power to grant the writ of habeas corpus and exercise jurisdiction in all matters pertaining to habeas corpus.” But, even if the circuit court had addressed the merits of the petition, Mr. Tyndale would not have prevailed. Although a motion to alter or amend the resolution of a petition for writ of habeas corpus, like that filed in *Green*, is governed by Title 2 of the Rules, Mr. Tyndale’s motion to alter or amend was of a petition for post-conviction relief, which is governed by Title 4 of the Rules. See Rule 1-101(d).

Mr. Tyndale does not cite any authority in Title 4 or elsewhere that required this Court to wait for the post-conviction court to resolve his motion before addressing the State’s appeal of the post-conviction court’s judgment, and hence, the subsequent judgments of the post-conviction court, this Court, and the Court of Appeals are not void.

Finally, Mr. Tyndale contends that the court violated Rule 15-306 and CJP § 3-704 by failing to hold a hearing on the petition. We disagree. Rule 15-306 and CJP § 3-704 govern the production of an individual before a judge, and the judge’s review of the individual’s confinement or detention, *after* a writ of habeas corpus is issued. Rule 15-303(e), which governs a court’s action on a petition for writ of habeas corpus, does not require a court to hold a hearing on a petition before denying it, and hence, the court did not err in so denying Mr. Tyndale’s petition.¹

APPELLEE’S MOTION TO DISMISS DENIED. APPELLEE’S MOTION TO EXTEND TIME TO FILE BRIEF AND APPELLANT’S MOTION FOR DEFAULT DEEMED MOOT. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

¹There are two additional motions outstanding in this matter, specifically appellee’s motion to extend time to file his brief, and Mr. Tyndale’s “Motion for Default,” in which he asks that we “bar [appellee] from any argument due to” his failure to comply with Rule 8-502(a)(2) (“[w]ithin 30 days after the filing of the appellant’s brief, the appellee shall file a brief”). In light of our analysis of Mr. Tyndale’s contentions, we deem the motions moot.