Circuit Court for Baltimore City
Case No. 299193050-52

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1402

September Term, 2016

RAHEEM RAHMAN

v.

STATE OF MARYLAND

Kehoe,
Berger,
Reed

JJ.

Opinion by Reed, J.

Filed: August 6, 2018

In this appeal, a Baltimore City Circuit Court denied the Appellant's, Raheem Rahman, writ of error *coram nobis*. The circuit court denied this writ on the ground of laches. Accordingly, Appellant presents two questions for our review, which we have reworded and rephrased for clarity as follows:

> I. Did the circuit court err where it found Appellant's guilty plea complied with the requirements of Md. Rule 4-243(d)?
>
> II. Did the circuit court err where it found Petitioners' writ of error *coram nobis* was barred by laches?

We will only address whether this Court can hear this case. The State, along with its brief, filed a motion to dismiss arguing that Appellant failed to file a notice of appeal within thirty days of the final judgement. We conclude, for the reasons that follow, that we lack the authority to grant Appellant's requested relief. Accordingly, we grant the State's Motion to Dismiss.

PROCEDURAL AND FACTUAL BACKGROUND

On July 12, 1999, Raheem Abdul Rahman ("Appellant") was charged in the Circuit Court for Baltimore City for, *inter alia*, attempted second-degree murder and robbery with a deadly weapon. The charges derived from Appellant's involvement in a robbery of a U-Haul store in Baltimore City.

On April 17, 1999, a masked individual, armed with a sawed-off shotgun, robbed a U-Haul Store located at 4111 West Northern Parkway of $591.00 ("U-Haul Case"). After the conclusion of the robbery, the individual fled in a vehicle. The manager of the location followed closely behind. During the vehicle chase, the individual fired two shots out of the window of the vehicle, missing the manager. An investigation ensued and fingerprints

taken from the vehicle – which was found abandoned, as well as identification found in the vicinity of the vehicle, directed officers to Appellant. Appellant was arrested and charged.

Appellant, unsatisfied with his court appointed counsel, discharged his assigned public defender[1] and proceeded to trial *pro se*. On the fifth day of trial, the circuit court ruled that there existed a necessity to declare a mistrial. Following the mistrial, the State intended to retry Appellant. However, Appellant filed a motion to dismiss on the grounds of double jeopardy. Following a hearing on February 23, 2000, Appellant's motion was denied.

On November 9, 2000, Appellant entered an *Alford* plea to, (1) attempted second-degree murder; (2) robbery with a deadly weapon; and (3) possession of a deadly weapon. In exchange for his plea, Appellant was sentenced to a concurrent suspended sentence of twenty-years for attempted murder, three-years for dangerous weapon, and twenty-years for armed robbery. Appellant was to serve four years on probation.

Appellant was unable to abide by the conditions of his probation and on December 1, 2000, was arrested for robbery with a dangerous weapon in Baltimore County. Six months later, Appellant was arrested for Possession of a firearm on June 11, 2011. After Appellant was arrested for violating his probation, he was sentenced in the Circuit Court

[1] In a footnote, Appellant states that he was represented by Cristina Gutierrez. At that time, it was during the initial stages of her health problems with multiple sclerosis. This was done so, perhaps, in an effort to use the publicity garnered against Ms. Gutierrez to aid in his case. The record states that Gutierrez provided Appellant with legal advice, but was not his attorney and had never entered an appearance on his behalf. Moreover, the court described Ms. Gutierrez as a "stranger" to this case.

for Baltimore City to eleven years. Additionally, Appellant was found guilty of Robbery with a Dangerous and Deadly Weapon on November 20, 2001 in the Circuit Court for Baltimore County ("Baltimore County Case"). In total, Appellant was sentenced to twenty-five years' imprisonment without the possibility of parole for Robbery with a Dangerous and Deadly Weapon on December 5, 2001. This sentence, along with the violation of probation sentence, was to run consecutive to any unserved sentences from the U-Haul Case.

On April 10, 2006, Appellant filed a post-conviction petition in the U-Haul case, which was denied on June 15, 2006. On November 5, 2010, Appellant filed a second post-conviction petition for the Baltimore County Case, which was also denied. Additionally, Appellant applied for leave to appeal on April 10, 2012, this Court denied that application on March 29, 2013.

Following numerous other petitions and denials,[2] on February 24, 2015, Appellant filed a *pro se* writ of error *coram nobis* claiming that he was not advised, on the record, of his charges and the elements to those offenses. Appellant's writ was denied on June 10, 2016, because it was barred by laches, and even if it were not barred by laches, his claim was without merit. It is from this decision that Appellant files this untimely appeal.

DISCUSSION

[2] Appellant filed a *pro se* Motion to Correct Illegal Sentence on February 25, 2014, which was denied on November 5, 2014. Appellant also filed a Petition for Writ of Actual Innocence on March 13, 2014, that motion was denied on March 27, 2015.

A. Parties Contentions

Accompanied by its brief, the State has filed a motion to dismiss the appeal, arguing that the appeal was filed beyond the thirty day period. It argues that the denial of the writ of error *coram nobis* was entered on June 10, 2016, thereby giving Appellant until July 11, 2016 to file an appeal.[3] The envelope encasing the *pro se* notice of appeal is postmarked August 8, 2016 but was received by the circuit court on, or about, August 15, 2016. On September 18, 2016, the Circuit Court of Baltimore City issued a show cause order stating, the Appellant's notice of appeal "[had] not been filed within the time prescribed by [Maryland] Rules 8-202 or 8-204." Appellant filed a response, arguing that the notice was filed timely and that he did not receive the final order until June 14, 2016. Accordingly, the circuit court granted Appellant's belated application for leave to appeal.

In his reply brief, Appellant argues:

> [Appellant is] kept in a maximum-security prison that during most of 2016 and 2017 has been on and off lockdown status due to inmate stabbings and at one point the death of a guard. Mail delivery both to and from the prison has been delayed and in some cases interrupted…Mail from a prisoner at North Branch Correctional Institute is initially sent to the nearby Western Correctional Institution, where it is reviewed by security staff, and then forwarded to Baltimore where it is handed over to the U.S. Mail. When the prison staff is diverted to other tasks, the mail is delayed and the delivery time suffers.

He further argues that because the circuit court preserved Appellant's right to seek review in this Court, the State's motion should be denied. We disagree.

B. Analysis

[3] July 10, 2016, falls on a Sunday.

Maryland Rule 8-202 (a) governs the timeliness of a notice to appeal. It states:

> Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed *within 30 days after entry of the judgment* or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

(emphasis added). This Court has interpreted that to mean:

> Generally, a notice of appeal must be filed *within thirty days of the entry of final judgmen*t. Md. Rule 8-202(a). Any party, however, has the option of filing a motion to alter or amend a judgment within ten days after entry of final judgment. Md. Rule 2-534. If a party files a timely post-judgment motion, a notice of appeal must be filed within thirty days "after entry of (1) a notice of withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534." Md. Rule 8-202(c).

(emphasis added). *Owings v. Foote*, 150 Md. App. 1, 8 (2002). Therefore, regardless of when Appellant received the final judgment, his notice of appeal was still late.

In criminal cases, an Appellant has the opportunity to have a belated appeal. This is an exception granted in cases where there is a post-conviction that falls under the Post-Conviction Procedure Act. *See Garrison v. State*, 350 Md. 128, 139 (1998) ("The allowance of belated appeals generally is disfavored. There exists no rule, however, preventing courts from providing belated appeals as a remedy under the Post-Conviction Procedure Act."). These appeals are granted when "a timely direct appeal was attempted, but thwarted by the action of state officials." *Id.* (citing *Bernard v. Warden,* 187 Md. 273, 282 (1946)).

In the case *sub judice*, a belated appeal would be improper as this is not a post-conviction appeal, but an appeal of a writ of error *coram nobis*. Assuming *arguendo* that

this was a post-conviction appeal, it still would not apply because the record does not indicate that his attempt to file a notice of appeal was deliberately thwarted by the actions of state officials. Thus, we hold that Appellant's case is not exceptional such that we should grant him a belated appeal.

Although Appellant does not argue for this Court to apply the prison mailbox rule in his brief, reply brief, or show cause letter, it is essentially his argument for his untimely delivery of appeal, *supra* pg. 4. The prison mailbox rule, which Maryland has recently adopted in *Hackney v. State,* 459 Md. 108 (2018), allows a *pro se* Appellant's notice of appeal to be deemed timely – and thus "filed," when it is delivered to the proper prison authorities to be forwarded to the clerk of the court. *See Houston v. Lack*, 487 U.S. 266 (1988). In *Hackney*, the Court of Appeals adopted the prison mailbox rule "for unrepresented prisoners attempting to file *post-conviction petitions.* From now on, an unrepresented prisoner is deemed to have filed his or her post-conviction petition at the moment the prisoner formally delivers it to the prison authorities for forward to the circuit court." (emphasis added) *Hackney*, 459 Md. 108, 127 (2010).

In light of Appellant's argument that because of prison fights and constant lockdowns mail does not get delivered in and out of the jail, and the Court of Appeals' recent decision in *Hackney*, we are not unsympathetic to Appellant's claim.[4] But, we

[4]"The Supreme Court recognized at the outset of the case that the 'situation of prisoners seeking to appeal without the aid of counsel is unique.'" *Hackney* at 120. The Court of Appeals noted, while reviewing Supreme Court precedent, that "the lack of control of pro se prisoners over delays extends much further than that of the typical civil litigant." Such a difference, it noted, "warranted a departure from the general rule in civil appeals that receipt constitutes filing." *Id*. at 123.

conclude that we still lack the authority to grant his requested relief. The Court of Appeals was explicit in its ruling that the prison mailbox rule does not apply to prisoners who are not attempting to file post-conviction petitions. Accordingly, we grant the state's motion to dismiss.

MOTION TO DISMISS APPEAL GRANTED. APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.