

Circuit Court for Baltimore County
Case No. C-03-CR-20-003432

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1443

September Term, 2021

GARY THOMAS LEE, JR.

v.

STATE OF MARYLAND

Graeff,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 1, 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.

On November 1, 2021, Gary Thomas Lee, Jr., appellant, filed in the Circuit Court for Baltimore County a *pro se* motion seeking grand jury testimony, which the court summarily denied on November 4, 2021.¹ Appellant, again acting *pro se*, noted an appeal from that denial. For the reasons explained below, we dismiss this appeal because the circuit court’s denial of appellant’s motion did not constitute a final judgment or an otherwise appealable order.

The appellate record indicates that, on December 7, 2020, a grand jury returned a 19-count indictment against appellant charging him with various sexual offenses. The matter is currently scheduled for trial to begin on November 28, 2022.

Appellant’s motion seeking grand jury testimony, filed in his circuit court criminal case number C-03-CR-20-003432, stated in its entirety, verbatim, the following on its merits: “I request that the courts grant me this motion for grand jury testimony in accordance with my 6th Amendment right to notice of accusation. In the above listed matter.”

Section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code provides generally that “a party may appeal from a final judgment entered in a civil or criminal case by a circuit court.” Md. Code Ann., Cts. & Jud. Proc., § 12-301. A final judgment in a criminal case occurs “after conviction and sentence has been determined[.]” *Harris v. State*, 420 Md. 300, 312 (2011) (citation omitted). The Court of Appeals has

¹ It appears from the record that, at all relevant times, including when appellant filed his *pro se* motion, he was represented by counsel.

made clear that

the right to seek appellate review of a trial court’s ruling ordinarily must await the entry of a final judgment that disposes of all claims against all parties, and that there are only three exceptions to that final judgment requirement: appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602²; and appeals from interlocutory rulings allowed under the common law collateral order doctrine.

St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A., 392 Md. 75, 84 (2006)

(quotation marks and citation omitted).

Because appellant’s appeal is not allowed by any statute or rule, it could only be permitted under the collateral order doctrine. Discovery orders, such as the order denying appellant’s motion for grand jury testimony, “being interlocutory in nature, are not ordinarily appealable prior to a final judgment terminating the case in the trial court.”

Harris, 420 Md. at 314 (quotation marks and citation omitted).

Accordingly, because this appeal has not been taken from any appealable judgment or order, the appeal is not properly before this Court and must be dismissed.³

² Maryland Rule 2-602 deals with certain civil judgments not disposing of an entire action.

³ We note that, because appellant appears to be represented by counsel, the circuit court acted well within its discretion in denying appellant’s *pro se* motion as “the right to counsel and the right to defend *pro se* cannot be asserted simultaneously.” *Parren v. State*, 309 Md. 260, 264 (1987).

Moreover, the Court of Appeals has made clear that, while Maryland Rule 4-642(d) permits the disclosure of grand jury records upon a court order, to obtain such an order, the moving party must present “a strong showing of a particularized need before disclosure is permitted.” *Causion v. State*, 209 Md. App. 391, 403 (2013) (quotation marks and citation omitted). Appellant’s motion asserted no need, much less a particularized one, for the grand jury transcripts.

(continued)

**APPEAL DISMISSED. COSTS TO BE
PAID BY APPELLANT.**

As such, even if we had not dismissed this appeal we would have found that the circuit court did not err or abuse its discretion in denying appellant's motion.