Circuit Court for Howard County
Case No. 13-K-13-053426

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1482

September Term, 2023

DONALD EUGENE BELL

v.

STATE OF MARYLAND

Zic,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 29, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Donald Eugene Bell, appellant, appeals from the denial, by the Circuit Court for Howard County, of a petition for writ of habeas corpus. For the reasons that follow, we shall affirm the judgment of the circuit court.

On June 19, 2013, Mr. Bell was charged by indictment with two counts of first degree burglary and related offenses. The first count of first degree burglary charged Mr. Bell with committing, "on or about April 3, 2013," a first degree burglary of "the dwelling of Darren Ferber, located at 7003 Copperwood Way, Columbia." The second count of first degree burglary charged Mr. Bell with committing, "on or about May 7, 2013," a first degree burglary of "the dwelling of Michael Irwin, located at 9343 Kendal Circle, Laurel." Mr. Bell subsequently moved to sever the counts, and the court granted the motion.

On December 4, 2013, Mr. Bell was convicted by the court of first degree burglary of Mr. Ferber's dwelling, third degree burglary, and theft of property of a value of less than $1,000. The court sentenced Mr. Bell to a term of imprisonment of fifteen years for the first degree burglary, a concurrent term of imprisonment of ten years for the third degree burglary, and a concurrent term of imprisonment of eighteen months for the theft. Mr. Bell subsequently appealed from the judgments. On May 21, 2014, Mr. Bell pleaded guilty to first degree burglary of Mr. Irwin's dwelling. The court sentenced Mr. Bell to a term of imprisonment of fifteen years, to be served consecutive to his previous sentences. On April 9, 2015, this Court vacated the sentence for third degree burglary of Mr. Ferber's dwelling and remanded "for a limited re-sentencing hearing only on [the] theft conviction." *Bell v. State*, No. 133, Sept. Term 2014 (filed April 9, 2015), slip op. at 1.

On May 31, 2019, Mr. Bell moved for evaluation and treatment pursuant to Md. Code (1982, 2015 Repl. Vol., 2018 Supp.), §§ 8-505 and 8-507 of the Health-General Article ("HG"). The court summarily denied the motion. On September 1, 2022, Mr. Bell again moved for evaluation and treatment. Mr. Bell also filed a motion to correct illegal sentence, in which he contended that the two counts of first degree burglary "were based on the same conduct," and hence, the conviction of first degree burglary of Mr. Irwin's dwelling "was barred by the constitutional prohibition against double jeopardy." On September 21, 2022, the court summarily denied both motions. Mr. Bell subsequently appealed from the denial of the motion to correct illegal sentence.

On January 17, 2023, the court held the re-sentencing hearing ordered by this Court in our April 2015 opinion. Following the hearing, the court ordered that the third degree burglary and theft convictions be merged into the conviction of first degree burglary of Mr. Ferber's dwelling. On April 4, 2023, this Court affirmed the denial of the motion to correct illegal sentence, concluding that "there was no double jeopardy violation because the crimes were based on distinct incidents." *Bell v. State*, No. 1401, Sept. Term 2022 (filed April 4, 2023), slip op. at 3.

On July 10, 2023, Mr. Bell filed in the Supreme Court of Maryland the petition for writ of habeas corpus, in which he again contended that his conviction of first degree burglary of Mr. Irwin's dwelling is barred by the constitutional prohibition against double jeopardy. Mr. Bell also contended that the circuit court erred in failing to award him "Good Conduct Credit" of "3 years, 3 months, 1 week, [and] 5 days" that he allegedly would have earned while serving the sentence for third degree burglary. Finally, Mr. Bell contended

that the circuit court erred in failing to order evaluation and treatment pursuant to HG §§ 8-505 and 507. The Court transferred the petition to the circuit court, which subsequently denied the petition.

Mr. Bell contends that, for three reasons, the court erred in denying the petition. Mr. Bell first repeats his contention that the conviction of first degree burglary of Mr. Irwin's dwelling is "barred by the constitutional prohibition against double jeopardy because the first and fourth counts of the . . . indictment . . . were based on the same conduct." But, as described above, this Court has previously concluded that the counts of first degree burglary were based on distinct incidents, and hence, there is no double jeopardy violation. Also, Md. Code (2001, 2018 Repl. Vol., 2023 Supp.), § 7-107(b)(1) of the Criminal Procedure Article ("CP"), states that "[i]n a case in which a person challenges the validity of confinement under a sentence of imprisonment by seeking the writ of habeas corpus . . . , a person may not appeal to the Supreme Court of Maryland or" this Court. Mr. Bell explicitly challenges the validity of his confinement under the sentence of imprisonment for first degree burglary of Mr. Irwin's dwelling by seeking a writ of habeas corpus, and hence, CP § 7-107(b)(1) prohibits Mr. Bell from appealing from the denial of the application on this ground.

Mr. Bell next contends that he "has a right to all of the Good Conduct Credits" that he allegedly would have been awarded while he served the sentence for third degree burglary, which was subsequently vacated by this Court. But, diminution credits for good conduct are calculated and awarded not by a sentencing court, but by the Division of Correction. *See* Md. Code (1999, 2017 Repl. Vol., 2023 Supp.), § 3-704 of the Correctional

Services Article. Also, the sentencing court ordered that the sentence for third degree burglary run concurrent with the sentence for first degree burglary of Mr. Ferber's dwelling, and Mr. Bell does not contend that he has been deprived of diminution credits for good conduct earned toward that sentence. Hence, the court did not err in rejecting this contention.

Finally, Mr. Bell contends that "the *Ex Post Facto* Clause requires that [he] be issued commitment to [HG §§] 8-505 and . . . 8-507 pursuant to the more lenient laws of . . . December 4, 2013, and . . . May 21, 2014, that were in effect . . . when the crimes were committed, . . . not the 2018 version and not until he attains parole eligibility."[1] But, the court did not deny Mr. Bell's motions for evaluation and treatment on the ground that the statutes prohibited the court from ordering evaluation and treatment, and Mr. Bell does not cite any authority that would have required the court to order evaluation and treatment prior to the amendment of the statutes. Also, Mr. Bell does not cite any authority that empowers him to challenge the denial of a motion for evaluation and treatment via a petition for writ of habeas corpus. Hence, the court did not err in denying the petition.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[1]"Effective October 1, 2018, . . . the General Assembly amended [HG § 8-507] to preclude a court from ordering a commitment for substance abuse treatment for a defendant convicted of a crime of violence until the defendant is eligible for parole." *Hill v. State*, 247 Md. App. 377, 379 (2020) (citation and quotations omitted).