Circuit Court for Baltimore City
Case Nos.: 18805302-03; 18805305-09

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1500

September Term, 2020

TERRY DORSEY

v.

STATE OF MARYLAND

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 20, 2021

In 1988, appellant Terry Dorsey was convicted in the Circuit Court for Baltimore City of first-degree sex offense and sentenced to life imprisonment. In 1989, he pleaded guilty to first-degree rape and burglary and was sentenced to life, plus 15 years.[1] In 2020, the self-represented Mr. Dorsey filed a motion for substance abuse evaluation and commitment to a treatment facility pursuant to Health-General §§ 8-505 and 8-507. Pursuant to an order dated October 7, 2020, the circuit court, "[u]pon its consideration" of the motion and "no opposition from the State," denied the request. On appeal, Mr. Dorsey asserts that the court erred in denying his motion without stating any reasons for its decision.

We note, first, that Health-General § § 8-505(a)(1)(i) and 8-507(a)(1) provide that a court, pursuant to certain conditions, "may" order an evaluation for substance abuse and "may" commit a defendant for treatment. As such, whether to grant relief is left to the court's discretion. Neither statute requires a court to set forth its reasons for denying a request for an evaluation or commitment for treatment.

The State maintains that the court's denial of Mr. Dorsey's motion is not an appealable order and moves to dismiss the appeal. The State points out that neither Health-General § 8-505 or § 8-507 provide for appellate review of a decision to deny a request for substance abuse evaluation or commitment for treatment. Moreover, the State, relying on *Fuller v. State*, 397 Md. 372, 394-95 (2007), asserts that "a motion for commitment for

[1] Mr. Dorsey indicates that he pleaded guilty in 1989 to two counts of first-degree rape and was sentenced to two concurrently run terms of life imprisonment, and that he is serving three concurrently run life sentences, plus 15 years.

treatment pursuant to HG § 8-507 is not a final order or an appealable collateral order because there is no limit on the number of motions a defendant may file, such that his rights cannot be completely settled."

The State further maintains that this Court's decision in *Hill v. State*, 247 Md. App. 377 (2020), which addressed a decision denying relief under Health General § 8-507, is distinguishable. The State points out that here, unlike in *Hill*, the record does not reflect that the circuit court believed it lacked authority to grant Mr. Dorsey's motion, as the order itself reflects that the court in fact considered it.

We agree with the State that *Hill* is distinguishable from the matter presently before us. In *Hill*, we held that there was appellate jurisdiction to consider the denial of an inmate's Health General § 8-507 request where the circuit court ruled that it was precluded from authorizing treatment because the petitioner had been convicted of a crime of violence and was not yet parole eligible. *Id*. at 389. Although Hill had previously qualified for treatment and the court had indicated its willingness to authorize it, *id*. at 380-81, in 2018 the legislature amended the statute and disallowed commitment for drug treatment for prisoners convicted of crimes of violence until they became eligible for parole. *Id*. at 381-82. The circuit court rejected Hill's contention that applying those amendments to him violated the *Ex Post Facto* Clause found in Article 1 of the United States Constitution and Article 18 of the Maryland Declaration of Rights because the statutory amendments were enacted after his 2011 conviction. *Id*. at 382.

When Hill appealed, the State argued that, pursuant to *Fuller*, this Court lacked jurisdiction to consider the appeal. *Id*. at 383. We disagreed. In short, we noted that "the

court's express determination that application of the 2018 amendments to Hill do not violate the *Ex Post Facto* Clause is final in that it denies Hill any possibility of being granted an HG § 8-507 commitment until after he reaches parole eligibility." *Id.* at 389. Hence, we concluded that the ruling in Hill's case constituted a final judgment and, therefore, this Court had jurisdiction to consider his appeal. *Id*.

In contrast, the court's order in this case reflects that the court considered Mr. Dorsey's request, and there is nothing in the record to indicate that the court believed that it was prohibited from granting relief. Moreover, Mr. Dorsey's motion, unlike Hill's, did not raise any constitutional challenge to the statutes. Accordingly, we hold that the court's order denying Mr. Dorsey's requests for substance abuse evaluation and commitment for treatment is not appealable. *See Fuller*, 397 Md. at 380 ("the denial of a petition for commitment for substance abuse treatment pursuant to Section 8-507 of the Health-General Article is not an appealable order."). *Compare Hoile v. State*, 404 Md. 591, 615 (2008) ("the denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress, is not appealable") and *Brown v. State*, 470 Md. 503, 548, 551 (2020) (acknowledging *Hoile's* principle that a motion for modification of sentence filed pursuant to Rule 4-345(e) is committed to the court's discretion and the denial of that motion is not subject to appeal).

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.