

Circuit Court for Baltimore County
Case No. 03-K-97-002964

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1848

September Term, 2021

ARCHIE COOPER

v.

STATE OF MARYLAND

Arthur,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 4, 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.

In 1998, a jury in the Circuit Court for Baltimore County convicted Archie Cooper, appellant, of two counts of attempted murder, two counts of first-degree assault, and one count of burglary. This Court affirmed his convictions on direct appeal. *See Cooper v. State*, No. 795, Sept. Term 1998 (filed May 10, 1999). In October 2021, appellant filed a Motion to Set Aside Judgment Due to Newly Discovered Evidence pursuant to Maryland Rule 4-331. The newly discovered evidence consisted of a several notarized statements by appellant’s siblings which, he claimed, showed that the police had obtained statements from him in violation of his *Miranda* rights.

The court denied the motion without a hearing on December 14, 2021. Appellant mailed a notice of appeal to the circuit court on December 30, 2021. However, the clerk rejected that notice of appeal on January 4, 2022 and returned it to appellant because it did not contain a certificate of service. Appellant then filed a new notice of appeal which was docketed on January 26, 2022. That notice of appeal contained a certificate of service that was dated January 19, 2022. The envelope containing the notice of appeal was postmarked January 24, 2022. On appeal, appellant claims that the circuit court erred in denying his motion on the merits. The State disagrees and has also filed a motion to dismiss the appeal as having been untimely filed. For the reasons that follow, we shall grant the motion to dismiss the appeal.

Maryland Rule 8-202(a) provides that a party must file his or her notice of appeal “within 30 days after entry of the judgment or order from which the appeal is taken.” Although not jurisdictional, this requirement is a “binding rule on appellants” unless

“waiver or forfeiture applies to a belated challenge to an untimely appeal.” *Rosales v. State*, 463 Md. 552, 568 (2019).

Here, the circuit court’s order denying appellant’s motion to set aside judgment was entered on the docket on December 14, 2021. Therefore, appellant was required to file his notice of appeal no later than January 13, 2022. Because appellant is a self-represented litigant who is confined to a correctional facility and has no direct access to the postal service, his appeal would be considered filed on the day that it was deposited in an appropriate receptacle or given to an appropriate employee of the prison facility for mailing. *See* Md. Rule 1-322(d)(1) and (2).¹ Maryland Rule 1-322(d) further provides that the date of filing may be proved by either a date stamp affixed by the facility to the appeal or by a “Certificate of Filing” attached to the appeal, provided that the certificate is substantially in the form indicated by the Rule. Md. Rule 1-322(d)(3) and (4).

As an initial matter, we note that appellant attempted to file a notice of appeal on December 30, 2021. This Court has held, however, that “a pleading or paper required to be served by Rule 1-321 that does not contain an admission or waiver of service or a signed certificate showing the date and manner of making service cannot become a part of any court proceeding[.]” *Lovero v. Da Silva*, 200 Md. App. 433, 446 (2011). Therefore, the

¹ Previously, Maryland Rule 1-322 required that, to be considered filed, “pleadings and papers must be actually delivered, either in person or by mail, to the clerk or a judge of the court in which they are sought to be filed.” *Blundon v. Taylor*, 364 Md. 1, 11 (2001). However, the Court of Appeals’ Standing Committee of Rules of Practice and Procedure recently amended Rule 1-322 to create a “prison mailbox rule,” which applies in this case.

receipt of the Notice of Appeal by the clerk on December 30 did not constitute a “filing of the notice on that date under Rule 8-202(a).” *Id.* at 450.

Appellant’s second notice of appeal included a certificate of service dated January 19, 2022. And the envelope containing the notice of appeal was postmarked January 24, 2022. But even if we construe appellant’s appeal as having been filed on the earlier date indicated in the certificate of service it was still untimely. Moreover, the State has not waived or forfeited its challenge to the timeliness of appellant’s appeal because Md. Rule 8-603(c) provides that a motion to dismiss pursuant to Md. Rule 8-602(b) “may be included in the appellee’s brief.” Consequently, we shall grant appellee’s motion to dismiss.²

**APPELLEE’S MOTION TO DISMISS
GRANTED. COSTS TO BE PAID BY
APPELLANT.**

² Even if appellant had filed a timely notice of appeal, we would affirm the judgment of the circuit court. Appellant filed his motion pursuant to Maryland Rule 4-331(c). That Rule provides that unless the motion is based on DNA evidence that demonstrates actual innocence, it must be filed within one year after the later of the date the court imposed the sentence, or the date the court receives the mandate of the final appellate court to consider a direct appeal from judgment. Appellant’s motion was not based on DNA identification testing. And we issued the mandate in his direct appeal in 1999. Consequently, appellant’s motion, filed more than 20 years after the mandate issued, was untimely.