

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2021

September Term, 2015

BERNARD SMITH

v.

STATE OF MARYLAND

Krauser, C. J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 31, 2016

*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.

Bernard Smith, appellant, appeals the denial, by the Circuit Court for Montgomery County, of his petition for a writ of habeas corpus. The State moves to dismiss the appeal on the ground that it is not permitted by law. We agree that the appeal must be dismissed.

In his petition, Smith challenged the validity of his 1983 convictions, after a jury trial in the Circuit Court for Montgomery County, for kidnapping, sexual offense in the first degree, sexual offense in the second degree, sexual offense in the third degree, assault with intent to rape, and battery. Smith also had pleaded guilty to rape in the Superior Court for the District of Columbia. The charges in both jurisdictions stemmed from offenses involving the same victim, whom Smith abducted and sexually assaulted in Montgomery County, and then raped in the District of Columbia. As grounds for habeas corpus relief, Smith claimed that the State of Maryland did not have “territorial jurisdiction” to pursue the charges, the evidence at trial was insufficient to support jurisdiction, and the court erred in instructing the jury on the jurisdictional issue and on reasonable doubt. The circuit court found no merit to any of the allegations and noted that the jurisdictional issue had been rejected by this Court in Smith’s direct appeal. *See Bernard Smith v. State*, No. 533, September Term, 1983 (filed January 31, 1984) (concluding that “the Maryland indictment charged Smith with separate and distinct crimes that were committed in Maryland”). And where a habeas corpus petitioner is challenging the legality of his conviction, as Smith does here, the circuit court’s denial of relief is not appealable. *Gluckstern v. Sutton*, 319 Md. 634, 652-653 (1990) (noting that an appeal of a decision on a petition for habeas corpus relief is permitted only where authorized by statute and no statute permits an appeal where the challenge is to the legality of the conviction); *Green v. Hutchinson*, 158 Md. App. 168,

174 (where the arguments in support of habeas relief “went directly to the legality of [the petitioner’s] convictions,” there was no right to appeal the circuit court’s order denying relief), *cert. denied*, 383 Md. 212 (2004).

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