

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 370

September Term, 2016

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VICTOR ANTONIO GLASCOE

v.

STATE OF MARYLAND

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Eyler, Deborah S.,  
Nazarian,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: May 23, 2017

\* 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.

Appellate courts can decide only the questions properly before them. In 2005, a jury in the Circuit Court for Prince George’s County found Victor Antonio Glascoe guilty of robbery with a dangerous weapon and related offenses. He filed a Petition for Post-Conviction Relief in 2014, which was denied. Then he filed an application for leave to appeal the denial of his post-conviction claims that we denied on September 9, 2016.

In parallel, Mr. Glascoe filed a Motion to Correct Illegal Sentence that sought to raise essentially the same issues. The circuit court denied the motion on March 24, 2016, and Mr. Glascoe filed a notice of appeal on April 26, 2016; that notice gives rise to this appeal. Mr. Glascoe contends that the circuit court erred in denying his Petition for Post-Conviction relief. The State counters that his claims are not before us, that the appeal should be dismissed because Mr. Glascoe’s notice of appeal of the denial of the Motion to Correct Illegal Sentence is untimely, and that the appeal from the denial of Post-Conviction relief has already been resolved. We agree with the State and dismiss.

## I. BACKGROUND

On November 5, 2005, a jury convicted Mr. Glascoe of robbery with a dangerous weapon and related handgun offenses. The court sentenced him to sixty years in prison. Mr. Glascoe appealed, contending that the prosecutor’s use of peremptory challenges during *voir dire* violated *Batson v. Kentucky*, 476 U.S. 79 (1986). This Court, in an unreported opinion,<sup>1</sup> affirmed his convictions and held that the *Batson* issue was not preserved for appellate review. Before issuing the opinion, however, one of the three

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<sup>1</sup> *Glascoe v. State*, No. 271, Sept. Term 2006 (Md. App. July 10, 2008).

judges on the panel that heard the argument died. Mr. Glascoe filed a petition for writ of *certiorari*, contending that our opinion was invalid because the judge’s death deprived the panel of a quorum. The Court of Appeals affirmed,<sup>2</sup> holding that the decision rendered by the remaining two judges was valid because they agreed on the reasoning and result.

Mr. Glascoe filed a Petition for Post-Conviction Relief on November 26, 2012. The circuit court held a hearing on the Petition on March 18, 2014, took the matter under advisement, and issued an opinion on May 6, 2014, granting the Petition as to Mr. Glascoe’s request to file a belated Motion for Modification of Sentence and denying it as to the remaining claims. He then filed an application for leave to appeal the denial of his post-conviction claims, which this Court denied.

On July 23, 2015, while his petition for post-conviction relief was pending, Mr. Glascoe filed a Motion to Correct Illegal Sentence. The motion was denied on March 24, 2016, and on April 26, 2016, Mr. Glascoe filed a notice of appeal.

## II. DISCUSSION

Mr. Glascoe contends that the circuit court erred in denying his Petition for Post-Conviction Relief.<sup>3</sup> Based on the timing, though, the appeal before us is his appeal from

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<sup>2</sup> *Jackson v. State*, 408 Md. 231 (2009).

<sup>3</sup> In his brief, Mr. Glascoe phrased the Questions Presented as follows:

- 1) DID THE POST CONVICTION COURT ERR IN DENYING POST CONVICION CLAIMS OF INEFFECTIVE ASSISSTANCE OF TRIAL COUNSEL WHO: (a) WAIVED ALL PRE-TRIAL [M]OTIONS: (b) FAILED TO ADEQUATELY ARGUE BATSON CHALLENGE TO JURY SELECTION: (c) FAILED TO

the circuit court’s denial of the Motion to Correct Illegal Sentence, not from the denial of Mr. Glascoe’s Petition for Post-Conviction Relief. The State asks us to dismiss the appeal either way—if Mr. Glascoe is appealing the denial of the Motion to Correct Illegal Sentence (which he is), the appeal is untimely, and if he were appealing the denial of his Petition for Post Conviction Relief (which he isn’t), we resolved those claims when we denied his application for leave to appeal. We agree with the State and dismiss the appeal.

Maryland Rule 8-202(a), which governs the time frame in which a notice of appeal must be filed, gives a party thirty days from the judgment or order at issue:

(a) **Generally.** Except as otherwise provided in this Rule or by law, notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.

Mr. Glascoe did not file a notice of appeal from the circuit court’s denial of the Motion to Correct Illegal Sentence within the time period prescribed by Rule 8-202: the motion was denied on March 24, 2016 and Mr. Glascoe filed a notice of appeal on April 26, 2016. As such, we lack jurisdiction to consider the appeal. *See Walbert v. Walbert*, 310 Md. 657, 662 (1987) (“We have repeatedly stated that the timeliness of an order of appeal is

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INFORM APPELLANT OF HIS RIGHT TO TESTIFY: (d) FAILED TO OBJECT TO THE REASONBLE DOUBT JURY INSTRUCTIONS: (e) FAILED TO INQUIRE INTO CIRCUMSTANCES SURROUNDING THE PHOTO ARRAY ASSEMBLY: (f) FAILED TO OBJECT TO STATE’S IMPROPER COMMENTS DURING CLOSING ARGUMENTS ABOUT EVIDENCE THAT APPELLANT DID NOT PRESENT; (g) FAILED TO OBJECT TO THE PHOTO ARRAY AS UNNECESSARILY SUGGESTIVE; AND, (h) FAILED TO FILE A MOTION FOR MODIFICATION OF SENTENCE.

jurisdictional, and that if an appeal is not filed within the prescribed time, the appellate court acquires no jurisdiction and the appeal must be dismissed.” (citation and internal quotations omitted)).

Even if the appeal were timely, we would decline to consider the arguments he asserts because Mr. Glascoe does not, in fact, challenge the court’s decision to deny his Motion to Correct Illegal Sentence in his brief. *See Foster v. State*, 305 Md. 306, 315 (1986) (noting that failure to make an argument in one’s appellate brief constitutes a waiver); *Health Servs. Cost Review Comm’n v. Lutheran Hosp. of Md., Inc.*, 298 Md. 651, 664 (1984) (“[A] question not presented or argued in an appellant’s brief is waived or abandoned and is, therefore, not properly preserved for review.”); *Abbott v. State*, 190 Md. App. 595, 632 n.14 (2010) (declining to address an issue that the appellant did not raise in his brief, noting that “[a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant’s initial brief.” (citations omitted)); *Oaks v. State*, 83 Md. App. 1, 5, 9 (1990) (declining to address alleged errors because appellant presented no argument in support of his position); Md. Rule 8-504(a)(6) (providing that a brief shall contain “[a]rgument in support of the party’s position on each issue”). Rather, Mr. Glascoe’s brief only addresses the denial of his Petition for Post-Conviction Relief, which is not before us at this point.

Indeed, there is no right to a direct appeal from a denial of post-conviction relief. In order to appeal a denial of post-conviction claims, a party must file an application for leave to appeal. *See* Md. Rule 4-408 (review of post conviction proceedings is by way of

application for leave to appeal). Mr. Glascoe filed such an application and we denied it on September 9, 2016, and thus resolved all of his contentions then. Accordingly, there is nothing before us to resolve now, and the appeal must be dismissed.

**APPEAL DISMISSED. APPELLANT TO  
PAY COSTS.**