

Circuit Court for Baltimore City
Case No. 195135013

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1913

September Term, 2016

TREMAINE KITCHEN

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 29, 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.

On January 31, 1996, Tremaine Kitchen, appellant, was convicted by a jury in the Circuit Court for Baltimore City of second-degree murder and the use of a handgun in a crime of violence. The court sentenced him to an active sentence of fifty years. This Court affirmed his conviction and sentence in an unreported opinion. *See Kitchen v. State*, No. 623, Sept. Term 1996 (filed Apr. 16, 1997).

Since that time, appellant has filed numerous post-judgment petitions and motions. Relative to this appeal, on June 28, 2016, appellant filed a second petition for a writ of actual innocence (“second petition”).¹ On July 27, 2016, the circuit court dismissed this petition without a hearing. On August 18th, appellant filed a motion for reconsideration, which the court denied on September 20th. In the interim, appellant filed a notice of appeal on September 1, 2016. Appellant filed a second and third notice of appeal on October 6, 2016, and November 23, 2016, respectively.

On appeal, appellant contends that the court erred in denying his second petition without a hearing because he had adequately pled the requirements of the writ, as directed by Maryland Code (2001, 2008 Repl. Vol., 2016 Suppl.), Criminal Procedure Article (“Crim. Pro.”), § 8-301. The court’s order denying his second petition is, however, not before us. We explain.

Pursuant to Rule 8-202(a), with certain exceptions inapplicable to this case, “the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” When a party files a motion for reconsideration within ten days

¹ The circuit court denied his first petition for a writ of actual innocence on July 27, 2010. We subsequently dismissed appellant’s appeal of that denial.

of the order, “the time the parties have to note an appeal is suspended until after the motion is decided.” *Pickett v. Noba, Inc.*, 122 Md. App. 566, 570 (1998). “If parties file a motion for new trial or a motion to alter or amend more than ten days after judgment,” however, “the time for filing an appeal will not be stayed.” *Id.* Accordingly, appellant’s August 18, 2016 motion for reconsideration did not toll the 30-day appeal deadline for the court’s July 27, 2016 order denying his second petition, because it was filed more than ten days later. Appellant’s first notice of appeal filed on September 1st, therefore, was not timely to appeal the denial of his second petition. *See Hartford Fire Ins. Co. v. Estate of Sanders*, 232 Md. App. 24, 60 (2017) (noting jurisdictional requirement of timely appeal).

What is properly before us, however, is the denial of appellant’s motion for reconsideration. We review the denial of a motion for reconsideration for abuse of discretion. *See RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 673 (2010). This Court has noted that “[t]he relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse.” *Schlottzhauer v. Morton*, 224 Md. App. 72, 84 (2015) (quoting *Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 676 (2008)), *aff’d*, 449 Md. 217 (2016). Stated differently, “in appeals from the denial of a post-judgment motion, reversal is warranted in cases where there is both an error and a compelling reason to reconsider the underlying ruling.” *Id.* at 85.

We are not persuaded that the court abused its discretion in denying appellant’s motion to reconsider. Appellant’s brief is a recitation of his concerns about the prosecutor who tried his case in 1996 and the Baltimore police officers who investigated and testified.

At no point does he direct our attention to anything new that the circuit court failed to consider in denying his second petition. Indeed, much of his motion for reconsideration was a reargument of his first petition for a writ of actual innocence, which had been previously denied. Accordingly, we are not persuaded that the court erred, and we perceive no compelling reason to reverse. We, therefore, affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**