UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2862

September Term, 2015

RICKIE McFADDEN

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: April 6, 2017

In 1973, Rickie McFadden, appellant, pleaded guilty to felony murder and was sentenced to life imprisonment by the Circuit Court for Baltimore City.[1] In 2015, he filed a request for a "writ of habeas corpus" to "correct an illegal sentence" in which he asserted that, when he pleaded guilty, he had understood that a life sentence meant a sentence of twenty-five years, with parole granted after serving eleven and one-half of those years. After the circuit court denied the request, McFadden filed an appeal. Because his request for appellate review was not filed in a timely manner, we have no jurisdiction over the matter and we shall dismiss the appeal.

Rule 8-202(a) provides that a notice of appeal "shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." The docket entries reflect that the circuit court denied McFadden's request for relief by order dated December 10, 2015, which was docketed on December 14, 2015. The docket entries further indicate that, on February 9, 2016, McFadden filed a request for an appeal of that order. The circuit court then issued an order directing McFadden to "show cause" why his appeal should not be stricken as untimely. McFadden's response is not in the record before us, but the circuit

[1] In 2000, after filing a motion to correct an illegal sentence in which he claimed that the sentencing court (as well as the prosecutor and his defense counsel) mistakenly believed that no part of the life sentence could be suspended, the circuit court granted McFadden a new sentencing hearing. The court then imposed the same sentence, that is, life imprisonment.

court, upon consideration of an apparent response, granted McFadden "permission" to file a "belated application for leave to appeal."[2]

McFadden's request for an appeal was untimely because it was filed beyond the 30-day time period.[3] Although the circuit court granted him "permission" to file a "belated" appeal, the court did not have the authority to do so. Rule 1-204(a) provides that a "court may not shorten or extend the time for filing" either a notice of appeal or an application for leave to appeal.

The Court of Appeals has held that the requirement that a notice of appeal be filed within 30 days of the final judgment is "jurisdictional" and "if the requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed." *Houghton v. County Commissioners of Kent County*, 305 Md. 407, 413 (1986). This Court has held that the "same principle applies" when an application for leave to appeal is not timely filed. *Keys v. State*, 195 Md. App. 19, 27 (2010).

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[2] Rule 8-204(b)(2) provides that an application for leave to appeal "shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." Because appellate review of a ruling on a motion to correct an illegal sentence is a direct appeal, a "notice of appeal" pursuant to Rule 8-202 would have been the appropriate pleading in this case.

[3] His certificate of service states that he mailed his pleading on January 26, 2015, which, if true, was still beyond the 30-day time period.