UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2265

September Term, 2013

ZACHARY WILLIAMS

v.

STATE OF MARYLAND

Meredith,
Friedman,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 23, 2015

Zachary Williams, appellant, appeals from the denial, by the Circuit Court for Baltimore City, of two petitions for writ of error coram nobis.[1]

We shall grant the State's motion to dismiss the appeal.

FACTS and PROCEEDINGS

In April 1975, Williams was convicted by a jury in circuit court case number 17401308 of assault with intent to murder and a related offense. The court sentenced Williams to a total term of 15 years' imprisonment.

In September 1975, Williams was convicted by a jury in circuit court case number 17402473 of assault with intent to murder. The court sentenced Williams to a term of 15 years' imprisonment, to be served consecutive to the sentence in case number 17401308.

On August 8, 2013, Williams, *pro se*, filed the petitions, in which he contended that instructions given to the juries at his 1975 trials "were unconstitutional." On September 10, 2013, the State filed a response, in which it contended, *inter alia*, that Williams "has not

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[1]The writ of coram nobis

> is a collateral challenge to a criminal conviction[.] It is a remedy for a convicted person who is not incarcerated and not on parole or probation. To be eligible for coram nobis relief, several requirements must be met: (1) the grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character; (2) the coram nobis petitioner must be suffering or facing significant collateral consequences from the conviction; (3) the claim for which coram nobis relief is sought cannot be waived or finally litigated; and (4) the petitioner must show prejudice.

Graves v. State, 215 Md. App. 339, 348 (2013) (internal citations and quotations omitted), *cert. granted*, 437 Md. 637, *dismissed*, 441 Md. 61 (2014).

included a copy of the relevant portions of the transcript in this case or indicated why he is unable to do so." On November 6, 2013, the court entered an order in which it denied both petitions.

On November 19, 2013, Williams filed a motion pursuant to Rule 2-534[2] to alter or amend the court's judgment. In the certificate of service of the motion, Williams stated that he "delivered [the motion] to prison authorities" on November 14, 2013. On December 3, 2013, the court denied the motion. On December 16, 2013, Williams filed a notice of appeal.

DISCUSSION

Williams contends that the court erred in denying the petitions. He claims that erroneous instructions similar to those reviewed by the Court of Appeals in *Unger v. State*, 427 Md. 383 (2012),[3] were given to the juries at his 1975 trials.

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[2]Rule 2-534 provides:

> "In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment."

[3]At Unger's trial on charges of felony murder and related offenses, the court instructed the jury: "[A]nything which I may say about the law, including any instructions which I may give you, is merely advisory and you are not in any way bound by it. You may feel free to reject my advice on the law[.]" 427 Md. at 391-92 (italics omitted). The Court of Appeals concluded that the instructions "were clearly in error, at least as applied to (continued...)

The State moves to dismiss the appeal on the ground that the "appeal is not timely." (Italics omitted.) We agree. Rule 8-202(a) provides: "Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." Here, Williams filed the notice of appeal more than 30 days after entry of the order in which the court denied the petitions. Hence, Williams did not file the notice in a timely manner.

Williams contends that his filing of the motion to alter or amend the court's judgment tolled the deadline for filing of the notice of appeal. *See* Rule 8-202(c) ("[i]n a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534"). We are not persuaded. Williams did not file the motion "within ten days after entry of judgment." Rule 2-534. Hence, Williams did not file the motion in a timely manner.

Williams next contends that the motion was "filed at the moment of delivery to prison authorities for forwarding to the [] court." Again, we are not persuaded. Rule 1-322(a) provides: "The filing of pleadings, papers, and other items with the court shall be made by

[3](...continued)
matters implicating federal constitutional rights." *Id.* at 417.

filing them with *the clerk of the court*[.]" (Emphasis added.) Williams did not file the motion by delivering it to prison authorities.

Williams next contends that the State waived any objection to the timeliness of the motion by "elect[ing] to not challenge any aspect of its content." Rule 2-534 does not require an opposing party to file a response in opposition to a motion to alter or amend a judgment, or state that an opposing party waives any particular defense by failing to file a response. The State did not waive any challenge to the timeliness of the motion by failing to file a response in opposition to the motion, and the filing of the motion did not toll the deadline for filing of the notice of appeal.

The State moves to dismiss the appeal on a second ground: that Williams "failed to provide a record adequate for review." (Italics omitted.) We agree. Rule 8-411 states that "the appellant shall order" a "transcription of . . . all the testimony . . . that . . . is necessary for the appeal," and "cause the original transcript to be filed . . . with the clerk of the lower court for inclusion in the record[.]" Here, the transcripts of the instructions given to the juries at the 1975 trials are necessary for the appeal, but Williams did not cause the transcripts to be included in the record. The record does not contain all the testimony that is necessary for the appeal.

Williams contends that the State "waived any contestation" to the adequacy of the record by "cho[osing] not to oppose" the motion to alter or amend the court's judgment. As we have noted, a party does not waive any particular defense by failing to file a response in

opposition to a motion to alter or amend a judgment. Rule 2-534. Moreover, the State, in its response to the petitions, expressly challenged Williams's failure to produce transcripts of all the testimony necessary for the actions. The State did not waive its challenge to the adequacy of the record.

We grant the State's motion to dismiss the appeal.

STATE'S MOTION TO DISMISS GRANTED.
COSTS TO BE PAID BY APPELLANT.