Circuit Court for Anne Arundel County
Case No.: C-02-CR-22-001623

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

Nos. 114, 774, & 1526

September Term, 2023

SHAUNESI Y. DEBERRY

v.

STATE OF MARYLAND

Nazarian,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 4, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Anne Arundel County, Shaunesi Y. DeBerry, appellant, was convicted of second-degree assault. The court later sentenced DeBerry to three years' incarceration, all but time served suspended, followed by three years' probation. On appeal,[1] DeBerry presents 15 questions for our review, which we have combined and rephrased for clarity:

1. Did the trial judge err by refusing to recuse herself?
2. Did the trial court err by refusing to order the prosecutor to recuse himself?
3. Did the trial court err by granting DeBerry's motion to withdraw her own motion for a new trial?
4. Did the trial court impose an illegal sentence?
5. Did the trial court err in denying DeBerry's post-sentencing motions?
6. Did the trial court err in ordering DeBerry to cease referencing or naming the trial judge's family in her filings?

For the following reasons, we shall affirm.

Before addressing the merits of DeBerry's arguments, we first note that none of the contentions in her initial brief allege any error with the trial itself or her resulting conviction. To be sure, DeBerry raised arguments to that effect in her reply brief. But under

[1] This consolidated appeal encompasses 17 notices of appeal filed between March 21 and November 6, 2023. DeBerry previously filed notices of appeal on December 29, 2022, and February 13, 2023, which were both docketed in Case No. 1894, Sept. Term, 2022. But because DeBerry was not sentenced until March 16, 2023, there was not yet a final judgment, and so that appeal was dismissed under Maryland Rule 8-602(a)(1). *See* Md. Code Ann., Cts. & Jud. Proc. § 12-301; *Brown v. State*, 470 Md. 503, 550 (2020). She has also appealed from later orders by the circuit court: Case No. 1782, Sept. Term, 2023, encompasses five notices filed between November 8 and December 5, 2023, which will be addressed in a separate opinion. The notices DeBerry has filed since then have been docketed in Case No. 2201, Sept. Term, 2023, which is still proceeding in this Court.

Maryland Rule 8-504(a)(3) and (6), appellants are required to set forth all questions presented, and argument in support thereof, in their opening brief. They may not raise an issue on appeal for the first time in a reply brief. *Robinson v. State*, 404 Md. 208, 215 n.3 (2008) ("An appellate court will not ordinarily consider an issue raised for the first time in a reply brief."); *Federal Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457 (1979) ("[I]t is necessary for the appellant to present and argue all points of appeal in [their] initial brief."). Accordingly, we will not consider the issues DeBerry raised exclusively in her reply brief.

DeBerry first contends that the trial judge erred in refusing to recuse herself.[2] We review a trial judge's refusal to recuse for an abuse of discretion. *In re K.H.*, 253 Md. App. 134, 154 (2021). Judicial recusal is required "when a reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality." *Matter of Russell*, 464 Md. 390, 402–03 (2019). "The party requesting recusal has a heavy burden to overcome the presumption of impartiality." *In re K.H.*, 253 Md. App. at 154 (cleaned up). To do so, the party "must prove that the trial judge has a personal bias or prejudice concerning [them] or personal knowledge of disputed evidentiary facts concerning the proceedings. Only bias, prejudice, or knowledge derived from an extrajudicial source is 'personal.'" *Id.* (cleaned up). Knowledge or an opinion is not "personal" if the "knowledge is acquired in a judicial setting, or [the] opinion arguably expressing bias is formed on the

[2] The record reflects that DeBerry first moved for recusal of the trial judge on February 23, 2023, which was after trial but before sentencing.

basis of information acquired from evidence presented in the course of judicial proceedings[.]" *Id.* at 154–55 (cleaned up).

Here, DeBerry did not make any showing of "bias, prejudice, or knowledge derived from an extrajudicial source[.]" *Id.* at 154. Her motion to recuse merely expressed displeasure with the trial judge's prior rulings in the case. That is not enough to require recusal, and so the trial judge did not abuse her discretion by refusing to do so.

Likewise, the court also did not err by refusing to order the prosecutor to recuse himself.[3] Even if the trial court had authority to grant such relief, prosecutors, like other attorneys, are not obligated to recuse themselves unless there is a conflict of interest. *See Sinclair v. State*, 278 Md. 243, 259–60 (1976). DeBerry does not allege that any such conflict existed, and so the prosecutor was not required to recuse himself.[4]

DeBerry's next argument concerns the circuit court's granting her motion to withdraw her motion for new trial. This ruling granted DeBerry the relief she requested. In

[3] The record reflects that DeBerry first moved for recusal of the prosecutor on March 9, 2023, which was after trial but before sentencing.

[4] In her brief, as support for her argument that the prosecutor was required to recuse himself, DeBerry seems to allege that the prosecutor made improper remarks during closing argument at trial, which would be a separate issue to review. *See generally Sivells v. State*, 196 Md. App. 254, 277 (2010). But despite repeated Orders from this Court, the only transcripts DeBerry provided were of a scheduling conference, a bail review hearing, and a post-sentencing hearing at which the court clarified the conditions of her probation. She did not provide transcripts of either her trial or sentencing. It is an appellant's duty to order all transcripts necessary for consideration of an appeal. Md. Rule 8-411(a). Without a transcript of the trial, we cannot review, for even plain error, any comments the prosecutor may have made during closing arguments.

other words, it was a ruling in her favor. Because "one cannot appeal from a favorable ruling," *Rush v. State*, 403 Md. 68, 95 (2008), we will not address this issue.

We next turn to DeBerry's sentence. Although this is a direct appeal from DeBerry's conviction, as noted above, she does not allege any error with the trial itself or her resulting conviction. Accordingly, her sentence would be illegal only if "the illegality inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful." *Carlini v. State*, 215 Md. App. 415, 426 (2013) (cleaned up). As noted above, DeBerry was convicted of second-degree assault, which has a maximum sentence of 10 years' incarceration. Md. Code Ann., Crim. Law § 3-203(b). She was sentenced to three years' incarceration, suspended, with three years' probation. DeBerry does not assert how any illegality might inhere in that sentence itself. Consequently, the court did not impose an illegal sentence.

After she was sentenced, DeBerry filed a variety of motions, all of which the court denied. The motions relevant to this appeal include:

- A motion for "proof of ruling on all outstanding motions";
- Three "motion[s] for clarity" on prior court orders;
- Two "motion[s] to strike" prior court orders; and
- A "motion for sanctions against the State . . . for failure to comply with victim rights compliance."

"Appellate jurisdiction, except as constitutionally authorized, is determined entirely by statue, and, therefore, a right of appeal must be legislatively granted[.]" *Dvorak v. Anne*

Arundel Cnty. Ethics Comm'n, 400 Md. 446, 450 (2007) (cleaned up). No constitutional provision, statute, or Rule authorizes an appeal from the denial of any of the above motions. Consequently, DeBerry had no right to appeal from them, and we will not address them. *See* Md. Rule 8-602(b)(1) ("The [C]ourt shall dismiss an appeal if the appeal is not allowed by [the Maryland] Rules or other law[.]").

In many of her post-sentencing motions, DeBerry began referencing and naming members of the trial judge's family. So, on November 3, 2023, the court issued an order in which it directed that their names be redacted from DeBerry's prior filings and ordered her to cease referencing or naming members of the trial judge's family in any pleadings or other documents filed in the proceeding. On appeal, DeBerry contends this order violated her First Amendment right to free speech. We disagree.

"Although litigants do not surrender their First Amendment rights at the courthouse door, those rights may be subordinated to other interests that arise in this setting." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 n.18 (1984) (cleaned up). "In the conduct of a case, a court often finds it necessary to restrict the free expression of participants, including counsel, witnesses, and jurors." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 104 n.21 (1981). The trial judge's family was not in any way relevant to this case or any of DeBerry's filings. That their names may have been available publicly elsewhere does not change this. Further, the court ordered only that, to protect their safety and privacy, the names of the judge's family members be redacted from DeBerry's past filings and directed her not to include them in future filings. The order was "no broader than necessary to meet a clearly articulated compelling State interest"—the safety and privacy of the judiciary and members

of their family. *Hearst Corp. v. State*, 60 Md. App. 651, 658 (1984). *Cf.* Md. Rule 2-322(e) (authorizing a circuit court, in civil cases, to order, on its own initiative, that "any improper, immaterial, impertinent, or scandalous matter stricken from any pleading"). It was, therefore, not erroneous.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.