

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1292

September Term, 2015

JASON MURDOCK

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 4, 2016

*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.

Jason Murdock was convicted of first-degree felony murder and sentenced to life imprisonment. In December 2008, Mr. Murdock petitioned for post-conviction relief in the Circuit Court for Baltimore City, and that request was denied in June 2012. Although Mr. Murdock's then-counsel advised him of the thirty-day window during which he could file an Application for Leave to Appeal ("ALA") and the court in which he should file that motion, Mr. Murdock didn't file anything with the court until his November 2014 *pro se* Motion to Revise Enrolled Judgment ("Motion"). In that Motion, Mr. Murdock contends that he, as a *pro se* litigant, mistakenly and irregularly filed his ALA with the Office of the Attorney General on July 6, 2012, and so, he argues, the circuit court erred in denying his Motion to correct those errors. We disagree, and affirm.

I. BACKGROUND

On November 1, 1997, Baltimore City police officers responded to a call to Friendly Food Market, where they discovered proprietor Byong Wan Pak lying on the store floor with fatal gunshot wounds to his neck and abdomen. Information from the 911 dispatcher led the officers to a nearby residence, where Mr. Murdock and his mother lived, and officers transported Mr. Murdock and his mother to the police station. There, gun residue tests revealed the probable proximity of Mr. Murdock's hands to a recently discharged firearm. Police then executed a search warrant at Mr. Murdock's residence and recovered a white plastic Halloween mask, a .44 caliber one-shot Derringer, and a pair of blood-speckled boots; Mr. Murdock was subsequently arrested.

In May 1999, a jury in the Circuit Court for Baltimore City found Mr. Murdock guilty of the use of a handgun in the commission of a crime of violence; wearing, carrying,

and transporting a handgun; attempted robbery with a dangerous weapon; and conspiracy to commit robbery; however, the jury's inability to reach a verdict on the final count led to a mistrial with regard to the first-degree felony murder charge. Nevertheless, after a re-trial, the jury found Mr. Murdock guilty of felony murder, for which he was sentenced to life in prison, plus a twenty-year consecutive term for the use of a handgun in the commission of a violent crime and a twenty-year concurrent term for the conspiracy conviction. Mr. Murdock filed an appeal with this Court, and we affirmed the circuit court's disposition, with the exception of the conspiracy conviction, which we vacated.

In December 2008, Mr. Murdock sought post-conviction relief in the Circuit Court for Baltimore City. Mr. Murdock's attorney informed Mr. Murdock of the circuit court's denial of his petition and advised him that he had "30 days from [June 5, 2012] to file a motion with the Court of Special Appeals asking for leave to appeal." But nothing was filed until October 2014, when Mr. Murdock filed the Motion with the circuit court seeking to revise the judgment against him, citing Md. Rule 2-535 and Md. Code (1973, 2013 Repl. Vol., 2015 Supp.), § 6-408 of the Courts & Judicial Proceedings Article ("CJP"). The court denied the Motion without a hearing, and Mr. Murdock timely noted an appeal.

II. DISCUSSION

Mr. Murdock contends that the circuit court erred by denying his Motion. He admits that he was aware of his right to file an ALA, privy to the time limitation attached to that right, and was given notice as to where he should file, but claims that he was uninformed as to the appropriate recipient of the ALA, and so, acting *pro se*, he submitted the ALA to the Office of the Attorney General. Indeed, on July 6, 2012, the Office of the Attorney

General received a pleading entitled “Application for Leave to Appeal” from Mr. Murdock, accompanied by a certificate of service (signed by Mr. Murdock) stating that the ALA was mailed on July 2, 2012. He *first* argues that as a *pro se* litigant he should not be held to the same standards as an attorney. *Second*, Mr. Murdock notes that his attempt to file an ALA should count as an error, as opposed to inaction or waiver. Mr. Murdock *lastly* characterizes this action as a mistake and an irregularity in an attempt to invoke the court’s revisory powers under Md. Rule 2-535(b) and CJP § 6-408. We disagree with each of these contentions.

First, Mr. Murdock’s *pro se* status does not exempt him from the Maryland Rules. Maryland courts “have long held that a defendant in a criminal case who chooses to represent himself is subject to the same rules regarding reviewability and waiver . . . as one who is represented by counsel.” *Grandison v. State*, 341 Md. 175, 195 (1995) (quoting *Midgett v. State*, 223 Md. 282, 298 (1960) (holding *pro se* litigants to a different standard with regard to reviewability and waiver would lead to pervasive delay and confusion in the courts)). As such, the thirty-day window with which a party can file an ALA applied equally to Mr. Murdock, as did the Rules regarding where motions shall be filed.

Second, Mr. Murdock waived his right to file an ALA by not properly filing the Motion with the correct court. He argues that his actions cannot constitute a waiver because they were not knowing and intelligent, or alternatively, if this Court finds that he acted knowingly and intelligently, then, he claims, his waiver should be excused for “special circumstances” under Md. Code (2001, 2008 Repl. Vol.), § 7-106(b)(1)(ii)(1) of the

Criminal Procedure Article (“CP”).¹ Mr. Murdock acknowledges that his prior counsel gave him written notice of the means to file an ALA; the letter from his post-conviction counsel states that he had “30 days [from the date of the order] to file a motion with the Court of Special Appeals asking for leave to appeal.” The law presumes, though, that Mr. Murdock acted knowingly and intelligently when failing to make a proper motion. CP § 7-106(b)(2), and the law places on him the burden of proving “special circumstances.” *See* CP § 7-106(b)(1)(ii)(2). By failing to provide any facts or law that could rebut the presumption of waiver, and by failing to even allege any specific special circumstance, Mr. Murdock waived his right to file an ALA.

Third, Mr. Murdock’s actions, although fairly categorized as “irregular” or a “mistake” in laymen’s terms, do not amount to a “mistake” or “irregularity” as that term is used in Md. Rule 2-535(b) or CPJ § 6-408. These Rules confer jurisdiction on the circuit court to amend a judgment enrolled at any prior time upon a showing of fraud, mistake, or irregularity. *See* Md. Rule 2-535(b) (“On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.”). Mistake, in this context, refers only to jurisdictional error, as where the court did not have the authority to enter a judgment. *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003) (citing *Claibourne v. Willis*, 347 Md. 684, 692 (1997)). No one contests the jurisdiction of the Circuit Court for Baltimore City to hear and decide Mr.

¹ Mr. Murdock actually cites to “Md. Code Ann., Art. 27, §645A(c)(1).” We will address the Code as is currently in force, which is the successor to Art. 27, § 645.

Murdock's Motion. And irregularity, here, refers to nonconformity to a standard process or procedure, *Davis v. Attorney General*, 187 Md. App. 110, 125 (2009), most commonly when a court failed to provide necessary notice to party, *see, e.g., Mercy Med. Ctr., Inc. v. United Healthcare of the Mid-Atlantic, Inc.*, 149 Md. App. 336, 375 (2003) (citations omitted). Again, no one contests the procedures and processes employed by the court in reviewing and ruling on Mr. Murdock's Motion. His mailing to another party, rather than the court, is not a mistake or irregularity that can be corrected via Md. Rule 2-535(b) or CJP § 6-408, and none of his arguments or actions bring this case within their narrow scope.

Because Mr. Murdock was subject to the Maryland Rules (and was informed in writing about how to seek leave to appeal), he was charged with knowing where to file his Motion. His error caused the thirty-day filing period to lapse, and his failure to file on time waived his right to file an ALA. The circuit court did not err when it declined to revise its earlier judgment.

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