

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2225

September Term, 2014

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BENJAMIN VANCE

v.

STATE OF MARYLAND

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Wright,  
Graeff,  
Raker, Irma S.  
(Retired, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: May 5, 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.

Appellant, Benjamin E.J. Vance, was charged with murder, robbery, armed robbery, and unlawful use of a handgun. Vance was tried before the Circuit Court for Prince George's County on January 29, 2013, through February 1, 2013, after which the jury convicted him on all charges. On April 2, 2013, Vance was sentenced to life imprisonment for murder and a concurrent twenty years' imprisonment for unlawful use of a handgun. The court merged the remaining convictions.

Vance appealed and this Court affirmed the judgment of the lower court on April 4, 2014. *Vance v. State*, No. 448, Sept. Term 2013. Petition of writ of *certiorari* to the Court of Appeals was denied on June 19, 2014. *Vance v. State*, 438 Md. 741 (2014).

Vance filed a petition for a writ of *habeas corpus* on October 20, 2014, in the circuit court. On November 13, 2014, the circuit court denied the *habeas corpus* petition without a hearing. On November 24, 2014, this appeal was filed. Thereafter, the State filed a motion to dismiss.

### **QUESTIONS PRESENTED**

For the purpose of clarity, we shall rephrase the question posed by Vance:<sup>1</sup>

If addressed by this Court, did the circuit court properly deny Vance's petition for *habeas corpus* relief?

For the reasons discussed below, we grant the State's motion to dismiss this appeal.

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<sup>1</sup> Vance presented the following question:

Did the circuit court err by denying appellant's petition for habeas corpus relief although appellant complied with the provisions of [Md.] Rule 15-302 (e) (2) (c) and more than sufficient showing of probably illegal confinement was meritorious?

## FACTS

At Vance's trial, David Hester testified on behalf of the State regarding the murder of James Speaks, Jr. On May 11, 2011, after working a part-time shift at a Nordstrom's warehouse, Hester went to Travis Bonner's house to play video games and smoke marijuana. When they ran out of marijuana, Bonner borrowed a cell phone from an individual named Travaughn,<sup>2</sup> and called Speaks to purchase more marijuana. They arranged to meet at a twenty-four hour convenience store later that day.

Bonner and Hester drove to pick up Vance around 5:00 p.m. near the Hechinger Mall in Washington, D.C. Neither Bonner nor Hester saw Vance with a weapon. Around 6:30 p.m., they arrived at a convenience store in Oxon Hill, Maryland to meet Speaks. Vance got out of the car and into Speaks's green Cadillac. Bonner immediately saw a scuffle inside of the car and heard multiple gunshots, while Hester reported that he heard a couple of "pows."

Bonner drove Hester and Vance to the Minnesota Avenue Metro Station. At approximately 7:00 p.m., the Prince George's County police responded to 4451 Wheeler Road in Oxon Hill and found Speaks lying on the ground with multiple gunshot wounds. Speaks was transported to the hospital and pronounced dead upon arrival.

## DISCUSSION

Vance argues that the circuit court erred by denying his petition for *habeas corpus*. Vance contends that pursuant to Md. Rule 15-303, which describes the procedure for

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<sup>2</sup> Vance identifies Travaughn as Bonner's cousin, while the State reports Travaughn only as someone that Bonner knew.

receiving a petition for a writ of *habeas corpus*, the circuit court should have granted the writ because Vance's petition complies with the provisions of the statute. Vance asks us to reverse the circuit court's denial of the *habeas corpus* petition and urges us to vacate his sentence and remand the case for a new trial.

In response, the State avers that because Vance's *habeas corpus* petition challenged the legality of his criminal conviction and sentence, this appeal should be dismissed pursuant to Md. Rule 8-602(a)(1), which provides that "[o]n motion or on its own initiative, the Court may dismiss an appeal . . . [if] the appeal is not allowed by these rules or other law." We agree with the State.

Section 12-301 of the Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article describes when a party may appeal a judgment:

[A] party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law.

Pertinently, "[a]n appeal may be taken from a final order in a habeas corpus case only where specifically authorized by statute." *Gluckstern v. Sutton*, 319 Md. 634, 652 (1990) (citations omitted). One of four identified statutes that permit appeals of *habeas corpus*, and the one applicable here, is § 7-107 of the Maryland Uniform Post Conviction Procedure Act ("the Act"). *Id.* Section 7-107(b) of the Act provides:

(1) In a case in which a person challenges the validity of confinement under a sentence of imprisonment by seeking the writ of *habeas corpus* or the writ of *coram nobis* or by invoking a common law or statutory remedy

other than this title, *a person may not appeal to the Court of Appeals or the Court of Special Appeals.*

- (2) This subtitle does not bar an appeal to the Court of Special Appeals:
- (i) in a *habeas corpus* proceeding begun under § 9-110 of this article; or
  - (ii) in any other proceeding in which a writ of *habeas corpus* is sought *for purpose other than to challenge the legality of a conviction of a crime* or sentence of death or imprisonment for the conviction of the crime, including confinement as a result to proceeding under Title 4 of the Correctional Services Article.

Md. Code (2001, 2008 Repl. Vol.), Criminal Procedure Article § 7-107(b) (emphasis added).

Here, neither of the exceptions permitting appeal are applicable to Vance. He argues that his conviction and sentence are illegal because the circuit court failed to rule on a mandatory pretrial motion to suppress evidence, which is challenging “the validity of confinement under a sentence of imprisonment.” *Id.*; see *Green v. Hutchinson*, 158 Md. App. 168, 174 (2004) (holding that appellant’s *habeas corpus* petition challenging, among other things, “errors in the admission of evidence,” would not be heard by the Court of Special Appeals because his “arguments went directly to the legality of [his]

convictions”). Accordingly, Vance has no right to appeal the *habeas corpus* petition under the Act and his appeal is hereby dismissed.<sup>3</sup>

**APPEAL DISMISSED. COSTS TO  
BE PAID BY APPELLANT.**

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<sup>3</sup> We note that, even if we were to reach the merits of the case, we would agree with the State that the circuit court did not err or abuse its discretion in denying the *habeas corpus* petition. Pursuant to Md. Rule 15-303(e)(3), a court may deny a writ of *habeas corpus* if “the judge finds from the petition . . . there is no good reason why new grounds now raised by the petitioner were not raised in previous proceedings.” In this *habeas corpus* petition, Vance raises the issue of a pretrial motion to suppress evidence, which should have been raised during his first appeal. Therefore, even on the merits of the case, the *habeas corpus* petition was properly denied.