Circuit Court for Baltimore City
Case No.: 199032009

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1441

September Term, 2022

TREY JAMAL ROBINSON

v.

STATE OF MARYLAND

Nazarian,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 26, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Trey Jamal Robinson appeals the denial of his petition for substance abuse evaluation by the Circuit Court for Baltimore City. The State maintains the decision is not appealable and moves to dismiss the appeal. For the reasons to be discussed, we shall grant the State's motion.

BACKGROUND

In 2000, Mr. Robinson pleaded guilty to first-degree rape and was sentenced to 25 years' imprisonment. In 2012, the circuit court ordered an "in-custody evaluation for drug or alcohol treatment" pursuant to Section 8-505 of the Health-General Article of the Maryland Code. Mr. Robinson asserts that he appeared before the court (The Honorable Robert Kershaw) on January 16, 2013 and "Judge Kershaw entered an Order for Appellant's commitment to the Patuxent Institute to begin treatment," but the "evaluators" requested that he "re-submit his request for treatment at a later date due to space restrictions." The docket entries for January 16, 2013, however, simply state: "Motion for Change of sent heard and 'denied'[.]"

In September 2017, Mr. Robinson sent a letter to Judge Kershaw, stating in part:

> I was before the Honorable Robert B. Kershaw on January 16, 2013 (5 years) ago for the drug or alcohol treatment (Health General 8-505 Program). Your Honor, I do want to apologize for taking so long to resubmit my request to the program. Your Honor, the staff from the 8-505 program advise me that they wasn't willing to accept me into the program at that time but also made it very clear that they definitely wasn't telling me no and simply wanted me to resubmit my request at a later date. Your Honor, you have also encourage me to be patience and continue to do positive things and resubmit my request to the 8-505 program at a later date. I am now resubmitting my request[.]

The request was docketed on January 26, 2018. A docket entry dated January 2, 2019 states: "The Defendant's Pro-Se Petition for Evaluation Pursuant To Annotated Code

of Maryland Health General 8-505 Is Hereby Denied As There Are No Allegations Or Proffer Supporting A Health General 8-505 Evaluation At This Time." The docket entry further reflects that the order was signed by Judge Kershaw. The order itself is not in the record before us.

In 2022, Mr. Robinson filed another request for substance abuse evaluation pursuant to Health-General § 8-505. In his *pro se* petition, Mr. Robinson, among other things, discussed the General Assembly's 2018 amendments to Health-General § 8-505 and § 8-507 which prohibited a person convicted of a violent crime from eligibility for an evaluation by the Department of Health and a commitment to the Department of Health for treatment until the person becomes eligible for parole. Mr. Robinson then discussed this Court's opinion in *Hill v. State*, 247 Md. App. 377 (2020) holding that the 2018 amendments to the statute violated the *Ex Post Facto* Clause when applied to the defendant in that case who had been eligible for evaluation and treatment prior to the amendments. Mr. Robinson attached to his petition a synopsis of the *Hill* opinion from *The Daily Record*, and he asserted that the 2018 amendments to the statutes did not apply to him because he, like Hill, had been convicted prior to 2018. In an order entered on September 19, 2022, the circuit court, "[u]pon consideration" of the motion, denied relief.

DISCUSSION

On appeal, Mr. Robinson claims that at the January 16, 2013 hearing, Judge Kershaw had "ruled" that he was "eligible for substance abuse treatment, and was approved for modification of sentence to accommodate transfer to the Maryland Department of Health and Mental Hygiene for this substance abuse treatment[,]" but the judge

"acquiesced" to the Department's request to "postpone transfer for treatment" due to "the limited space in the program at that time[.]" He then asserts that his 2018 request for treatment was denied based on the amendments to Health-General § 8-505 and § 8-507, "resulting in an 'Ex Post-Facto' violation." In addition, he maintains that his 2022 petition was improperly denied, despite his "advising the Court of the Ex Post-Facto violation" and this Court's opinion in *Hill*.

The State, citing *Fuller v. State*, 397 Md. 372 (2007), maintains that the court's denial of Mr. Robinson's petition is not an appealable order and moves to dismiss the appeal. The State further maintains that this Court's decision in *Hill v. State*, 247 Md. App. 377 (2020) is distinguishable because, unlike in *Hill*, the record does not reflect that the circuit court believed it lacked authority to grant Mr. Robinson's petition, as the order itself reflects that the court in fact considered it.

We agree with the State that *Hill* is distinguishable from the matter presently before us. In *Hill*, we held that there was appellate jurisdiction to consider the denial of an inmate's Health-General § 8-507 request where the circuit court ruled that it was precluded from authorizing treatment because the inmate had been convicted of a crime of violence and was not yet parole eligible. 247 Md. App. at 389. Although Hill had previously qualified for treatment and the court had indicated its willingness to authorize it, *id*. at 380-81, the 2018 amendments to Health-General § 8-505 and § 8-507 disallowed commitment for drug treatment for defendants convicted of crimes of violence until they became eligible for parole. *Id*. at 381-82. The circuit court rejected Hill's contention that applying those amendments to him violated the *Ex Post Facto* Clause found in Article 1 of the United

States Constitution and Article 17 of the Maryland Declaration of Rights because the statutory amendments were enacted after his 2011 conviction. *Id*. at 382.

When Hill appealed, the State argued that, pursuant to *Fuller*, this Court lacked jurisdiction to consider the appeal. *Id*. at 383. We disagreed. In short, we noted that "the [circuit] court's express determination that application of the 2018 amendments to Hill do not violate the *Ex Post Facto* Clause is final in that it denies Hill any possibility of being granted an HG § 8-507 commitment until after he reaches parole eligibility." *Id.* at 389. Hence, we concluded that the ruling in Hill's case constituted a final judgment and, therefore, this Court had jurisdiction to consider his appeal. *Id*. We then addressed the merits, and we held that applying the 2018 statutory amendments to Hill violated the *Ex Post Facto* Clause. *Id*. at 402.

In contrast, the circuit court's 2022 order in this case reflects that the court considered Mr. Robinson's request, and there is nothing in the record to indicate that the court believed that it was prohibited from granting relief.[1] Moreover, as the State points out, the Supreme Court of Maryland has long recognized "[t]he presumption that trial

[1] We disagree with Mr. Robinson's assertion that the court's 2019 order denying his second request for a Health-General § 8-505 evaluation was based on the 2018 amendments to the statute. As we pointed out above, the docket entry reflects that the court's order read: "The Defendant's Pro-Se Petition for Evaluation Pursuant To Annotated Code of Maryland Health General 8-505 Is Hereby Denied As There Are No Allegations Or Proffer Supporting A Health General 8-505 Evaluation At This Time."

judges know the law and apply it properly[.]" *State v. Chaney*, 375 Md. 168, 181 (2003).[2] In any event, Mr. Robinson certainly made the circuit court aware of this Court's decision in *Hill*, as he discussed it thoroughly and attached *The Daily Record's* summary of the opinion to his petition.

Finally, we note that Health-General § 8-505(a)(1)(i) and § 8-507(a)(1) provide that a court, pursuant to certain conditions, "may" order an evaluation for substance abuse and "may" commit a defendant for treatment. As such, whether to grant relief is left to the court's discretion. Neither statute requires a court to set forth its reasons for denying a request for an evaluation or commitment for treatment, and neither statute provides the right to an appeal from an adverse decision.

In sum, we hold that the court's order denying Mr. Robinson's request for substance abuse evaluation is not appealable. *See Fuller*, 397 Md. at 380 ("the denial of a petition for commitment for substance abuse treatment pursuant to Section 8-507 of the Health-General Article is not an appealable order."). We see no reason why the denial of a petition for a substance abuse evaluation pursuant to Health-General § 8-505 would be treated differently than the denial of a request for treatment pursuant to Health-General § 8-507 for appeal purposes.

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

[2] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.