

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0873

September Term, 2014

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BRIAN WILLIAMS

v.

STATE OF MARYLAND

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Wright,  
Reed,  
Alpert, Paul E.  
(Retired, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: July 16, 2015

\*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.

This appeal arises from the Circuit Court for Wicomico County's dismissal of a Notice of Appeal filed by appellant, Brian W. Williams. On May 20, 2014, Williams filed a motion to correct illegal sentence, related to his 1995 conviction for distribution and possession of cocaine. Along with his motion, Williams filed a statement and affidavit which requested the court to waive the filing fees. On June 3, 2014, the court denied the motion to correct illegal sentence. On June 12, 2014, Williams filed a Notice of Appeal without a separate request to waive fees. On August 11, 2014, the court issued a notice of show cause and ordered Williams to explain why the Notice of Appeal should not be stricken for his failure to pay the filing fee and the cost of preparing the record.

On August 20, 2014, Williams filed a letter, responding to the notice of show cause, advising that a statement of indigency was filed on page seven of the motion to correct illegal sentence, and therefore, his Notice of Appeal should not be stricken. On August 25, 2014, the circuit court dismissed Williams's Notice of Appeal because it deemed his response insufficient. Specifically, the court ruled that Williams failed to comply with Md. Rule 8-201(b), which requires appellants to deposit the filing fee with the Clerk of Court. This appeal followed.

Williams raises two questions for our review which we have redrafted:<sup>1</sup>

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<sup>1</sup> In his brief, Williams asked:

1. Did [t]he the lower court err when it dismissed the Notice of Appeal from the order denying the Motion to Correct Illegal Sentence?
2. Do the particular circumstances require reinstatement of the June 14, 2014 Notice of Appeal, and resolution of whether the lower court erred when it denied the Motion to Correct Illegal Sentence?

- 1) Whether the circuit court was within its discretion in dismissing Williams’s Notice of Appeal when he did not file a separate statement of indigency.
- 2) Whether the circuit court properly denied Williams’s motion to correct illegal sentence.

Although Williams’s appeal to this Court stems only from the circuit court’s dismissal of his Notice of Appeal, we will still address the denial of his motion to correct illegal sentence. As explained below, we answer the first – and only – question properly before us in the affirmative.

### **Discussion**

Williams argues that the circuit court abused its discretion in dismissing his Notice of Appeal. According to Williams, he complied with Md. Rule 8-201(b), as his request to waive fees was filed with the motion to correct illegal sentence, and was granted at the time the motion to correct illegal sentence was allowed to proceed.

The State responds that Williams cannot meet his burden of proving an abuse of discretion because 1) the language of Md. Rule 1-325(a) contemplates that a separate statement of indigency needs to be filed with the Notice of Appeal; 2) a motion to correct an illegal sentence apparently has no filing fee;<sup>2</sup> 3) the court is requested to assess whether a claim is frivolous before waiving fees, and the court cannot decide whether a claim is frivolous unless papers are presented; and 4) a court may reasonably exercise its discretion in determining that it should check for a change in financial circumstances

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<sup>2</sup> We disagree. There is a cost according to Md. Rule 4-353, Costs, and Revised Schedule of Circuit Court Charges, Costs and Fees Established under Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”), § 7-202.

over a period of time. We agree with the State that the circuit court’s judgment should be affirmed.

Md. Rule 8-201(b) states:

(b) **Filing Fees.** At the time of filing a notice of appeal in a civil case, or within the time for transmitting the record under Rule 8-412 in a criminal case, an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, § 7-102 with the clerk of the lower court unless the fee has been waived by an order of court . . . .

Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”), § 7-201(a) requires that filing fees be paid prior to docketing a case. Pursuant to CJP § 7-201(b) and Md. Rule 1-325, however, in cases of indigency, the prepayment of fees may be waived upon a proper finding by the circuit court. CJP § 7-201 provides, in pertinent part:

(b) *Waiver in case of indigency.* -- The circuit court shall pass an order waiving the payment in advance if:

- (1) Upon petition for waiver, it is satisfied that the petitioner is unable by reason of his poverty to make the payment; and
- (2) The petitioner’s attorney, if any, certifies that the suit, appeal, or writ is meritorious.

This statutory provision is implemented by Md. Rule 1-325(a):

(a) **Generally.** A person unable by reason of poverty to pay any filing fee or other court costs ordinarily required to be prepaid may file a request for an order waiving the prepayment of those costs. The person shall file with the request an affidavit verifying the facts set forth in that person’s pleading, notice of appeal, application for leave to appeal or request for process, and stating the grounds for entitlement to the waiver. If the person is represented by an attorney, the request and affidavit shall be accompanied by the attorney’s signed certification that the claim, appeal, application, or request for process is meritorious. The court shall review the papers presented and may require the person to supplement or explain

any of the matters set forth in the papers. If the court is satisfied that the person is unable by reason of poverty to pay the filing fee or other court costs ordinarily required to be prepaid and the claim, appeal, application, or request for process is not frivolous, it shall waive by order the prepayment of such costs.

Under Md. Rule 1-325(a), Williams only needed to show that he was indigent and that his claim was not frivolous. *Williams v. Circuit Court for Washington County*, 196 Md. App. 169, 179 (2010). When a waiver of filing fees is requested, the circuit court is required to review the documents filed by the petitioner, and grant the request if it finds that the petitioner is too impoverished to pay the fee and that the action is not frivolous. *Torbit v. State*, 102 Md. App. 530, 534 (1994). If the petitioner is proceeding *pro se*, no certification is required and the court may base its determination on the motion and the petitioner's affidavit. *Id.* If a court has insufficient information upon which to make a determination, the court may either conduct a hearing on the matter or request that the petitioner submit additional information. Md. Rule 1-325(a); *see also Torbit*, 102 Md. App. at 534 (citing *Wigginton v. Wigginton*, 16 Md. App. 329, 333 (1972)).

“A circuit court's decision to grant or deny a request for a waiver of fees and costs under Md. Rule 1-325(a) is reviewed under an abuse of discretion standard.” *Torbit*, 102 Md. App. at 536 (citation omitted). An abuse of discretion occurs when no reasonable person would have behaved in the same fashion. *See Pickett v. State*, 222 Md. App. 322, 331 (2015). This Court has noted:

The Court of Appeals has defined the abuse of discretion standard as a reasonable decision based on the weighing of various alternatives. There is an abuse of discretion where no reasonable person would take the view adopted by the [trial] court. Thus, where a trial court's ruling is reasonable,

even if we believe it might have gone the other way, we will not disturb it on appeal.

*Fontaine v. State*, 134 Md. App. 275, 288 (2000) (internal citations and quotation marks omitted). The Court of Appeals has similarly defined the exercise of discretion as “a reasoned decision based on the weighing of various alternatives[;]” discretion is abused “where no reasonable person would take the view adopted by the trial court[.]” *Metheny v. State*, 359 Md. 576, 604 (2000) (emphasis, citation, and internal quotation marks omitted).

In this case, Williams filed the request to waive fees with an affidavit verifying the facts set forth in his request when he filed his motion to correct illegal sentence on May 20, 2014. Because Williams was acting pro se, his request and affidavit were not required to be accompanied by an attorney’s signed certification. The circuit court reviewed the request and considered his motion to correct illegal sentence, which it subsequently denied on June 3, 2014.

Williams then filed a Notice of Appeal on June 12, 2014, with neither a filing fee nor a separate request to waive fees. In order to determine whether or not to also waive the filing fee for the Notice of Appeal, the circuit court issued a show cause order requesting that Williams explain why the Notice of Appeal should not be stricken for his failure to pay the filing fee and costs of preparing the record. Md. Rule 1-325 requires that “the person shall file . . . an affidavit verifying the facts set forth in that person’s pleading, *notice of appeal*, application for leave to appeal, or request for process, and stating the grounds for entitlement to the waiver.” (Emphasis added). In other words, the

rule provides for a separate affidavit for a pleading and the Notice of Appeal. Therefore, the circuit court did not abuse its discretion when it asked Williams to explain why the Notice of Appeal should not be stricken for his failure to pay the filing fee and costs of preparing the record. Moreover, it was reasonable for the court to inquire, by way of the show cause order, whether Williams's financial circumstances remained the same during the passage of time since the filing of the motion to correct illegal sentence. Because Williams failed to provide an undated affidavit showing that he is unable by reason of poverty to pay the requisite cost, the circuit court did not abuse its discretion in dismissing Williams's Notice of Appeal.

Additionally, Williams's claim is utterly devoid of merit. Williams seems to urge that his sentence is "illegal" because while a jury found him guilty of the various crimes for which he was sentenced, at some undefined stage of the proceedings, someone neglected to intone the phrase "beyond a reasonable doubt." He does not claim instructional error – that the jury was never informed of its obligation to find him guilty beyond a reasonable doubt. Rather, he only argues that at some undisclosed point during the rendering of the verdict, the hearkening of the verdict, or the polling of the jury, someone should have uttered the magic words "beyond a reasonable doubt."

For all of the foregoing reasons, we affirm the circuit court's judgment.

**JUDGMENT OF THE CIRCUIT COURT  
FOR WICOMICO COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**