

Circuit Court for Worcester County
Case No. C-23-CR-18-000339

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 4

September Term, 2019

DAVID F. SAYLOR

v.

STATE OF MARYLAND

Fader, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 29, 2020

*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.

Convicted by a jury in the Circuit Court for Worcester County of disorderly conduct, David F. Saylor, appellant, contends that the evidence is “legally insufficient to support the conviction.” But, trial counsel did not move for judgment of acquittal pursuant to Rule 4-324(a) (a “defendant may move for judgment of acquittal . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence”), and “[a]bsent such a motion, no review of the legal sufficiency of the evidence is even permitted.” *Chisum v. State*, 227 Md. App. 118, 124 (2016). Hence, Mr. Saylor’s contention is not preserved for our review.

Relying on *Testerman v. State*, 170 Md. App. 324 (2006), Mr. Saylor asks us to conclude that “trial counsel rendered ineffective assistance” in failing to move for judgment of acquittal, because “[t]here can be no tactical reason for failing to preserve [Mr. Saylor’s] right to challenge the sufficiency of the evidence on direct appeal.” We decline to do so. The Court of Appeals has stated that “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel . . . omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to the allegations of the counsel’s ineffectiveness.” *Mosley v. State*, 378 Md. 548, 560 (2003) (citations and footnote omitted). Here, like in *Mosley*, the record does not reveal why trial counsel failed to move for judgment of acquittal. A post-conviction proceeding will allow for the introduction of

testimony and evidence, and fact-finding, directly related to Mr. Saylor's contention, and hence, the contention should be addressed in such a proceeding.

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