

Circuit Court for Baltimore County
Case No. 03-K-07-002086

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 5

September Term, 2021

ERIC MATTHEW WILKINSON

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: November 23, 2021

*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.

Eric Matthew Wilkinson, appellant, contends that the Circuit Court for Baltimore County erred in denying his “motion for re-issuance of court order.” For the reasons that follow, we shall affirm the judgment of the circuit court.

On July 14, 2020, Mr. Wilkinson filed a motion to correct an illegal sentence. On August 4, 2020, the court issued an order in which it denied the motion. Below the motion judge’s signature, the order stated:

Clerk, please docket only. Copies have been sent to:

Eric Wilkinson, #1590432 (SID), Roxbury Correctional Institution
Office of the State’s Attorney, Collateral Unit
Court File

On February 4, 2021, Mr. Wilkinson filed the motion for re-issuance, in which he contended that he “never received and signed for a Certified Copy” of the court’s August 4, 2020 order. Mr. Wilkinson further contended that his institution’s “Staff is willing to testify . . . that the [institution’s] mail room never received any such mail,” and that “the post office has been backed up and maybe such mail was lost.” The court denied the motion.

Mr. Wilkinson now contends that the court erred in denying the motion, because Rule 1-324 “mandates that a clerk of a court shall send a copy of an order or ruling to all parties entitled to service . . . [t]o afford [an] appellant the right of appeal [of] such order[] or ruling.” (Quotations omitted.) Attached to Mr. Wilkinson’s brief are several documents that, he contends, “show[] proof [that] from August 2020 to September 2020 no such mail was received from the circuit court in those months.”

“Failure to provide a copy of an order required to be sent by Rule 1-324 can be grounds for exercising the court’s revisory power.” *Government Employees Ins. v. Ropka*, 74 Md. App. 249, 255 (1988) (citations omitted). But, a party seeking relief on the ground “that the court clerk failed to send . . . a copy of [an] order as required by” the rule “must establish the irregularity by clear and convincing evidence.” *Id.* (internal citation and quotations omitted). Such evidence may include an “affidavit[] stating that [the party] had not received a copy of the order” and evidence that the individual “personally responsible for . . . mailing copies of the orders to the proper parties” failed to do so. *Id.*

Here, Mr. Wilkinson did not attach to the motion for re-issuance an affidavit stating that he had not received a copy of the court’s August 4, 2020 order. Mr. Wilkinson also did not attach to the motion an affidavit of a member of the staff of Mr. Wilkinson’s institution stating that the institution’s mail room did not receive any mail from the court during August or September of 2020, an affidavit of an employee of a post office stating that there was a delay in delivering mail or that mail had been lost, or any evidence that the individual personally responsible for mailing a copy of the order to Mr. Wilkinson failed to do so. Finally, Mr. Wilkinson did not attach to the motion any of the documents attached to his brief, and because a record extract must contain only “papers filed in the action in the lower court,” Rule 8-413(a), we shall not consider the documents. We conclude that Mr. Wilkinson failed to establish, by clear and convincing evidence, that the court failed to send him a copy of the court’s August 4, 2020 order, and hence, the court did not err in denying the motion for re-issuance.

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