

Circuit Court for Baltimore County
Case No. 3K91-1785

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 96

September Term, 2017

DUANE JONES

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 3, 2018

*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.

Duane Jones, appellant, appeals from an order, issued by the Circuit Court for Baltimore County, denying his “Petition for Declaratory Judgment and Relief.” In that petition, Jones sought a declaration that (1) the circuit court had imposed ambiguous sentences in his criminal case; (2) the Division of Correction had improperly aggregated his sentences into a single term of confinement; and (3) the Maryland Parole Commission had miscalculated his parole eligibility date. For the reasons that follow, we dismiss the appeal.

Maryland Rule 8-202(a) requires a notice of appeal to be “filed within 30 days after entry of the judgment or order from which the appeal is taken.” Because the order denying Jones’s petition was entered on the docket on February 1, 2017, he was required to file his notice of appeal no later than March 3, 2017. Maryland Rule 1-322 provides that the “filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing . . . and forthwith transmit the item to the office of the clerk.” This has been construed to mean that the pleading must “be actually delivered, either in person or by mail, to the clerk or a judge of the court” to be considered filed. *See Blundon v. Taylor*, 364 Md. 1, 11 (2001). Here, Jones’s notice of appeal was not received and filed in the circuit court until March 7, 2017. Therefore, his notice of appeal was untimely, and his appeal must be dismissed.

We note that the envelope containing Jones’s notice of appeal was date stamped February 27, 2017, and that the Court of Appeals has recently adopted the prison mailbox rule in the context of post-convictions petitions. Specifically, the Court held that a “post-conviction petition by an unrepresented prisoner is deemed to be ‘filed’ at the moment the

petition is formally submitted to prison authorities for forwarding to the circuit court.” *See Hackney v. State*, ___ Md. ____, No. 53, Sept. Term 2017 (filed May 9, 2018), slip op. at 12. However, the Court of Appeals limited its holding to post-conviction petitions and did not extend the prison mailbox rule to other situations. In fact, the Court specifically indicated that it would be up to the Rules Committee “to determine the scope of the prison mailbox rule and explore whether, for example, the rule also should apply to prisoner-filed notices of appeal and petitions for writ of certiorari.” *Id.*, slip op. at 12, n.11. Therefore, we believe that any change in the interpretation of Rule 1-322(a), as it applies to notices of appeal filed by prisoners, must be made by either the Rules Committee or the Court of Appeals.¹

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

¹ It is unclear if Jones would benefit from the prison mailbox rule, even if we were inclined to adopt it in this case. The notice of appeal was sent via certified mail and therefore, we are unable to determine whether he submitted it to prison authorities or gave it to someone else for mailing.