

Circuit Court for Baltimore City
Case No. 24-C-17-005899

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 107

September Term, 2018

ABRAS S.Q. MORRISON

v.

STATE OF MARYLAND, *et al.*

Fader, C.J.,
Meredith,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 29, 2019

*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.

In 1992, Abras S.Q. Morrison, appellant, was convicted of first-degree murder, conspiracy to commit murder, kidnapping, and robbery, following a jury trial in the Circuit Court for Carroll County. The Honorable Francis M. Arnold, who is now deceased, presided over the trial and sentenced Morrison to life imprisonment.

In 2017, Mr. Morrison filed a civil complaint in the Circuit Court for Baltimore City against the State of Maryland, Governor Lawrence J. Hogan, the Maryland General Assembly, and Judge Arnold, appellees, claiming that his incarceration violated his due process rights because Judge Arnold was not qualified to preside over his trial and impose a life sentence. Specifically, he claimed that, because Judge Arnold was 61 at the time of his judicial appointment and would not have been able to complete his 15-year term before reaching the mandatory retirement age of 70, his appointment violated Article IV, Section 5 of the Maryland Constitution which provides that “no person shall be appointed [as a judge] who will be disqualified by reason of age and thereby unable to continue to hold office until the prescribed time when his successor would have been elected.” As relief, Mr. Morrison did not ask the court to vacate his sentence. Rather, he requested “\$15 million in compensatory damages and \$50 million in punitive damages.” Mr. Morrison also filed a motion for the appointment of a panel attorney to help him prosecute his complaint and requested a hearing on that motion.

In response, appellees filed a motion to dismiss or for summary judgment, claiming that: (1) Mr. Morrison had not served the Estate of Judge Arnold; (2) they were immune from suit; (3) Mr. Morrison had failed to comply with the Maryland Tort Claims Act; and (4) Mr. Morrison had failed to state a claim for which relief could be granted.

Mr. Morrison did not file an opposition; however, he filed a motion for an extension of time to respond to the motion to dismiss and a second motion requesting the court to appoint a panel attorney. Mr. Morrison did not request a hearing on either of those motions.

On February 6, 2018, the circuit court denied, without a hearing, Mr. Morrison’s motion for extension of time and motion for appointment of a panel attorney. Then, on February 9, 2018, it granted the State’s motion to dismiss, without a hearing. Mr. Morrison filed a timely “Motion to Reconsider Motion to Extend Time and Motion for Panel Attorney,” which the court also denied. On appeal, Mr. Morrison raises a single issue: whether the court abused its discretion in granting the State’s motion to dismiss and denying his motion for the appointment of a panel attorney without holding a hearing. Because the court was not required to hold a hearing on either motion, we shall affirm.

On appeal, Mr. Morrison contends that the court’s “decision to grant appellees’ motion to dismiss . . . involved intentional dishonesty, abuse of discretion, judicial bias, and other serious violations of the Maryland Code of Judicial Conduct” because it did not hold a hearing on that motion and his motion for appointment of a panel attorney. We disagree.

Maryland Rule 2-311(f) provides that any party may request a hearing on a motion by “request[ing] the hearing in the motion or response under the heading ‘Request for Hearing’” and stating in the title of the motion that a hearing is requested. Here, neither party requested a hearing on the appellees’ motion to dismiss, Mr. Morrison’s motion for

extension of time, or Mr. Morrison’s second motion for the appointment of a panel attorney. Therefore, no hearing was required on those motions. And the court was not required to hold a hearing on Mr. Morrison’s first motion for appointment of counsel because, although he requested a hearing, the motion was not dispositive of a claim or defense. *See* Maryland Rule 2-311(f) (stating that the court shall determine in each case whether a hearing will be held, but that it “may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section”); *see Unnamed Attorney v. Attorney Grievance Com ’m*, 409 Md. 509, 527 (2009) (holding that a “decision dispositive of a claim or defense is one intrinsic to the underlying action”). Moreover, even if the court was required to hold a hearing on Mr. Morrison’s first motion to appoint counsel, reversal would not be required. Mr. Morrison has not cited any legal authority, and we are aware of none, that would have permitted the court to appoint the public defender or a panel attorney to represent him in his civil action. Therefore, he cannot demonstrate that he was prejudiced by the court’s failure to hold a hearing. *See Miller v. Mathias*, 428 Md. 419, 446 (2012) (noting that “an error that is not shown to be prejudicial does not warrant reversal”).

Finally, we note that Mr. Morrison does not challenge the merits of the court’s order dismissing his complaint. Therefore, that issue is not properly before us on appeal. *See Diallo v. State*, 413 Md. 679, 692-93 (2010) (noting that “arguments not presented in a brief or not presented with particularity will not be considered on appeal” (citation omitted)). But had Mr. Morrison raised the issue, we would find no error because his complaint failed to state a claim upon which relief could be granted. Even if we assume

that Judge Arnold’s appointment violated Article IV, Section 5 of the Maryland Constitution, he was still acting as a *de facto* judge at the time of Mr. Morrison’s trial and sentencing and therefore, his actions were valid and effectual as they related to Mr. Morrison. *See Baker v. State*, 377 Md. 567, 593 (2003) (holding that even if a circuit court judge had ceased to be a *de jure* judge at the time that he sentenced the appellant because of a change in residency, he was “at the very least a *de facto* judge” and therefore his actions were valid as they related to the appellant and were not subject to collateral attack); *Kimble v. Bender*, 173 Md. 608 (1938) (holding that the appointment of certain justices of the peace in Allegany County violated the Maryland Constitution but that their official acts were still the acts of a “*de facto* officer” and thus valid where they concerned the public or the rights of a third person). Consequently, Judge Arnold’s involvement in Mr. Morrison’s trial and sentencing did not violate his due process rights.

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