

Circuit Court for Baltimore City
Case No. 118192022

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 166

September Term, 2025

CHARLES VENEY

v.

STATE OF MARYLAND

Graeff,
Leahy,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: June 11, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted Charles Veney, appellant, of multiple sex offenses. The court sentenced appellant to 20 years, all but 15 suspended, and five years of probation.

On appeal, appellant contends that his trial counsel provided ineffective assistance of counsel by failing to file a notice of appeal, as he requested. The State agrees, stating that it is “unable to defend the postconviction court’s rationale,” and appellant “established ineffective assistance of counsel on this record.”

For the reasons discussed below, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

For purposes of his appeal, we need not discuss the evidence supporting appellant’s conviction. We note only that, on November 18, 2019, after a four-day jury trial, appellant was convicted of second-degree rape and related offenses. On December 2, 2019, counsel for appellant, J. Wyndal Gordon, filed a motion for a new trial, arguing that certain evidence should not have been admitted because the probative value of the evidence was outweighed by its prejudicial impact.

On October 6, 2021, the court held a disposition hearing.¹ The court denied the motion for a new trial, and it sentenced appellant to 20 years, all but 15 suspended.

The court requested that Mr. Gordon advise appellant of his rights, and Mr. Gordon advised appellant, among other things, that he had the right to file a notice of appeal.

¹ In subsequent proceedings, the State explained that the delay between the conviction and sentencing was due to the COVID-19 pandemic.

Appellant also signed a notice of post-trial rights, which provided notice of the right to appeal.

On December 1, 2021, appellant filed a *pro se* notice of appeal.² On December 8, 2021, the circuit court ordered appellant to show cause in writing within 15 days why the notice of appeal should not be stricken for failure to comply with the time prescribed in the Maryland Rules of Procedure. On January 5, 2022, the court found that appellant failed to show cause regarding the timeliness of his notice of appeal, and it ordered that the notice of appeal be stricken.³

On May 25, 2023, appellant filed a petition for post-conviction relief, alleging: (1) “ineffective assistance of counsel, attorney failed to present relevant evidence to support a defense”; (2) “attorney failed to investigate”; (3) “attorney failed to file an appeal after conviction”; (4) “attorney failed to maintain proper communication with client”; and (5) “attorney failed to appear on video conference.” On July 19, 2023, the State filed a response, arguing that appellant failed to provide a statement of facts supporting his allegations as required by Maryland Rule 4-402(a).

On September 19, 2024, appellant filed, through counsel, an amended petition for post-conviction relief, alleging, among other things, ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), for failure to note an appeal. The State

² The certification of service says it was mailed on November 18, 2021, but it was not received by the circuit court until December 1, 2021.

³ The court refers to the filing as an Application for Leave to Appeal, but the record shows that appellant filed a notice of appeal.

argued that appellant's request should be denied because appellant provided "nothing more than the self-serving claim that he 'asked counsel to note an appeal on his behalf.'" It asserted that appellant failed to supply evidence that counsel "was obligated to represent [appellant] for any appeals process, such as by providing the retainer agreement between [appellant] and Trial Counsel," or evidence that appellant actually made a request to counsel to file an appeal, "such as the time(s), manner(s), and method(s) of such conversations or requests." The State argued that appellant's filing of a *pro se* notice of appeal suggested that he "likely understood the scope of representation by Trial Counsel as not including any appeal."

On November 20, 2024, the court held a post-conviction hearing. Appellant testified that he spoke with Mr. Gordon only once before he went to trial. Mr. Gordon did not consult with him about his options if he were to be convicted. The State offered him a plea deal, but Mr. Gordon said he was "pretty confident" that they could "beat this case," and appellant did not take the deal. Appellant did not speak with Mr. Gordon after he received the guilty verdict. He was not aware that Mr. Gordon filed a motion for a new trial at the time it was filed. After sentencing, appellant told Mr. Gordon that he wanted to appeal, and Mr. Gordon stated that he "could probably win on appeal." Appellant had not heard from Mr. Gordon since sentencing.

The State indicated that it had summoned Mr. Gordon as a witness, but Mr. Gordon refused personal service and returned the certified mail. Mr. Gordon did not attend the hearing.

Defense counsel argued that counsel rendered ineffective assistance of counsel by failing to consult with appellant and advise him whether an appeal was appropriate. She argued that appellant asked Mr. Gordon to note an appeal, and by not doing so, appellant was prejudiced because he lost his right to appeal.

The State argued that Mr. Gordon consulted with appellant by advising appellant of his rights at sentencing, and by discussing the legitimacy of an appeal. With respect to whether Mr. Gordon had an obligation to file a notice of appeal, the State noted that Mr. Gordon was “privately retained,” asserting that any obligation would be determined by a “meeting of the minds, as typically shown by a retainer agreement.” The State stated that logic indicated that the agreement was for Mr. Gordon to represent appellant “through the trial and sentencing, but no further,” stating that “[o]therwise, why would Mr. Gordon show the dedication to represent [appellant] two years later at sentencing, but not file any post-sentencing matters.” The State argued that Mr. Gordon could not be deficient for failing to file the notice of appeal when he was not obligated to since he was allowed to negotiate his scope of representation.

Counsel for appellant responded that appellant asked Mr. Gordon to file an appeal, not “do the appeal.” And all lawyers, public defenders and private attorneys, had a duty to consult with their clients.⁴

⁴ Counsel also stated that “criminal lawyers don’t have retainer agreements”; they have oral agreements.

On December 10, 2024, the circuit court issued its ruling. It stated that the issue was whether Mr. Gordon “was obligated to file a notice of appeal pursuant to his agreement with” appellant. The court found that appellant had provided no direct evidence in that regard and no inference could be drawn to that effect. It stated that it was not reasonable to infer that Mr. Gordon neglected an obligation to file a one-to-two-page notice of appeal when he represented appellant in a sentencing hearing two years after the verdict. The court found that appellant’s actions indicated that he understood that Mr. Gordon was not obligated to file an appeal, noting that appellant did not try to contact Mr. Gordon after being sentenced. The court also found that appellant admitted that the appeal was untimely because he was mistaken about the deadline, and appellant requested that the Office of the Public Defender to represent him in the appeal. These facts indicated to the court that appellant knew that Mr. Gordon’s representation had concluded, and it was appellant’s responsibility to file the notice of appeal.

On January 10, 2025, appellant filed an application for leave to appeal the denial of post-conviction relief. He argued that privately retained trial counsel is required to file a notice of appeal on behalf of their client, when counsel is aware that the client wished to appeal their conviction, in the absence of an agreement to the contrary. The State, in its opposition, alleged that appellant did not meet his burden to prove ineffective assistance of counsel. On March 28, 2025, this Court granted appellant’s application for leave to appeal.

This appeal followed.

STANDARD OF REVIEW

The Supreme Court of Maryland has set forth the applicable standard of review of a circuit court’s decision in a post-conviction proceeding as follows:

Our review of a post-conviction court’s findings regarding ineffective assistance of counsel is a mixed question of law and fact. *Newton v. State*, 455 Md. 341, 351, 168 A.3d 1, 7 (2017) (citing *Harris v. State*, 303 Md. 685, 698, 496 A.2d 1074, 1080 (1985) (“[T]o determine the ultimate mixed question of law and fact, [we ask] namely, was there a violation of a constitutional right as claimed.”)). The factual findings of the post-conviction court are reviewed for clear error. *Id.* The legal conclusions, however, are reviewed *de novo*. *Id.* at 351-52, 168 A.3d at 7. The appellate court exercises “its own independent analysis” as to the reasonableness, and prejudice therein, of counsel’s conduct. *Oken v. State*, 343 Md. 256, 285, 681 A.2d 30, 44 (1996).

State v. Syed, 463 Md. 60, 73, *cert. denied*, 589 U.S. 1080 (2019).

DISCUSSION

I.

Parties’ Contentions

Appellant contends that Mr. Gordon’s performance was deficient because Mr. Gordon ignored appellant’s “request to appeal and failed to consult with him about the appeal.” Appellant asserts that he “was prejudiced by this deficiency because he lost his ability to have an appeal.”

The State agrees. It asks, as does appellant, that we reverse the judgment and remand with instructions to grant appellant’s post-conviction relief in the form of a belated opportunity to file a notice of appeal.

On May 15, 2026, after the State filed its brief, appellant filed a “Motion for Summary Reversal and to Expedite Issuance of the Mandate.” Appellant requests that “this Court issue an order (1) summarily reversing the judgment of the Circuit Court for Baltimore City with instructions for [] that court to grant [a]ppellant post-conviction relief in the form of a belated opportunity [to] file a notice of appeal; and (2) directing that the mandate be issued forthwith.” We deny the motion to summarily reverse the judgment, and instead, we file an opinion briefly addressing appellant’s argument on appeal.

II.

Analysis

The Supreme Court of Maryland has explained:

In *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052, the Supreme Court established a two-part test for resolving a claim of ineffective assistance of counsel. The first part of the test is known as “the performance prong[.]” and the second prong is known as “the prejudice prong[.]” See *Newton v. State*, 455 Md. 341, 356, 168 A.3d 1, 9 (2017) (citing *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052). To demonstrate the ineffective assistance of counsel, both parts of the test must be satisfied. See *id.* at 355, 168 A.3d at 9.

To satisfy the first part of the test, a petitioner “must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning [in a manner] guaranteed [] by the Sixth Amendment.” *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052. A petitioner “must show that counsel’s representation fell below an objective standard of reasonableness” “under prevailing professional norms.” *Id.* at 688, 104 S.Ct. 2052.

Davis v. State, 490 Md. 359, 378-79 (2025). Accord *Wallace v. State*, 475 Md. 639, 653-55 (2021).

The second prong of an ineffective assistance of counsel claim “requires the defendant to show prejudice.” *Syed*, 463 Md. at 86. “[T]he court does not presume the

defendant suffered prejudice as a result of the deficient performance.” *Id.* at 87. “A showing of prejudice is present where ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Id.* at 86 (quoting *Strickland*, 466 U.S. at 694).

In *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000), the United States Supreme Court considered whether the performance of defense counsel was deficient when counsel failed to file a notice of appeal. The Court stated that “a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable.” *Id.* In that case, the defendant had not clearly conveyed whether the defendant wanted to appeal, and in that situation, the first question was whether counsel consulted with the defendant about an appeal. *Id.* at 478. The Court defined the term consult as “advising the defendant about the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant’s wishes.” *Id.*

If counsel has consulted with the defendant, “[c]ounsel performs in a professionally unreasonable manner only by failing to follow the defendant’s express instructions with respect to an appeal.” *Id.* If counsel did not consult with the defendant, the next question is “whether counsel’s failure to consult with the defendant itself constitutes deficient performance.” *Id.* The Court held that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal . . . or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Id.* at 480. In assessing those

factors, it is highly relevant if the defendant went to trial, as opposed to pleading guilty, because a defendant who maintains innocence is more likely to want an appeal if he or she is convicted, whereas “a guilty plea reduces the scope of potentially appealable issues” and “may indicate that the defendant seeks an end to judicial proceedings.” *Id.* at 480. Although the Court declined to say that it was always unreasonable to fail to consult with a defendant about an appeal, it believed that, “in the vast majority of cases,” courts would find “that counsel had a duty to consult with the defendant about an appeal.” *Id.* at 479, 481.

When a defendant shows deficient performance in the failure to file an appeal, the defendant must also show prejudice by establishing a reasonable probability that, “but for counsel’s deficient conduct, he would have appealed.” *Id.* at 486. “[W]hen counsel’s constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal.” *Id.* at 484.

In *Davis*, 490 Md. at 390, the Supreme Court of Maryland adopted the framework established in *Flores-Ortega* for a claim based on the failure to file a motion for modification of sentence. The Court held that, when a defendant has not asked counsel to file a motion for modification of sentence, the first question is whether counsel consulted with the defendant about filing such a motion, and if not, was counsel’s decision to not consult with the defendant objectively reasonable. *Id.* at 393. In that case, the failure to consult with the defendant constituted deficient performance. *Id.* at 395. And because this

resulted in the loss of an opportunity to file the motion, prejudice was established. *Id.* at 395-98.

Here, appellant testified that he requested Mr. Gordon to file a notice of appeal, and Mr. Gordon stated that he “could probably win on appeal.” The circuit court did not indicate that it did not believe appellant’s testimony in this regard.⁵ As the United States Supreme Court has stated: “a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable.” *Flores-Ortega*, 528 U.S. at 477. Under these circumstances, appellant established that Mr. Gordon’s performance was deficient.⁶

⁵ As indicated, the post-conviction court based its decision on the lack of evidence that Mr. Gordon’s scope of representation included filing a notice of appeal, and inferred that appellant understood that. The court stated in a footnote:

At the post-conviction hearing, [appellant] made the related argument that Trial Counsel was ineffective by failing to consult with [appellant] about an appeal. The record belies [appellant]’s argument, however, because he admitted at the post-conviction hearing that he spoke with Trial Counsel about the appeal at the sentencing hearing.

⁶ The record does not support the court’s inference that Mr. Gordon did not file the notice of appeal because he had an agreement for a limited scope of representation. “An attorney may limit the scope of the representation . . . if (1) the limitation is reasonable under the circumstances, (2) the client gives informed consent, and (3) the scope and limitations of any representation . . . are clearly set forth in a writing.” Md. Rule 19-301.2(c). If privately retained counsel’s representation is limited, as clearly set forth in a writing, counsel must file a motion to withdraw its appearance after sentencing to avoid its appearance continuing until the expiration of the appeal period. Here, Mr. Gordon filed an entry of appearance and did not specify any limitation to his representation. Mr. Gordon did not file a motion to withdraw his appearance after appellant was sentenced, and as such, Mr. Gordon was subject to the duties described in *Flores-Ortega*. An attorney may file a notice of appeal without continuing representation during the appeal by “notif[ying] the Clerk of the appellant court in writing not to enter the attorney’s appearance in the appellate court[.]” Md. Rule 8-402.

“[T]o show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel’s deficient failure to consult with him about an appeal, he would have timely appealed.” *Id.* at 484. “A petitioner’s ‘unwavering and ongoing’ interest in and pursuit of an appeal demonstrates the intent to pursue that appeal regardless of an attorney’s advice.” *Bostick v. Stevenson*, 589 F.3d 160, 168 (4th Cir. 2009) (quoting *Frazer v. South Carolina*, 430 F.3d 696, 712 (4th Cir. 2005)).

Here, appellant filed a *pro se* notice of appeal in December 2021, less than two months after his sentencing hearing. After the notice of appeal was stricken, appellant filed a petition for post-conviction relief. It is clear from the record that, but for Mr. Gordon’s deficient performance, appellant would have filed a timely notice of appeal. Having found that appellant has demonstrated ineffective assistance of counsel, we reverse the circuit court and instruct the court to grant appellant leave to file a belated notice of appeal.⁷

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED
WITH INSTRUCTION TO GRANT
APPELLANT LEAVE TO FILE A
BELATED NOTICE OF APPEAL. COSTS
TO BE PAID BY THE MAYOR AND CITY
COUNCIL OF BALTIMORE.**

⁷ As indicated, we have denied the motion for summary reversal. We shall grant, however, request to expedite the mandate. Upon entry of this Opinion, the Clerk shall issue the mandate forthwith.