

Circuit Court for Frederick County
Case Nos. 10-K-11-50599-601

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 334

September Term, 2020

VAUGHN DEMETRIUS DAVIS

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick, L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 11, 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.

Vaughn Demetrius Davis, appellant, appeals from an order issued by the Circuit Court for Frederick County denying his Petition for Writ of Mandamus. In that petition he requested the court to modify his sentence and release him from confinement due to his potential risk of exposure to COVID-19 while incarcerated at Maryland Correctional Training Center. On appeal, he contends that the court erred in (1) processing his petition as a criminal proceeding rather than as a civil case; (2) accepting a response to the petition from the Frederick County State’s Attorney rather than the Office of the Attorney General; and (3) in denying the petition on the merits.¹ For the reasons that follow, we shall affirm the judgment of the circuit court.

In 2012, Mr. Davis pleaded guilty, pursuant to an *Alford* plea, to three counts of armed robbery in the Circuit Court for Frederick County. The court sentenced him to a total of 60 years’ incarceration, with all but 36 years suspended. In May 2020 he filed a Petition for Writ of Mandamus alleging that the conditions of his incarceration placed him at a heightened risk for contracting COVID-19. In so arguing, he did not claim that he was at an increased risk of complications from COVID-19 because of his age or health conditions. Rather, he generally asserted that between March and April 2020, the Secretary

¹ The same day that Mr. Davis filed his petition for writ of mandamus, he also filed a petition for writ of habeas corpus raising substantially the same issues. The court denied the petition for habeas corpus in a separate order and Mr. Davis filed a separate notice of appeal from that order. Thereafter, this Court consolidated those appeals. However, in his brief, Mr. Davis does not mention the petition for writ of habeas corpus or claim that the court erred in denying it. Consequently, we do not consider that issue on appeal. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.” (citation omitted)).

of the Department of Public Safety and Correctional Services (the Secretary) and the Commissioner of Corrections (the Commissioner) had created an unsafe environment by: (1) failing to post bulletins and directives about social distancing; (2) failing to insure that staff and inmates had access to adequate PPE; (3) permitting inmates to engage in yard activities without social distancing; (4) allowing inmates to eat meals without social distancing; (5) failing to adequately test inmates and staff for COVID-19; and (6) failing to release sufficient inmates to allow for social distancing. As relief, Mr. Davis requested the court to reduce his sentence and issue an amended commitment order releasing him from custody. The court denied Mr. Davis’s petition without a hearing. This appeal followed.

On appeal, Mr. Davis first raises two procedural issues. Specifically, he claims that the court erred in (1) docketing the petition for writ of mandamus in his criminal case, rather than as a separate civil action, and (2) “accepting the State’s Attorney’s answer in lieu of the Attorney General of Maryland,” who he claims was the proper party because the “basis of the complaint is against [his] custody, the Governor, and his appointees.” Mr. Davis appears to acknowledge that he shares some of the blame for these issues as the caption of his petition listed the case numbers in his criminal cases and he served the State’s Attorney for Frederick County instead of the Office of the Attorney General. He nevertheless asserts that the court erred in denying the petition without allowing him an opportunity to cure these defects and serve the proper party.

As an initial matter, we note that Mr. Davis never raised these issues in the circuit court and therefore, they are not preserved for appellate review. Moreover, even if the

court erred in the manner suggested by Mr. Davis, he cannot demonstrate prejudice because, regardless of how his petition was docketed or which governmental entity responded, the court could not have granted his requested relief. Consequently, reversal is not required. *See Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) (“Appellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show prejudice as well as error.” (internal quotation marks and citation omitted)).

“The fundamental purpose of a writ of mandamus is ‘to compel inferior tribunals, public officials, or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear right.’” *Balt. Cnty. v. Balt. Cnty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 569-70 (2014) (quoting *Town of La Plata v. Faison–Rosewick, LLC*, 434 Md. 496, 511 (2013)). The Court of Appeals has observed that a writ of mandamus is only “‘appropriate where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials, but not where there is any vestige of discretion in the agency action or decision.’” *Id.* at 570 (quoting *Faison–Rosewick*, 434 Md. at 511). “[A] writ of mandamus will not be issued where the right is unclear of the party seeking it, doubtful, or where the act sought to be compelled is within the discretion of the decision-maker against whom the writ is sought.” *Id.* (emphasis added) (internal citations omitted).

Here, Mr. Davis did not request the court to compel the Secretary or the Commissioner to take any actions with respect to the alleged safety issues set forth in his

petition. And in any event, the petition indicated that most of these issues had already been addressed by the time the petition was filed. Rather, the sole relief sought by Mr. Davis was the modification of his sentence and his release from incarceration. However, neither the Secretary nor the Commissioner had the discretion, much less a legal duty, to order his release. Consequently, the court could not compel them to do so by means of a petition for writ of mandamus.² Because Mr. Davis’s petition did not request any other relief, the court did not err in denying it without a hearing.³

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

² Even if we were to construe Mr. Davis’s petition as a motion to modify his sentence, he would fare no better as the denial of such a motion is generally not appealable. *See Hoile v. State*, 404 Md. 591, 615 (2008) (“[T]he denial of a motion to modify a sentence, unless tainted by illegality, fraud, or duress is not appealable.” (citations omitted)).

³ Mr. Davis contends that the court erred in denying his petition for the reasons stated in the State’s Attorney’s response. However, the court’s order did not indicate that it was denying the petition for those reasons. And in any event, this Court may “affirm a circuit court’s judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.” *Puppolo v. Adventist Healthcare, Inc.*, 215 Md. App. 517, 530 (2013).