Circuit Court for Baltimore County
Case No. 03-K-05-004844

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 453

September Term, 2020

REGINALD MICHAEL FENWICK

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 3, 2020

In 2005, Reginald Michael Fenwick, appellant, was convicted of armed robbery and other related offenses in the Circuit Court for Baltimore County and sentenced to 20 years' imprisonment. Mr. Fenwick is currently an inmate at Eastern Correctional Institution.

In June 2020, Mr. Fenwick filed a "Petition for Immediate Release Under Catastrophic Health Emergency," pursuant to Maryland Rule 15-1103, claiming that he should be immediately released because COVID-19 was "spreading throughout the prison system" and it placed him at "severe immediate risk to suffer severe illness and potential death." Specifically, he asserted that he was at high risk of contracting and dying from COVID-19 because he was 49 years' old and suffered from several medical conditions including high blood pressure and asthma. In addition to requesting relief pursuant to Rule 15-1103, Mr. Fenwick also contended that he should be released pursuant Chief Judge Barbera's April 14, 2020 "Administrative Order Guiding the Response of the Trial Courts of Maryland to the COVID-19 Emergency as it Relates to Those Persons Who Are Incarcerated or Imprisoned" (the Administrative Order). The circuit court denied his petition without a hearing. Mr. Fenwick raises two issues on appeal: (1) whether the court erred in denying his petition without appointing counsel, holding a hearing, or explaining the reasons for its decisions, and (2) whether the court erred in failing to "properly and fairly apply" the Administrative Order to his case. For the reasons that follow, we shall affirm.[1]

[1] The State has filed a motion to transfer the appeal to the ALA docket, claiming that Mr. Fenwick's petition was akin to a petition for writ of habeas corpus or a motion for modification of sentence. However, although Mr. Fenwick's petition did seek a (continued)

Mr. Fenwick first contends that the court erred in denying his petition without appointing counsel, as required by Rule 15-1104(a); without holding a hearing, as required by Rule 15-1104(c); and without explaining the reasons for its decision, as required by Rule 15-1105(c). We disagree. Rules 15-1104-05 apply to petitions that are filed pursuant to Rule 15-1103(a), which provides that an "individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary [of Health] issued pursuant to Code, Health-General Article, § 18-906, Public Safety Article, § 14-3A-05, may contest the isolation or quarantine by filing a petition for relief in the circuit court[.]" Mr. Fenwick is not being quarantined or ordered to remain in isolation by a directive of the Secretary of Health. Rather, he is incarcerated in the Division of Correction because of a sentence that was lawfully imposed by the circuit court in his criminal case. And while we acknowledge the possibility that the circumstances of his incarceration might increase his risk of contracting COVID-19, that does not change the fact that Rule 15-1103 does not apply to someone in his situation. Because Mr. Fenwick was not eligible to file a petition pursuant to Rule 15-1103 in the first instance, the court did not err in failing to comply with Rules 15-1104-05.[2]

modification of his sentence pursuant to the Administrative Order, his primary claim was that he was being unlawfully quarantined pursuant to a directive of the Secretary of Health. Because the denial of a petition challenging such a quarantine order is appealable as a final judgment we shall deny the State's motion.

[2] Even if we were to assume that Mr. Fenwick was entitled to counsel and a hearing simply by virtue of his having cited Rule 15-1103 in his petition, we would not reverse as he cannot demonstrate prejudice. *Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) ("Appellate courts of this State will not reverse a lower court judgment for harmless error: the (continued)

Mr. Fenwick further contends that the court erred in failing to "properly and fairly apply" the Administrative Order to his case. In so arguing, he cites two provisions of the Administrative Order that he contends are applicable to him, paragraph (a), which encourages certain judges to "communicate with justice system stakeholders to identify at-risk incarcerated persons for potential release," and paragraph (i), which directs judges to "continue to act expeditiously to issue a ruling or schedule a remote hearing upon motion of any party to modify a sentence in light of the considerations related to the COVID-19 emergency." However, neither of these provisions, nor any other provision of the Administrative Order, creates a new cause of action or a right to release that did not previously exist under Maryland law. At most, paragraph (i) requires courts to expeditiously consider motions for modification of sentence based on COVID-19. But Mr. Fenwick is not eligible to file a motion for modification of sentence as a court can only revise its sentence within 5 years after the sentence was imposed. *See* Maryland Rule 4-345(e)(1). Moreover, even if we assume that Mr. Fenwick could have filed such a motion, the decision as to whether to grant it would be entirely in the court's discretion and the

complaining party must show *prejudice* as well as *error*." (internal quotation marks and citation omitted)). In short, we are not persuaded that the presence of counsel or the holding of a hearing could have affected the outcome of the proceedings as Mr. Fenwick's petition did not allege facts that would have allowed the court to release him from custody pursuant to Rule 15-1103.

denial of such a motion is not appealable. *See Carter v. State*, 193 Md. App. 193, 207 (2010).

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