Circuit Court for Baltimore County
Case No: 03-K-17-002633

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 583

September Term, 2022

KEITH COURTNEY

v.

STATE OF MARYLAND

Nazarian,
Ripken,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: October 28, 2022

*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.

On November 20, 2017, Keith Courtney, appellant, pleaded guilty in the Circuit Court for Baltimore County to first-degree assault, malicious destruction of property, and second-degree assault. Thereafter, on December 20, 2017, the court sentenced him to a total of 20 years' imprisonment with all but 15 years suspended in favor of 3 years' probation.[1] Appellant did not thereafter seek leave to appeal his guilty plea in this Court.

On April 18, 2022 appellant, acting *pro se*, filed a paper titled "Motion to Withdraw Guilty Plea" and a paper titled "Motion for A New Trial."[2] The circuit court denied the former on April 26, 2022 "because there is no basis to grant the relief requested," and the latter on May 16, 2022, stating that "[t]he [court] ha[d] heard and considered these argument[s] and has previously ruled on defendant's motion for a new trial[.]" The circuit court's denials prompted this appeal.[3, 4]

In appellant's *pro se* motion to withdraw his guilty plea, he asserted that his guilty

[1] The record reflects that, on April 18, 2022, the court modified appellant's sentence to 25 years' imprisonment with all but 12 years suspended in favor of 3 years' probation.

[2] We have liberally construed appellant's *pro se* papers. *See Simms v. Shearin*, 221 Md. App. 460, 480 (2015) (noting that we generally liberally construe papers filed by *pro se* litigants).

[3] While it is somewhat unclear which order is the subject of this appeal, in his *pro se* notice of appeal filed on May 20, 2022 in this Court, appellant specifically notes that he "challenges" the circuit court's April 26, 2022, denial of his motion to withdraw his guilty plea. In his brief of appellant, however, appellant appears to also be challenging the May 16, 2022 denial of his motion for a new trial. Regardless of the titles of the respective motions, they contain identical allegations.

[4] In the years since his guilty plea and sentencing appellant has repeatedly filed papers in the circuit court attacking his convictions and/or sentences, the denials of which have spawned six different appeals to this Court (not counting this one). CSA-REG-1090-2020, CSA-REG-0016-2021, CSA-REG-2042-2021, CSA-REG-0299-2022, CSA-REG-0436-2021, & CSA-REG-1001-2022.

plea was not knowingly and voluntarily entered because he entered the guilty plea without the benefit of "a substantial amount of favorable evidence[.]" According to appellant, the favorable evidence which he claims not to have been aware of at the time he entered his guilty plea was contained in medical records which he asserts could have supported a voluntary intoxication defense to the charge of first-degree assault.[5] Specifically, appellant claimed that:[6]

> The hospital records are mitigating circumstances that should have been available at the time of the of the guilty plea. The specific intent for first-degree assault has a defense and these reports would have changed the outcome.
>
> Appellant's mental status was directly impacted by his intoxication. These reports show the State's failure to provide a factual basis for the record, because the plea or sentencing has no record of these reports of appellant's intoxication.
>
> Appellant requests in the interest of justice to vacate the plea of first-degree assault or pray a new trial so evidence can be presented.

On appeal in this Court, appellant presents the following questions in his informal *pro se* Brief of Appellant:

> Issue 1 Did [the trial court] fail to question into how intoxicated [appellant] was? By not looking at the [relevant] hospital [records].
>
> Issue 2 Was [appellant's] plea knowing and voluntary without [the] hospital records?
>
> Issue 3 Did the State fail to provide favorable evidence at the time of [the] plea and sentencing?

[5] Appellant asserts that he obtained the medical records in March 2019 as the result of a MPIA request.

[6] For readability and clarity, we have made non-substantive alterations to this quotation.

Issue 4 With the documents of [appellant's] hospital stay, would they change the specific intent crime of first-degree assault?

Issue 5 Did this case lack evidence to deem a fair plea or resentencing?

Issue 6 Did [the] State prove serious physical injury?

DISCUSSION

The withdrawal of a guilty plea is governed by Maryland Rule 4-242(h), which provides that:

> At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, … if the defendant establishes that the provisions of section (c), (d), or (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243.

Sections (d) and (e) address conditional pleas of guilty and pleas of nolo contendere, respectively. Section (c) of the Rule explains that a court may not accept a guilty plea until the court determines and announces on the record various matters related to the entry the guilty plea.[7]

Setting aside, for the moment, the untimeliness of appellant's motion to withdraw

[7] Maryland Rule 4-242(c) provides:

> The court may not accept a plea of guilty. . . until after an examination of the defendant on the record in open court conducted by the court, . . . the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt.

his guilty plea, we note that he makes no allegation that fits within the contemplation of the Rule. Because appellant's guilty plea was not entered conditionally, and because he did not enter a plea of nolo contendre, sections (d) and (e) of the Rule are inapplicable. Moreover, appellant makes no allegation that the record fails to reflect compliance with any specific portion of section (c) of the Rule.[8] In addition, appellant does not allege that the plea agreement was violated. Importantly, the facts giving rise to appellant's claims did not materialize until March 2019 when he received the medical records at issue which was more than a year after the deadlines contemplated in by Rule 4-242(h) had elapsed.

In any event, we do not reach the merits of appellant's arguments because we dismiss this appeal as not allowed by law.

Appellant had, or has, various methods to attack his guilty plea that are authorized by Maryland law, some or all of which he has already unsuccessfully litigated and appealed.[9] We need not recount those methods here because the record reflects that

[8] Appellant did not provide this Court with any transcripts of his guilty plea or sentencing. The State points out that, pursuant to the applicable Maryland Rules, this Court could dismiss this appeal for that reason alone. In response, despite his admission that he has the relevant transcripts in his actual possession, appellant urges this Court to overlook his failure to have provided them due to his indigency, his incarceration, and the fact that he is not represented by an attorney. In addition, he explains that he:

> [Did] receive a copy of [his guilty plea and sentencing] transcripts and a[n] audio CD [but] both copies are different then [sic] what was really said in [the]court room. So[, appellant's] copies are not a reliable source of evidence for appeal purposes. The cop[ies] of [the] transcripts is [sic] a planned attempt to edit and tamper with court records and the untrue and unreliable documents should not be added to [the appellate] record. Someone should be held accountable. We are not here for that.

[9] Given the sheer number of post-trial petitions, motions, and papers appellant has (continued)

appellant appears to be on actual notice of most, if not all, of them. Suffice it to say that appellant cites no authority authorizing his out of time attack on his guilty plea, the denial of which is the subject of this appeal.[10] We are otherwise aware of none. For that reason alone, the circuit court did not err in denying appellant's motion. Moreover, in our view, appellant is not entitled to pursue a direct appeal from a proceeding unauthorized by law. If that were the situation, then a litigant who invents their own method of attacking a conviction unauthorized by law would then create for themselves greater appellate rights than a litigant who attacks a conviction pursuant to extant law and procedure. That cannot be the law.

filed in his case, it is nearly impossible for this Court to ascertain with any level of certainty precisely the disposition of everything he has filed. It would seem that the circuit court entertained similar uncertainty when, in October 2020, after noting the sheer volume of papers appellant had filed, it held a hearing to permit appellant to collectively clarify the relief he sought and present whatever supporting evidence and arguments he felt necessary. After the hearing, the court held the matter under advisement to further consider "the arguments presented at the hearing and to review in detail all of the documentation that [appellant] submitted at the hearing." Thereafter, on October 20, 2020, the court denied all requested relief.

If any of the arguments presented and/or relief sought, and not obtained, during those proceedings is in any way different from the arguments at issue in the current appeal, appellant has completely failed to explain the differences. To us, they appear identical.

[10] Appellant's attempt to invoke Maryland Rule 4-331(b)(2), which provides, among other things, that the circuit court retains revisory power over a judgment in the case of fraud, mistake, and irregularity, is unavailing. Other than citing to that rule briefly at the outset of his motion for new trial, he never mentions it again and never offers any argument or explanation anywhere about how his allegations amount to a fraud, mistake, or irregularity as those terms have been defined. As noted earlier, the merits of his motion for a new trial were identical to the merits of his untimely motion to withdraw his guilty plea.

Consequently, pursuant to Maryland Rule 8-602, we dismiss this appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.