

Circuit Court for Washington County
Case No.: 21-K-15-51064
Case No.: 21-K-16-53208

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 594 & 597

September Term, 2022

DWAYNE COX

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.

Dwayne Cox, an inmate serving time in the Department of Correction for distribution of heroin, appeals the denial of his requests for substance abuse evaluation and treatment. For the reasons to be discussed, we shall grant the State’s motion to dismiss the appeals.

BACKGROUND

In 2016, Cox was convicted of distribution of heroin in the Circuit Court for Washington County and was sentenced to 12 years’ imprisonment, all suspended except time served, and placed on a 3-year term of supervised probation (Case No. 21-K-15-51064). While on probation, Cox was charged with distributing heroin and crack cocaine and on May 16, 2017, he pleaded guilty to distributing heroin and was sentenced to 10 years’ imprisonment (Case No. 21-K-16-53208). He then admitted to violating conditions of his probation in the 2016 case and the court revoked his probation and ordered him to serve eight years of his previously suspended sentence, to run consecutively to any outstanding sentence.

On May 18, 2022, Cox filed a *pro se* pleading in both cases titled “Refiling of Petition for Civil Commitment to the Department of Health and Mental Hygiene for Treatment Pursuant to § 8-505 of the Health General Article, or, in the Alternative, Modification.”¹ In his petition, Cox asserted that it was in his best interest, as well as in

¹ In June 2018, Cox, *pro se*, filed a petition in both cases for substance abuse evaluation pursuant to Health-General § 8-505 of the Maryland Code. The court denied the request. Prior to that, in June 2017, Cox, through counsel, filed a “Motion for Evaluation Pursuant to Health General Article § 8-505 or, in the Alternative, Modification to be Held *Sub* (continued)

the best interest of the citizens of Maryland, that he “receives treatment for his addiction prior to his release from incarceration.” He claimed that there “are no programs of sufficient consequence to address the severity of [his] drug dependence available in the Division of Correction[.]” Thus, he requested modification of his sentences and a commitment to the Department of Health “for evaluation and treatment.” On May 20, 2022, the State file a response to the petition, simply stating: “The State defers to the discretion of this Honorable Court.” On May 24, 2022, the court, “[u]pon consideration” of the petition, denied relief. Cox noted timely appeals in each case. We granted the State’s motion to consolidate the cases for appeal purposes.

DISCUSSION

In his brief filed in No. 597, Sept. Term, 2022 (circuit court Case No. 21-K-16-53208), Cox asserts that the court erred in denying his request for substance abuse evaluation and treatment “without a reason and no explanation” for the denial. In his brief filed in No. 594, Sept. Term, 2022, Cox asserts that his 2017 guilty plea entered in Case No. 21-K-15-051064 was defective and that he is entitled to file another motion for modification or reduction of sentence in that case because of his attorney’s alleged failure to follow his instructions related to that motion.

The State moves to dismiss the appeals filed in both cases. The State points out that the appeal in both cases was from the circuit court’s May 24th order denying Cox’s request

Curia.” The court issued an order denying the request for substance abuse evaluation and ordering that the motion for modification of sentence be held *sub curia*.

for substance abuse evaluation pursuant to Health-General 8-505 and asserts that the judgment is not final for appealability purposes. The State relies on *Fuller v. State*, 397 Md. 372, 380 (2007) where the Court of Appeals held that “an order denying an inmate commitment to a drug treatment program pursuant to Section 8-507 of the Health-General Article is not appealable” because, given the fact such a motion may be filed repeatedly, the denial does not constitute a final judgment. Although *Fuller* addressed the denial of a motion for *treatment* pursuant to Health-General § 8-507, the State maintains that the reasoning in *Fuller* is equally applicable to the denial of a motion for *evaluation* pursuant to Health-General § 8-505 because neither statute provides for the right to appeal nor limit the number of times a request for evaluation or treatment may be filed.

We agree with the State. Health-General § § 8-505(a)(1) and 8-507(a)(1) provide that a court, pursuant to certain conditions, “may” order an evaluation for substance abuse and “may” commit a defendant for treatment. As such, whether to grant relief is left to the court’s discretion. Neither statute requires a court to set forth its reasons for denying a request for an evaluation or commitment for treatment and neither statute provides the right to appellate review of a decision denying relief. Finally, in light of the lack of any limit on the number of petitions that may be filed for an evaluation under Health-General § 8-505 and treatment under § 8-507, we are persuaded that the decision is not appealable. *See Fuller*.²

² There is no indication in the record before us that the circuit court believed it did not have the authority to grant relief. Thus, this case is distinguishable from *Hill v. State*, 247 Md. App. 377 (2020) which addressed the decision of the circuit court denying a

(continued)

The State next asserts that Cox’s claim that his 2017 guilty plea in Case No. 21-K-15-051064 was defective and that he is entitled to file another motion for modification or reduction of sentence in that case because of his attorney’s alleged ineffective assistance of counsel is not properly before us. We agree. These are claims that Cox is raising for the first time on appeal and are unrelated to the circuit court’s denial of his motion for substance abuse evaluation and treatment.

APPEALS DISMISSED. COSTS TO BE PAID BY APPELLANT.

request for substance abuse treatment under Health-General § 8-507 where the court concluded that it had no authority to authorize treatment and where the petitioner claimed that applying to him an 2018 amendment to the statute restricting treatment for inmates convicted of violent crimes until they were parole eligible violated the *Ex Post Facto* clause.