

Circuit Court for Washington County
Case No. 21-K-06-38204

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 619

September Term, 2017

DEMETRIUS MCDANIELS

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 3, 2018

*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.

Demetrius McDaniels, appellant, was convicted of first-degree felony murder, attempted first-degree murder, and other related offenses following a jury trial in 2007. This Court affirmed his convictions on direct appeal. *McDaniels v. State*, No. 861, Sept. Term 2007 (filed July 15, 2009). McDaniels subsequently filed a petition for post-conviction relief, that was denied on January 31, 2017. McDaniels filed a timely application for leave to appeal on March 1, 2017.

Because McDaniels did not include a request for waiver of prepaid appellate costs with his application for leave to appeal, the circuit court clerk sent him a letter directing him to either file a request for waiver of fees or pay the filing fees. On March 16, 2017, McDaniels filed a “Request for Waiver of Prepaid Costs for Assembling the Record on Appeal,” using the form approved by the State Court Administrator. Under the heading “Affidavit of Continuing Eligibility,” McDaniels stated that he was going to be represented by the Office of the Public Defender. Under the heading “Affidavit of Income” he also indicated that he had no income or property and that he was incarcerated. The form was not dated or signed by appellant and did not contain an attorney certification. The same day, the circuit court denied McDaniels’s request to waive the prepaid costs, finding that he was “represented by an attorney and no certificate was filed as required by Rule 1-325(e)(6).” On March 29, 2017, the circuit court entered an order dismissing the application for leave to appeal, pursuant Maryland Rule 1-325.1(c)(2)(C), because the appeal costs had not been waived or paid by McDaniels.

On April 17, 2017, McDaniels filed a motion to alter or amend the judgment dismissing his application for leave to appeal. The sole claim raised in that motion was

that the court should reconsider his request for a waiver of filing fees because he was “clearly impoverished due to his lengthy incarceration.” The circuit court denied appellant’s motion to alter or amend the judgment on April 24, 2017. McDaniels filed this appeal on May 15, 2017.

On appeal, McDaniels contends that the court erred in denying his motion to waive prepaid costs. However, the only issue that is properly before us is whether the court abused its discretion in denying his motion to alter or amend the judgment dismissing his application for leave to appeal. In *Pickett v. Noba, Inc.*, 122 Md. App. 566, 570-71 (1998), this Court recognized that a motion to alter or amend filed within ten days of the entry of judgment stays the deadline to file an appeal, whereas one filed more than ten days after entry of the judgment does not. Because McDaniels’s motion to alter or amend the judgment was filed more than ten days after the entry of the March 29, 2017 order dismissing his application for leave to appeal, the deadline to appeal that judgment was not stayed. Consequently, McDaniels’s notice of appeal does not encompass that judgment and is only timely as to the court’s denial of his motion for reconsideration. *See* Rule 8-202(a) (requiring notice of appeal to be filed within thirty days of the judgment from which the appeal is taken).

Having reviewed the record, we are not persuaded that the court abused its discretion in denying McDaniels’s motion to alter or amend the judgment. On appeal, McDaniels asserts that the “Circuit Court Judge abused his discretion in denying his waiver without [providing] an explanation[.]” However, he did not raise this issue in his motion to alter or amend the judgment and, therefore, it is not preserved for appellate review. *See* Md. Rule

8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”).

Moreover, even if preserved, McDaniels’s claim lacks merit. In its March 16, 2017 order, the court specifically indicated that it was denying McDaniels’s request for a fee waiver because he had indicated that he was going to be represented by counsel and “no certificate was filed as required by Rule 1-325(e)(6).” Therefore, the circuit court did, in fact, provide an explanation for denying McDaniels’s fee waiver request. McDaniels does not address this finding in his brief or contend that it was erroneous. Consequently, he has not established that the trial court abused its discretion in denying his motion to alter or amend the judgment.

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