

Circuit Court for Frederick County  
Case No. C-10-CR-22-000110

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 661

September Term, 2022

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MARCEL EMIL MASE

v.

STATE OF MARYLAND

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Kehoe,  
Ripken,  
Meredith, Timothy E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Ripken, J.

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Filed: January 5, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

Marcel Mase, appellant, was charged, in the Circuit Court for Frederick County, with three counts of burglary, with one count of second-degree assault, one count of concealment of a dangerous weapon, two counts of violating a protective order, one count of malicious destruction of property, and one count of resisting arrest. The court subsequently found Mase incompetent to stand trial and ordered that he be committed to the Maryland Department of Health (“Department”). Mase thereafter noted the instant appeal.

In this appeal, Mase, acting *pro se*, has filed an informal brief in which he asks this Court to review the circuit court’s commitment order, along with two additional orders: an “order to deny bail given on March 1, 2022,” and an “order to deny Petition for Writ of *Habeas Corpus* given on July 15, 2022 – C-10-CV-22-349.” The State has moved to dismiss the appeal on the grounds that none of the challenged decisions are appealable. For reasons to follow, we agree with the State and hold that Mase’s appeal should be dismissed.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On February 26, 2022, a statement of charges was filed against Mase in the District Court of Maryland for Frederick County. On February 28, 2022, Mase appeared in the District Court for a bail review hearing. Following that hearing, the District Court ordered Mase be held without bond.

On March 14, 2022, a criminal indictment was filed in the circuit court, and Mase’s case was transferred to that court and docketed as Case No. C-10-CR-22-000110. The following month, defense counsel filed a request to have Mase examined for competency. The court granted the request and ordered the Department to evaluate Mase’s competency

to stand trial. That examination was completed, and a competency hearing was held on May 19, 2022. At the conclusion of that hearing, the court found that Mase was incompetent to stand trial and was a danger to himself and/or the community. The court ordered that Mase be committed to the Department pending further review by the court. On June 2, 2022, Mase noted the instant appeal.

On June 13, 2022, Mase initiated a new action by filing a Petition for Writ of *Habeas Corpus* in the circuit court. That filing was accepted by the court and docketed under a new case number: Case No. C-10-CV-22-00039. On June 15, 2022, the court denied Mase’s petition. Mase thereafter filed a motion for reconsideration, and that motion was denied on August 3, 2022. Mase did not note an appeal from either the denial of the petition or the denial of the motion for reconsideration of that decision.

### **DISCUSSION**

As noted, Mase filed the instant appeal in Case No. C-10-CR-22-000110 following the entry of the circuit court’s commitment order. Mase filed an informal brief asking this Court to review the merits of three decisions: the District Court’s decision denying bail; the circuit court’s decision finding him incompetent to stand trial; and the circuit court’s decision denying his Petition for Writ of *Habeas Corpus* in Case No. C-10-CV-22-00039. As we shall discuss, none of those decisions have been properly appealed to this Court. We hold, therefore, that Mase’s appeal must be dismissed.

#### **I. MASE’S CHALLENGE TO THE DISTRICT COURT’S DENIAL OF BAIL WAS NEITHER FILED WITH THE CORRECT COURT NOR TIMELY FILED.**

We have no authority to review the District Court’s order denying bail. First, this

Court has no jurisdiction over an interlocutory order entered in the District Court. This Court’s jurisdiction arises from section 12-301 of the Courts and Judicial Proceedings Article (“CJP”) of the Maryland Code, which states that “a party may appeal from a final judgment entered in a civil or criminal case by *a circuit court*.” (emphasis added). Where the judgment being challenged is entered in the District Court, any appeal from that judgment must be noted in the District Court and must be brought by way of a de novo appeal in the circuit court. *See Oku v. State*, 433 Md. 582, 589–93 (2013); *see also* Md. Code, Cts. & Jud. Proc. § 12-401. In this case, Mase was denied bail by the District Court. Mase’s appeal regarding bail could thus only have been brought to the circuit court.

Additionally, the statutory scheme authorizing an appeal of a District Court judgment in a criminal case requires that the appeal be noted “within 30 days from the date of the final judgment from which appealed.” Md. Code, Cts. & Jud. Proc. § 12-401(e)(1). Mase did not note an appeal within 30 days from the date the order was entered. The District Court’s order denying bail was issued on March 1, but Mase did not file this appeal until June 2.

**II. THE CIRCUIT COURT’S COMMITMENT ORDER IS NOT A FINAL JUDGMENT AND DOES NOT SATISFY THE COLLATERAL ORDER DOCTRINE.**

Mase argues that the court erred in finding him incompetent to stand trial and ordering his commitment to the Department. As we shall explain, we may not review the court’s order because it is neither a final judgment nor appealable via the collateral order doctrine.

As noted, this Court’s jurisdiction “generally arises only after entry of a final

judgment.” *Abe v. State*, 217 Md. App. 174, 178 (2014). “In criminal cases, ‘no final judgment exists until after conviction and sentence has been determined[.]’” *Abe*, 217 Md. App. at 178 (quoting *Harris v. State*, 420 Md. 300, 312 (2011)). “The corollary to this general rule is that, ordinarily, interlocutory orders are not appealable.” *Bartenfelder v. Bartenfelder*, 248 Md. App. 213, 230 (2020), *cert. denied* 472 Md. 5. However, an interlocutory order may be appealed in very limited circumstances: where the interlocutory order falls within one of the exceptions enumerated in CJP section 12-303; where the interlocutory order falls within the collateral order doctrine; or where the circuit court issues an order directing entry of a final judgment pursuant to Maryland Rule 2-602. *Id.*

The circuit court’s commitment order is clearly not a final judgment, as *Mase* has yet to be tried, let alone convicted and sentenced. The order does not constitute one of the appealable interlocutory orders enumerated in CJP section 12-303, nor was it entered pursuant to Rule 2-602. Thus, for the court’s commitment order to be appealable, it would have to fall within the collateral order doctrine. “To qualify as a collateral order, a ruling must satisfy four criteria: (1) it must conclusively determine the disputed question; (2) it must resolve an important issue; (3) it must be completely separate from the merits of the action; and (4) it must be effectively unreviewable on appeal from a final judgment.” *McLaughlin v. Ward*, 240 Md. App. 76, 88 (2019) (citations and quotations omitted).

The circuit court’s commitment order does not satisfy the first and last prong. Section 3-101, *et seq.* of the Criminal Procedure Article (“CP”) of the Maryland Code governs incompetency and criminal responsibility in criminal cases. Pursuant to that statutory scheme, if a court finds that a defendant is incompetent to stand trial and, because

of a mental disorder, is a danger to himself or another person, the court is required to order the defendant committed to the Department until such time that the court finds that the defendant is no longer incompetent, no longer a danger to himself or another person, or not likely to become competent in the foreseeable future. Md. Code, Crim. Proc. § 3-106(c). The statute requires the court to hold a review hearing at least once per year to determine whether the defendant should remain committed. Md. Code, Crim. Proc. § 3-106(d). In addition, at any time before final judgment, the court, either on its own or upon motion from either party, may “review the status of the case” or “reconsider the question of whether the defendant is incompetent to stand trial.” Md. Code, Crim. Proc. §§ 3-104(c) and 3-106(d)(2).

Based on the reviewability of the court’s commitment order, we are convinced that the circuit court’s competency determination in the instant case was neither “conclusive” nor “effectively unreviewable.” The statutory scheme provides a clear avenue for the court to review and reassess its decision. It would be improper, therefore, for this Court to review the court’s decision on appeal. *See Walker v. State*, 392 Md. 1, 15–16 (2006) (holding that appellate review of the District Court’s determination of competency was inappropriate “[w]here clear avenues for effective relief are available”).

**III. MASE’S CHALLENGE TO THE CIRCUIT COURT’S DENIAL OF HIS PETITION FOR HABEAS CORPUS WAS MADE TO THE WRONG CASE AND IS NOT AN APPEALABLE INTERLOCUTORY ORDER.**

Mase argues that the court did not give due regard to the merits of his petition. However, as with the other two orders at issue here, the circuit court’s denial of Mase’s habeas petition is not properly before this Court. To begin with, Mase filed the instant

appeal on June 2 with respect to Case No. C-10-CR-22-000110, in which Mase was committed to the Department and denied bail. Eleven days later, on June 13, Mase petitioned for a writ of *habeas corpus* in a separate case, Case No. C-10-CV-22-00039. Because Mase’s petition for *habeas corpus* was not an issue raised in the appealed case, Mase cannot use the instant appeal as a vehicle for challenging the denial of the *habeas corpus*. See Md. Rule 8-131 (“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”).

Additionally, the denial of Mase’s habeas petition is not an appealable order. There are only four instances in which an appeal may be taken from the denial of a habeas petition: (1) where the denial is part of an extradition case; (2) where the denial pertains to a claim regarding bail or excessive bail; (3) where a claim is made that the law under which the petitioner was convicted is unconstitutional; and (4) where the petitioner challenges the validity of confinement under the Uniform Postconviction Procedure Act. *Sabisch v. Moyer*, 466 Md. 327, 351 (2019). None of those statutory exceptions applies here; therefore, the court’s order is not appealable.<sup>1</sup> See *id.* (“[A]n appeal may be taken from a final order in a habeas case only where specifically authorized by statute.”).

In sum, none of the challenged orders is appropriately before this Court as an appealable judgment. As such, Mase’s appeal must be dismissed.

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<sup>1</sup> Although Mase seeks to challenge his right to bail in the instant appeal, it does not appear from the record that he raised a similar challenge in his petition for *habeas corpus*. Regardless, if such a challenge had been raised in his petition and he sought to appeal that order, Mase was required to file an application for leave to appeal within ten days after the denial was entered. Md. Code, Cts. & Jud. Proc. § 3-707. No such application was filed.

**APPEAL FROM THE CIRCUIT COURT  
FOR FREDERICK COUNTY DISMISSED.  
COSTS TO BE PAID BY APPELLANT.**