

Circuit Court for Anne Arundel County
Case No. 02-K-08-001588

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 678

September Term, 2021

SHAWN CHRISTOPHER MALLEY

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 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 March 18, 2021, the Circuit Court for Anne Arundel County entered an order denying a petition for writ of error coram nobis filed by Shawn Christopher Malley, appellant. Mr. Malley, a prisoner at Eastern Correctional Institution, attempted to seek appellate review of that judgment by mailing a notice of appeal to the circuit court. Although the certificate of service was dated April 15, 2021, the clerk received and filed the notice of appeal on April 23, 2021.

The court subsequently issued an order directing Mr. Malley to show cause why the notice of appeal should not be stricken as untimely because it had not been filed within thirty days after the entry of the judgment denying his coram nobis petition. Mr. Malley filed a response, claiming that he had delivered the notice of appeal to a prison employee who was authorized to collect the mail within the 30-day time period to file the notice of appeal and therefore, it should be considered timely filed pursuant to *Hackney v. State*, 459 Md. 108 (2018). The circuit court struck appellant’s notice of appeal as untimely, finding that appellant had “not provided good cause for the filing of the belated appeal[.]” This appeal followed.

Maryland Rule 8-202(a) requires a notice of appeal to be “filed within 30 days after entry of the judgment or order from which the appeal is taken.” Previously, Maryland Rule 1-322 required that, to be filed, “pleadings and papers must be actually delivered, either in person or by mail, to the clerk or a judge of the court in which they are sought to be filed.” *Blundon v. Taylor*, 364 Md. 1, 11 (2001). Thus, under that version of Rule 1-322, Mr. Malley’s notice of appeal would have been untimely.

However, the Court of Appeals’ Standing Committee of Rules of Practice and Procedure recently amended Rule 1-322 to create a “prison mailbox rule.” Rule 1-322 now provides that when a self-represented individual, who is confined in a correctional facility and has “no direct access to the U.S. Postal Service or the ability to file an electronic submission,” files certain pleadings, including an application for leave to appeal, those pleadings are deemed filed “on the date that the pleading or paper, in mailable form and with proper postage affixed, was deposited by the individual into a receptacle designated by the facility for outgoing mail or personally delivered to an employee of the facility authorized by the facility to collect such mail.” *See* Rule 1-322 (d)(1)-(2). Thus, if Mr. Malley delivered his notice of appeal to an authorized prison employee within 30 days of March 18, 2021, the notice of appeal was timely filed.

Here, we are unable to determine whether Mr. Malley’s notice of appeal was timely filed under the amended version of Rule 1-322 because the circuit court’s order does not contain findings of fact addressing whether Mr. Malley timely deposited the notice of appeal with the prison authorities, as he claimed. In fact, it is not clear that the court could have assessed the credibility of his claim without holding a hearing. Consequently, we shall vacate the court’s order striking Mr. Malley’s notice of appeal

and remand the case to the circuit court to determine whether his notice of appeal was timely filed.

JUDGMENT STRIKING APPELLANT'S NOTICE OF APPEAL VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY ANNE ARUNDEL COUNTY.