

Circuit Court for Baltimore County
Case No. 03-K-10-003158

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 697

September Term, 2018

JOSEPH EDWARD GILMORE

v.

STATE OF MARYLAND

Meredith,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: May 14, 2019

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In this case we consider whether the Circuit Court for Baltimore County retained jurisdiction to extend a committed individual's conditional release term when the Maryland Department of Health's application to extend the term was filed two days after it was set to expire. We conclude that the circuit court retained jurisdiction, and so affirm its grant of an extension.

BACKGROUND & PROCEDURAL HISTORY

In 2010, Appellant Joseph Edward Gilmore was found guilty, but not criminally responsible, of attempted first-degree murder. At that time, he was committed to inpatient treatment at the Clifton T. Perkins Hospital Center. Subsequently, on March 26, 2013, pursuant to § 3-114 of the Criminal Procedure Article ("CP"), Md. Code (2001, 2018 Repl. Vol.), the Circuit Court for Baltimore County granted Gilmore a five-year term of conditional release.

Five years later, on March 28, 2018, the Maryland Department of Health filed an application to extend Gilmore's conditional release status for three years. (The application was mailed on March 23 but was not docketed until March 28.). Gilmore's counsel filed a motion to dismiss the application, arguing that because the original five-year term of conditional release expired on March 26, 2018, the court no longer had jurisdiction to extend conditional release. On April 26, 2018, the circuit court denied the motion to dismiss and granted a three-year extension of Gilmore's conditional release. Gilmore's appeal followed.

DISCUSSION

Gilmore’s sole contention on appeal is that the circuit court lacked jurisdiction to extend his term of conditional release because the five-year term expired on March 26, 2018, and the Department’s application for an extension was not docketed until March 28, 2018. We review the circuit court’s denial of a motion to dismiss *de novo*. *Mayor & Council of Rockville v. Pumphrey*, 218 Md. App. 160, 178-79 (2014). Although we review the circuit court’s ultimate decision to extend the order of conditional release for an abuse of discretion, it would constitute an abuse of discretion for the circuit court to have considered or applied an incorrect legal standard when making that decision. *Harrison-Solomon v. State*, 216 Md. App. 138, 146 (2014), *aff’d* 442 Md. 254 (2015).

Gilmore challenges the circuit court’s authority to extend his conditional release on the strength of our statement in *Harrison-Solomon* that “[i]n a situation where an application is not filed within the term of conditional release . . . once the [order of conditional release] expires, the court no longer would have jurisdiction to extend it.”¹ 216 Md. App. at 151 n. 10. However, the Court of Appeals has recently explained that a procedural time limit only qualifies as truly “jurisdictional”—in the sense that it “divest[s] [a court] of authority to reach the merits” of an issue—if the Legislature has

¹ When affirming this Court’s decision in *Harrison-Solomon*, the Court of Appeals noted this statement, immediately after it observed that “[n]o time limits are set specifically for the filing of the application by the State or Department or the ruling by the court.” 442 Md. at 270. The Court then stated: “Thus, an aroma of ambiguity lingers in the air.” *Id.*

“set[] forth the limitation in statute.”² *Rosales v. State*, ___ Md. ___, 2019 WL 1648616, No. 6, Sept. Term, 2018, Slip Op. at 11, 13 (April 17, 2019). Put another way: when there is no procedural deadline in a statute, issues concerning timeliness are not truly “jurisdictional” (although noncompliance with a binding timing rule can still provide grounds for dismissal).

As this Court noted in *Harrison-Solomon*, and as the State points out here, the Criminal Procedure Article contains no deadline for when the Department of Health must file an application to change an order of conditional release. The relevant statute says that the Department may apply to change a committed individual’s conditional release status “at any time.” CP § 3-122(a)(1)(i). Thus, the statute’s plain text indicates that the circuit court retained jurisdiction to consider the application that was filed here. Such a conclusion would also be consistent with the statute’s underlying purpose, which is not to punish the individual, but to ensure the continued safety of the individual and society at large. *Harrison-Solomon*, 216 Md. App. at 155 (citing *Bergstein v. State*, 322 Md. 506, 515-16 (1991)). Were the State (in a different situation) to file an application that was so

² In *Rosales*, which concerned an untimely appeal filed pursuant to Rule 8-202(a), the Court of Appeals clarified that “the appropriate grounds for dismissal of an untimely appeal is to dismiss for a failure to comply with the Maryland Rules, instead of for lack of jurisdiction.” Slip Op. at 14. The Court explained that ever since the adoption of the 1957 Code, the thirty-day time limit on filing appeals has not been a part of any statute. Instead, the thirty-day requirement is exclusively a part of the Maryland Rules. As such, the time limit set forth in the Rules should not be understood as jurisdictional, but as “a mandatory claim-processing rule subject to forfeiture if not properly raised by the appellee.” Slip Op. at 12 (quoting *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 16 (2017)).

inordinately untimely as to be unreasonable, a court could properly factor that in when considering whether the State was meeting its burden to justify a change in conditional release. *See* CP § 3-122(b) (“The burden of proof of any issue raised by the application for change in conditional release rests with the applicant.”). In that vein, we note that Gilmore has not challenged the circuit court’s decision on the merits.

Furthermore, it cannot be said that Gilmore suffered a lack of due process, considering that Gilmore and his counsel received notice of the Department’s application, filed a motion to dismiss, made his case to the circuit court, and the circuit court ruled on the Department’s application within a month after it was filed. *See Harrison-Solomon*, 442 Md. at 288.

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