Circuit Court for Baltimore City
Case No.: 193203029

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 738

September Term, 2022

RUDOLPH MCNEIL

v.

STATE OF MARYLAND

Graeff,
Tang,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: March 20, 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.

Appellant, Rudolph McNeil,[1] was convicted in the Circuit Court for Baltimore City of two counts of first-degree murder and related handgun charges. Several years after his conviction, he filed a "Motion to Prohibit the State from Destroying Tangible Evidence[,]" which was denied. McNeil asks this Court if the circuit court erred in denying the motion.[2] Finding no error, we shall affirm the judgment of the circuit court.

BACKGROUND

In 1994, a jury convicted McNeil of two counts of first-degree murder and two counts of using a handgun in a crime of violence. McNeil was sentenced to two consecutive life sentences for the murder convictions, a consecutive ten-year sentence for the first handgun conviction, and an additional ten-year sentence for the second handgun conviction, to be served concurrently with the first handgun sentence. McNeil appealed, and this Court affirmed in an unreported opinion. *McNeill v. State*, No. 303 Sept. Term,

[1] We note that McNeil's name is spelled "McNeill" at various places in the record, including this Court's opinion affirming appellant's conviction. *McNeill v. State*, No. 303 Sept. Term, 1994 (Md. App. Nov. 28, 1994). However, in a later appeal, *McNeil v. State*, No. 2498 Sept. Term, 1999, slip op. at 1 n.1 (Md. App. Sept. 21, 2001), we used the spelling "McNeil[,]" acknowledging the inconsistency in the record but noting that, "appellant has consistently signed his name, 'McNeil.'" Several other opinions thereafter issued by this Court concerning appellant (but otherwise not relevant to this appeal) followed suit, and both parties use the spelling "McNeil" in the instant appeal. *McNeil v. State*, No. 1365 Sept. Term, 2014 (Md. App. March 3, 2016); *McNeil v. State*, No. 585 Sept. Term, 2012 (Md. App. Feb. 9, 2015).

[2] As phrased in his brief, McNeil's questions are: 1) "Did Judge Yvette M. Bryant in deferring to another judge ruling neglected [sic] to render a decision on appellant[']s motion to prohibit the state from destroying tangible evidence?" and, 2) "Did Judge Yvette M. Bryant reli[e]ve[] the State (whom is the custodian of this evidence) of it's burden, in establishing that the evidence no longer exist [sic] without any response from the State pursuant to Md. Code Ann., Crim. Proc. § 8-201 a denial of procedural due process and equal protection of the law [sic]?"

1994 (Md. App. Nov. 28, 1994). McNeil's petition for certiorari was denied by the Supreme Court of Maryland[3] the following year.

Between 2014 and 2016, McNeil filed several motions regarding preserving evidence and conducting DNA testing ("motions to preserve evidence"). Specifically, the docket reflects the following filings during that time:

- On September 11, 2014, McNeil filed a "Motion to Preserve Evidence and Conduct DNA Testing Under CR. P. Section 8-201";
- On March 4, 2015, April 10, 2015, and once more on April 20, 2015, McNeil filed a "Motion for the Preservation of Evidence and DNA Testing Pursuant to CR. P. Section 8-201";[4]
- On July 7, 2015, the court ordered McNeil to file an amended petition for DNA post-conviction relief in compliance with Md. Rule 4-704(a);
- On July 13, 2015 and again on October 21, 2015, McNeil filed a "Supplemental Motion the Preservation of Evidence/DNA Testing New Trial [sic] and Release of Evidence for Forensic Testing";
- On December 17, 2015, the State filed an "Answer to Petition for Post Conviction DNA Testing";
- On December 22, 2015, McNeil filed a "Motion for New Trial and Release of Evidence for Forensic Testing"; and

[3] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

[4] We note that the April 20, 2015 motion does not appear in the record before this Court and that the March 4, 2015 and April 10, 2015 motions appear to be identical in substance.

- On January 4, 2016, McNeil filed a "Supplemental Response to State Answer to Petition for DNA Testing[.]"[5]

On October 19, 2016, the court held a hearing. The following day, the court denied McNeil's motions to preserve evidence, finding that "'there is no reasonable probability that DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing,' as required by Rule 4-710(a)(1)(B)[.]" (Quoting Md. Rule 4-710(a)(1)(B).) The court explained that

> [McNeil] is requesting that certain clothing and sandals allegedly worn by [McNeil] at the time of the crime, should be tested to show that the victim's DNA was not on the items in order to prove that [McNeil] was not involved in [the] crime. However, the clothing and sandals were not recovered from [McNeil] until almost two weeks after the incident. Due to the potential for tampering with, and/or cleaning of the items, the probative value of such testing would be extremely limited.

In March of 2017, McNeil filed a belated notice of appeal "On The Denial of [his] Motion to Preserve Evidence and DNA Testing[,]" which was denied as untimely.

On May 24, 2022, McNeil filed a "Motion to Prohibit the State from Destroying Tangible Evidence[,]" seeking an order "prohibiting the State from destroying or altering or permitting to be destroyed or altered any tangible evidence pertaining to this case[.]" The State did not file a response. On June 16, 2022, the court denied McNeil's motion, finding that it was "a regurgitation of" the earlier-filed motions to preserve evidence, which

[5] Although docket entries reflect that this pleading was filed on January 4, 2015, the State asserts that it was actually received on January 4, 2016, which McNeil does not dispute.

"were denied on October 20, 2016 upon a finding that there is no reasonable probability that DNA testing could produce exculpatory evidence[.]"[6]

On June 28, 2022, McNeil filed a notice of appeal. On August 23, 2022, McNeil also filed a motion to reconsider, which was denied.

STANDARD OF REVIEW

Where, as here, a matter has been decided without a jury, this Court "review[s] the case on both the law and the evidence." Md. Rule 8-131(c). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id. See also Wilson v. State*, 363 Md. 333, 348 (2001) ("This Court will not disturb the factual findings of the post-conviction court unless they are clearly erroneous."). And, "[w]e review a trial court's legal conclusions to determine whether they are 'legally correct.'" *Middleton v. State*, 238 Md. App. 295, 305 (2018) (quoting *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72 (2004)).

DISCUSSION

McNeil asserts that the circuit court erred in denying his motion, relying primarily upon Md. Code Ann., Criminal Procedure ("CP") § 8-201 and *Blake v. State*, 395 Md. 213 (2006). Specifically, he states that the court erred "[i]n not conducting a hearing, not ordering the State to respond and, in deferring to" the 2016 order when ruling on his motion.

[6] The court determined that the 2016 finding and order constituted the "law of the case[,]" which we discuss *infra*.

The State moves to dismiss McNeil's appeal, responding that CP § 8-201 "does not authorize circuit courts to issue the generalized order to preserve evidence that McNeil sought[,]" and that, accordingly, the judgment denying McNeil's motion is not a final, appealable judgment. Alternatively, the State asserts that this Court should affirm as neither CP § 8-201 nor *Blake* supports McNeil's assertions of error.

Appeals may be taken from a "final judgment entered in a civil or criminal case by a circuit court." Md. Code Ann., Cts. & Jud. Proc. § 12-301. For a ruling to be final, it must be "one that either determines and concludes the rights of the parties involved or denies a party the means to prosecute or defend his or her rights and interests in the subject matter of the proceeding." *Brown v. State*, 470 Md. 503, 549 (2020) (quotation marks and citation omitted). Moreover, "[i]n considering whether a particular court order or ruling constitutes an appealable judgment, we assess whether any further order is to be issued or whether any further action is to be taken in the case." *In re Billy W.*, 386 Md. 675, 688-89 (2005). In other words, "when there is a disposition of all claims against all parties, there is a final judgment." *Miller & Smith at Quercus, LLC v. Casey PMN, LLC.*, 412 Md. 230, 243 (2010).

Here, McNeil had been convicted and sentenced over two decades prior to the filing of his "Motion to Prohibit the State From Destroying Tangible Evidence[,]" and there were no other matters pending before the court when it denied McNeil's motion. Accordingly, the court's denial of McNeil's motion "[wa]s a disposition of all claims against all parties[.]" *Id*. The State asserts that this appeal should be dismissed for lack of a final judgment, but it points to no "further order" or "further action . . . to be taken in the case."

In re Billy W., 386 Md. at 689. Nor does the State dispute that the court's order "dispose[d] of all claims against all parties and conclude[d] the case." *Miller & Smith at Quercus*, 412 Md. at 241. The State's motion to dismiss the appeal is denied.

Nonetheless, McNeil fails to provide any authority entitling him to an order "prohibit[ing] the State from destroying tangible evidence[,]" and we are not aware of any. For that reason, the judgment of the circuit court shall be affirmed. He relies primarily on CP § 8-201 and *Blake* on appeal; however, neither provides the relief that McNeil seeks.[7] Section 8-201 permits petitions "(1) for DNA testing of scientific identification evidence that the State possesses that is related to the judgment of conviction; or (2) for a search by a law enforcement agency of a law enforcement data base or log for the purpose of identifying the source of physical evidence used for DNA testing." CP § 8-201(b). It also allows a petitioner to move for a new trial "on the grounds that the conviction was based on unreliable scientific identification evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence." CP § 8-201(c).

Here, McNeil did not seek DNA testing or a search of a law enforcement data base as provided for under CP § 8-201(b). Nor did he seek a new trial under CP § 8-201(c).

[7] McNeil also references Md. Rules 2-311(e) and (f) and 4-252(f), neither of which supports his position on appeal. Md. Rule 2-311 applies to civil, not criminal, proceedings, and McNeil provides no explanation as to how Md. Rule 4-252(f), which applies to responses to mandatory motions that must be filed "within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court[,]" Md. Rule 4-252(b), supports or even applies to his position on appeal. *See Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 288 n.18 (1996), *aff'd*, 346 Md. 122 (1997) (declining to consider assertion made by appellant where appellant "presented no argument in support of its position").

Instead, he sought only to preserve evidence by compelling the State "not to destroy or alter or permit to be destroyed or alter [sic] any tangible evidence related to this matter which evidence is in the possession or control of the Baltimore Police Department, [t]he Office of the State's Attorney o[r] other governmental body and their agents." Such relief is not provided for under CP § 8-201.

Nor does *Blake* support McNeil's position. *Blake* involved a petition for testing of DNA evidence. *Blake*, 395 Md. at 217. The State filed a motion to dismiss stating that the evidence had already been destroyed, and the circuit court summarily dismissed the petition. *Id*. The defendant filed an appeal asserting that he "was entitled to a hearing to resolve the factual dispute over the existence of the evidence."[8] *Id*. at 217-18. The Supreme Court of Maryland agreed and held that, "[w]hen it is the State's position that the evidence sought to be tested no longer exists, the circuit court may not summarily dismiss the petition requesting DNA testing." *Id*. at 228. That holding is not applicable here; McNeil did not seek testing of DNA evidence, and the State did not assert that the evidence no longer exists. As noted *supra*, the court in denying McNeil's motion referenced the previous denial of McNeil's motions to preserve evidence, stating that the 2016 order disposing of those motions constituted the "law of the case[.]" We disagree that the law of the case doctrine applies to the circuit court's prior rulings, *see Scott v. State*, 379 Md. 170, 184 (2004). But it "is well established in Maryland that, in an appeal from a final judgment, the appellate court may affirm the court's decision on any ground adequately shown by the

[8] That appeal was initially filed in this Court but was transferred to the Supreme Court under CP § 8-201(k)(6) which permits a direct appeal to that Court.

record." *Norman v. Borison*, 192 Md. App. 405, 419 (2010) (quotation marks and citation omitted), *aff'd*, 418 Md. 630 (2011). Therefore, we shall affirm based upon McNeil's failure to state any basis for relief.[9]

APPELLEE'S MOTION TO DISMISS IS DENIED. THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[9] Although McNeil's brief also lists the court's order denying his motion for reconsideration as an order from which he is appealing, he fails to make any arguments regarding that order. For that reason and the Discussion above, we do not consider it. *Hartford Accident & Indem. Co.*, 109 Md. App. at 288 n.18.