

Circuit Court for Baltimore County
Case Nos.: 03-K-01-004662 & 03-K-17-003099

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 863

September Term, 2021

LUKE JOSEPH WARNER

v.

STATE OF MARYLAND

Graeff,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 2, 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.

Acting *pro se*, on June 30, 2021, Luke Joseph Warner, appellant, filed in the Circuit Court for Baltimore County a paper titled “Motion to Recuse Judge and for a Change of Venue,” which the court denied on July 26, 2021. Appellant noted an appeal from that denial. For the reasons explained below, we dismiss this appeal because the circuit court’s denial of appellant’s motion did not constitute a final judgment or an otherwise appealable order.

We present a brief procedural background which illustrates that, prior to appellant seeking to change venue and recuse a judge, there were no matters then pending in the circuit court to change to another venue or to recuse a particular judge from hearing.

In 2001, the record reflects that appellant pleaded guilty to conspiracy to commit second-degree burglary in Case No. 03-K-01-004662.¹ In 2017, appellant pleaded guilty to second-degree burglary in Case No. 03-K-17-003099 and was sentenced to ten years’ imprisonment. In 2019, appellant, acting *pro se*, filed a paper referencing both cases in its caption seeking, in both cases, (1) modification of the sentences, and (2) post-conviction relief.² On May 15, 2020, represented by counsel, in open court, appellant agreed to withdraw the previously mentioned papers, with prejudice, in exchange for a modification

¹ Appellant’s sentence for this offense is not clear from the record. Nevertheless, it appears that he has fully completed whatever sentence was imposed. It appears that, in that case (the one ending in 4662), the court treated the paper as a petition for a writ of error coram nobis.

² While the Office of the Public Defender entered its appearance in both cases, it subsequently moved to withdraw from the case ending in 4662 because, by its calculation, appellant was no longer eligible for post-conviction relief in that case because he had completed his sentence, probation, and/or parole. The circuit court denied that motion.

of his sentence in the case ending in 3099 from ten years concurrent to five years concurrent.³ The court agreed and modified appellant’s sentence accordingly. Thereafter, on May 26, 2020, appellant filed, through counsel, a motion to vacate the post-conviction hearings that had been scheduled, explaining what had occurred in court on May 15, 2020 and attaching an affidavit signed by appellant attesting to his willingness to proceed in the manner that had occurred. On May 28, 2020, the circuit court granted that motion and vacated the previously scheduled post-conviction hearings.

Months later, on August 4, 2020, acting *pro se*, appellant filed a motion for “An Expedited Telephonic Hearing Pursuant to Covid-19 Pandemic for: Declaratory and Injunctive Relief; To Appoint Counsel; To Rescind and Modify Affidavit and Order with a Change of Venue.” On April 9, 2021, after holding remote hearings on September 1, 2020 and January 28, 2021, the court denied appellant’s motion in a written memorandum opinion addressing each of his claims. It does not appear from the record that appellant noted an appeal from this ruling.

In any event, months later, on June 30, 2021, appellant filed the previously mentioned motion for recusal and change of venue, the court’s denial of which, on July 26, 2021, is the subject of this appeal.

It is clear from the foregoing recitation of the relevant procedural history that, at the time that appellant filed his motion for judicial recusal and change of venue on June 30, 2021, there was neither a pending matter for a judge to recuse from, nor any pending matter

³ Apparently, this sentence was concurrent to a sentence for a federal offense.

that could be transferred to an alternative venue.

Section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code provides generally that “a party may appeal from a final judgment entered in a civil or criminal case by a circuit court.” Md. Code Ann., Cts. & Jud. Proc., § 12-301 (emphasis added). The Court of Appeals has made clear that

the right to seek appellate review of a trial court's ruling ordinarily must await the entry of a final judgment that disposes of all claims against all parties, and that there are only three exceptions to that final judgment requirement: appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602^[4]; and appeals from interlocutory rulings allowed under the common law collateral order doctrine.

St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A., 392 Md. 75, 84 (2006) (quotation marks and citation omitted).

“The decision to recuse is interlocutory, and is therefore not subject to immediate appeal.” *Doering v. Fader*, 316 Md. 351, 360 (1989). Similarly, the denial of a motion for change of venue is an interlocutory order and is not immediately appealable. *Smith v. Johns Hopkins Community Physicians, Inc.*, 209 Md. App. 406, 410-11 (2013) (citations omitted).⁵ Accordingly, because this appeal has not been taken from any appealable judgment or order, the appeal is not properly before this Court and must be dismissed.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

⁴ Maryland Rule 2-602 deals with certain civil judgments not disposing of an entire action.

⁵ The decision to *grant* a motion for a change of venue is, however, immediately appealable. *Smith*, 209 Md. App. at 411 (citation and quotation omitted).