Circuit Court for Queen Anne's County
Case No.: C-17-CR-20-000531

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1117

September Term, 2021

EDWARD CARROLL GAINES, III

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: February 28, 2022

Pursuant to a 12-count Indictment filed in the Circuit Court for Queen Anne's County, Edward Carroll Gaines, III, was charged with five counts of attempted first-degree murder, attempted first-degree arson, five counts of reckless endangerment, and knowingly manufacturing/possessing a destructive device. On May 27, 2021, Mr. Gaines appeared in court with counsel and pursuant to a plea agreement with the State pleaded guilty to knowingly manufacturing/possessing a destructive device—a violation of Md. Code, Criminal Law, §4-503(a)(1). On August 20, 2021, the court sentenced him to 25 years' imprisonment, suspending all but 15 years, and a 5-year term of supervised probation upon release. The State *nol prossed* the remaining charges.

On September 6, 2021, the prison housing Mr. Gaines stamped, as outgoing mail, a paper he sent to the circuit court in which he stated: "I would like to file for an appeal[.] [I] was sentenced to 25 years all suspen[d]ed but 15 years, 5 years supervised probation. I have asked my [lawyer] and still no answer." The clerk of the circuit court treated the paper as a notice of appeal but returned it to Mr. Gaines because it did not include a certificate of service. Mr. Gaines attempted to remedy the defect and on or about September 15, 2021 re-sent the paper with a certificate of service. The court again rejected the filing because Mr. Gaines had failed to sign the certificate of service. On September 23, 2021, Mr. Gaines re-sent the paper once again and it was docketed by the circuit court as a notice of appeal on September 27, 2021.

The State moves to dismiss the appeal for several reasons. First, the State asserts that the appeal is not allowed by law because appellate review of a judgment entered following a guilty plea is by way of application for leave to appeal; second, the notice of

appeal was untimely; and third, the record does not contain the transcripts from the proceedings relevant to the issues Mr. Gaines is raising in the appeal.

We agree with the State that the proper course of action was for Mr. Gaines to file an application for leave to appeal within 30 days of the sentencing date. *See* Md. Rule 8-204(b)(2) and Md. Code, Courts & Judicial Proceedings § 12-302(e). We disagree, however, that the request for an appeal was untimely. Mr. Gaines filed his request within 30 days of the sentencing date. The clerk of the circuit court treated the paper as a request for an appeal—something we do not take issue with. The clerk, however, should have treated the paper as a timely filed application for leave to appeal, rather than a notice of appeal, given that Mr. Gaines was seeking relief following his conviction and sentence following the entry of a guilty plea. Moreover, given that Mr. Gaines was then self-represented, the usual requirement for a certificate of service did not apply.

Rule 8-204(b)(4) provides:

> If the applicant [for leave to appeal] is the State of Maryland, it shall serve a copy of the application on the adverse party in compliance with Rule 1-321. Any other applicant shall serve a copy of the application on the Attorney General in compliance with Rule 1-321. *If the applicant is not represented by an attorney, the clerk of the lower court shall promptly mail a copy of the application to the Attorney General*.

(Emphasis added.)

Accordingly, we shall treat the matter before us as a timely filed application for leave to appeal and Mr. Gaines's brief as a supplement thereto. We shall, however, deny Mr. Gaines's request for appellate review because the issues he raises for our consideration do not relate to the validity of his guilty plea (*i.e.*, it was not entered knowingly and

voluntarily) or the sentence imposed (*i.e.*, it breached the terms of his plea agreement).[1] Rather, his claims, for the most part, concern the alleged ineffectiveness of counsel he received, issues that must be raised in a petition for post-conviction relief.[2]

Although Mr. Gaines also appears to challenge the sufficiency of the evidence to support the conviction, there is no indication in the record before us that he objected to the proffer of facts in support of the plea. The transcript from the plea and sentencing hearings are not in the record before us and, as the State correctly points out, the burden was on Mr. Gaines to produce them.

APPELLEE'S MOTION TO DISMISS DENIED.

APPLICATION FOR LEAVE TO APPEAL DENIED.

ANY COSTS TO BE PAID BY APPLICANT.

[1] Mr. Gaines requests that he be "grant[ed]" the same sentence as his co-defendant—five years all suspended—but he does not claim that the sentence he received violated the terms of his plea agreement, an agreement he asserts was binding on the court. The statutory maximum term of imprisonment for knowingly manufacturing or possessing a destructive device is 25 years. Crim. Law §4-503(b). The sentencing guidelines in his case were 12 to 20 years of executed time.

[2] We note that Mr. Gaines did file a petition for post-conviction relief, which is presently pending before the circuit court.