

Circuit Court for Montgomery County
Case No. 102215C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1121

September Term, 2017

ANTOINE GATEWOOD

v.

STATE OF MARYLAND

Wright,
Berger,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 5, 2019

*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.

Antoine Gatewood, appellant, appeals from an order, issued by the Circuit Court for Montgomery County, striking his application for leave to appeal as untimely. His sole contention on appeal is that the circuit court erred in dismissing his petition because, he claims, it was timely under the “prison mailbox rule.” In light of recent amendments to Maryland Rule 1-322, we vacate the circuit court’s order and remand for further proceedings.

In 2005, Mr. Gatewood was convicted by a jury of first-degree felony murder and other related offenses and was sentenced to life imprisonment. He filed a timely petition for post-conviction relief that was denied by the circuit court on March 29, 2017. Mr. Gatewood, a prisoner representing himself, attempted to seek appellate review of that denial by mailing an application for leave to appeal to the circuit court. The circuit court received Mr. Gatewood’s application for leave to appeal on May 2, 2017.

On May 9, 2017, the circuit court issued an order directing Mr. Gatewood to show cause why the application for leave to appeal should not be stricken as untimely because it had not been filed within thirty days after the entry of the judgment denying his petition for post-conviction relief. Mr. Gatewood filed a response, claiming that he had placed the application for leave to appeal in the prison mailbox at North Branch Correctional Institution on April 24, 2017, four days before the filing deadline, and therefore, that it should be considered timely under the “prison mailbox rule that was adopted by the United States Supreme Court in *Houston v. Lack*, 487 U.S. 266 (1998).” The circuit court disagreed and struck the application for leave to appeal as untimely, finding that there was

“no compliance with Rule 1-322 within the time proscribed in Rule 8-202, Rule 8-204, or Criminal Procedure § 7-109.” This appeal followed.

Maryland Rule 8-204(b)(2)(A) requires an application for leave to appeal to be “filed within 30 days after entry of the judgment or order from which the appeal is sought.” 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, Gatewood’s application for leave to appeal was 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). The amended version of Rule 1-322 applies to all actions commenced on or after January 1, 2019 and, insofar as practicable, to all actions then pending.” *See* Court of Appeals of Maryland, Rules Order at 3 (Oct. 10, 2018), *available at* https://mdcourt.gov/sites/default/files/rules/order/ro196_0.pdf.

Because Mr. Gatewood’s case is currently pending in this Court, the amendments to Rule 1-322 apply in his case. *See Estate of Zimmerman v. Blatter*, 458 Md. 698, 706-07 (2018) (holding that a Rules Committee Order explicitly providing for retroactive application to all pending actions, included actions pending in this Court). However, we are unable to determine whether Mr. Gatewood’s application for leave to appeal was timely filed under the amended version of Rule 1-322 because the circuit court’s order does not contain findings of fact with respect to whether Mr. Gatewood deposited the application for leave to appeal with the prison authorities on April 24, 2017, as he claimed. Consequently, we vacate the court’s order striking Mr. Gatewood’s application for leave to appeal and remand the case to the circuit court to determine whether Mr. Gatewood’s application for leave to appeal was timely filed.

JUDGMENT STRIKING APPELLANT’S APPLICATION FOR LEAVE TO APPEAL VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY MONTGOMERY COUNTY.