

Circuit Court for Baltimore City
Case No. 24-H-16-000113

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1156

September Term, 2017

JOHN MARTIN

v.

WARDEN, RCI

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 3, 2018

*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.

John Henry Martin, appellant, appeals the denial, by the Circuit Court for Prince George’s County, of his petition for writ of habeas corpus. In response, the State filed a motion to dismiss the appeal as not permitted by law. We grant the State’s motion to dismiss the appeal.

On May 25, 2007, Martin pleaded guilty to robbery, and the court sentenced him to ten years’ imprisonment. On October 4, 2007, following a violation of probation hearing, the court terminated his probation in three unrelated cases, based on his having pleaded guilty to robbery, and ordered him to serve: twenty years for attempted robbery with a dangerous weapon; a concurrent twenty years for robbery with a dangerous weapon; and a concurrent eight years for robbery with a dangerous weapon. The court ordered those sentences to run consecutively to the May 25, 2007 robbery sentence.

In 2016, Martin filed a petition for writ of a habeas corpus claiming that the sentence imposed in his 2007 robbery case should have been ordered to run concurrently with his other sentences and was therefore illegal.¹ He further contended that, but for the illegal sentence, he would be eligible for mandatory release. The circuit court denied the petition following a hearing. This appeal followed.

¹ In April 2015, Martin raised this exact claim in a motion to correct illegal sentence. The circuit court denied the motion and Martin appealed. This Court ultimately dismissed the appeal because Martin failed to file a brief addressing the illegal sentence issue or a transcript of the 2007 plea proceedings. *See Martin v. State*, No. 1553, Sept. Term 2015 (filed December 15, 2016). Nevertheless, we noted that “[a]summing that Martin’s brief . . . would elaborate on the same contentions [raised in his motion to correct illegal sentence], we would affirm the judgment of the circuit court for the reasons expressed in the court’s . . . Memorandum of Law and Order [denying that motion].”

“Although the right to seek a writ of habeas corpus is constitutionally protected, the right to an *appeal* from the disposition of the habeas corpus petition is not.” *Simms v. Shearin*, 221 Md. App. 460, 469 (2015) (emphasis in original). “An appeal may be taken from a final order in a habeas corpus case only where specifically authorized by statute.” *Gluckstern v. Sutton*, 319 Md. 634, 652 (1990) (citations omitted). The only possible statute that would apply in this case is Section 7-107 of the Criminal Procedure Article. However, that statute only authorizes appeals in habeas corpus cases “when the petitioner challenge[s] the legality of his confinement based on collateral post-trial influences and not the legality of the underlying conviction or sentence, and where the [Uniform Post-Conviction Procedure Act does] not otherwise provide a remedy.” *Simms*, 221 Md. App. at 473. Because the claims raised in Martin’s habeas petition attack the legality of his sentence, the denial of that petition is not appealable. Consequently, the appeal must be dismissed.

**APPELLEE’S MOTION TO DISMISS
APPEAL GRANTED. COSTS TO BE PAID
BY APPELLANT.**