

Circuit Court for Worcester County  
Case No. 23-K-15-000110

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1170

September Term, 2021

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DREW DAVID NEISSER

v.

STATE OF MARYLAND

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Berger  
Reed,  
Meredith, Timothy E.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 5, 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.

In 2015, a jury in the Circuit Court for Worcester County convicted Drew David Neisser, appellant, of first-degree assault, second-degree assault, and malicious destruction of property of less than \$1,000. This Court affirmed his convictions on direct appeal. *See Neisser v. State*, No. 1902, Sept. Term 2015 (filed Sept. 6, 2016). Following his conviction and sentence, appellant filed a timely motion for new trial asserting that the verdict was “contrary to the evidence” and that there was “new evidence” indicating that one of the witnesses in his trial had committed perjury. Following a hearing, the court denied the motion for a new trial on March 17, 2016. Appellant filed a notice of appeal in September 2021. On appeal, appellant claims that the circuit court erred in denying his motion on the merits. The State disagrees and has also filed a motion to dismiss the appeal as having been untimely filed. For the reasons that follow, we shall grant the motion to dismiss the appeal.

Maryland Rule 8-202(a) provides that a party must file his or her notice of appeal “within 30 days after entry of the judgment or order from which the appeal is taken.” Although not jurisdictional, this requirement is a “binding rule on appellants” unless “waiver or forfeiture applies to a belated challenge to an untimely appeal.” *Rosales v. State*, 463 Md. 552, 568 (2019). Here, the circuit court’s order denying appellant’s motion for a new trial was entered on the docket on March 17, 2016. However, he did not file his notice of appeal until more than five years later. Moreover, the State has not waived or forfeited its challenge to the timeliness of appellant’s appeal because Md. Rule 8-603(c)

provides that a motion to dismiss pursuant to Md. Rule 8-602(b) “may be included in the appellee’s brief.” Consequently, we shall grant the motion to dismiss.<sup>1</sup>

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

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<sup>1</sup> In his brief, appellant notes that his “attorney did not file a motion to appeal [the] decision to deny a new trial[.]” However, that does not affect the timeliness of his appeal. Moreover, any claim that his counsel was ineffective in failing to file a notice of appeal would have to be raised in the circuit court in a post-conviction petition.