Circuit Court for Howard County
Case No.: 00020171

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1329

September Term, 2023

WALTER HARDING

v.

STATE OF MARYLAND

Nazarian,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 5, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Following a 1989 jury trial in the Circuit Court for Howard County, Walter Harding, appellant, was convicted of two counts for first-degree murder and related firearm offenses. The court ultimately sentenced him to a total term of life plus 35 years' imprisonment. In 2023, Harding filed a motion for a substance abuse evaluation under Health-General Article ("HG") §§ 8-505 and 507. The court denied the motion without a hearing, stating only that the motion was "denied." This appeal followed. On appeal, Harding contends that the court abused its discretion in denying his petition. The State has moved to dismiss the appeal as not allowed by law. For the reasons that follow, we shall grant the motion to dismiss.

HG §§ 8-505(a)(1(i) and 8-507(a)(1) provide that, under certain conditions, a court "may" order an evaluation for substance abuse and "may" commit a defendant for treatment. Consequently, whether to grant relief under either provision is left to the court's discretion.

The State maintains that the court's denial of Harding's motion is not an appealable order, and so this appeal must be dismissed. The State points out that neither HG § 8-505 nor § 8-507 provides for appellate review of a decision to deny a request for substance abuse evaluation or commitment for treatment. Moreover, the State, relying on *Fuller v. State*, 397 Md. 372, 394–95 (2007), asserts that a motion for commitment for treatment under HG § 8-507 is not a final order or an appealable collateral order because there is no limit on the number of motions a defendant may file. The State further maintains that this Court's decision in *Hill v. State*, 247 Md. App. 377 (2020), which addressed a decision denying relief under HG § 8-507, is distinguishable. We agree.

In *Hill*, there was appellate jurisdiction to consider the denial of an inmate's HG § 8-507 request where the circuit court ruled that it was precluded from authorizing treatment because the petitioner had been convicted of a crime of violence and was not yet parole eligible. *Id.* at 389. Although Hill had previously qualified for treatment and the court indicated its willingness to authorize it, *id.* at 380–81, in 2018 the legislature amended the statue and disallowed commitment for drug treatment for prisoners convicted of crimes of violence until they became eligible for parole. *Id.* at 381–82. The circuit court rejected Hill's contention that applying those amendments to him violated the *Ex Post Facto* Clause found in Article 1 of the United States Constitution and Article 17 of the Maryland Declaration of Rights because the statutory amendments were enacted after his 2011 conviction. *Id.* at 382. On appeal, we rejected the State's argument that, under *Fuller*, this Court lacked jurisdiction to consider the appeal. *Id.* at 383. In short, we noted that "the court's express determination that application of the 2018 amendments to Hill d[id] not violate the *Ex Post Facto* Clause [was] final in that it denie[d] Hill any possibility of being granted an HG § 8-507 commitment until after he reache[d] parole eligibility." *Id.* at 389. Hence, we concluded that the ruling in Hill's case was a final judgment and, therefore, this Court had jurisdiction to consider his appeal. *Id.*

Here, in contrast, there is nothing in the record to indicate that the court believed it was prohibited from granting relief. Moreover, as the State points out, our Supreme Court has long recognized "[t]he presumption that trial judges know the law and apply it properly[.]" *State v. Chaney*, 375 Md. 168, 181 (2003).

Finally, as noted above, whether to grant relief under either HG § 8-505(a)(1)(i) or § 8-507(a)(1) is left to the circuit court's discretion. Neither statute requires a court to set forth its reasons for denying a request for an evaluation or commitment for treatment, and neither statute provides the right to an appeal from an adverse decision. Therefore, we hold that the court's order denying Harding's request for substance abuse evaluation is not appealable. Accordingly, we shall grant the State's motion to dismiss. *See Fuller*, 397 Md. at 380 ("[T]he denial of a petition for commitment for substance abuse treatment pursuant to Section 8-507 of the Health-General Article is not an appealable order.").

MOTION TO DISMISS GRANTED. COSTS TO BE PAID BY APPELLANT.