

Circuit Court for Dorchester County
Case No. 09-K-10-013933

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1481

September Term, 2022

DION PIERRE LOFLAND

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 28, 2023

*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.

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In 2010, a jury in the Circuit Court for Dorchester County convicted Dion Pierre Lofland, appellant, of distribution of cocaine and possession of cocaine. The court sentenced appellant to a term of incarceration of forty years, with all but twenty years suspended on the distribution count. Appellant’s conviction for possession was merged for the purposes of sentencing. This Court affirmed his convictions on direct appeal. *See Lofland v. State*, No. 2222, Sept. Term 2010 (filed Nov. 23, 2011).

In 2022, appellant filed a motion to correct illegal sentence, claiming that his sentence was illegal because the State failed to give him notice that it intended to try him as a subsequent offender at least 15 days prior to trial, as required by Maryland Rule 4-245(b). The circuit court denied his motion on September 12, 2022. Appellant filed a notice of appeal on October 24, 2022. 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 denied appellant’s motion on September 12, 2022. However, he did not file his notice of appeal until October 24, 2022, more than 30 days 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.¹

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

¹ Even if the appeal had been timely filed, we would affirm the judgment of the circuit court as the failure of the State to give a defendant timely notice that it will seek an enhanced sentence pursuant to Rule 4-245(b) is a procedural flaw that does not result in an inherently illegal sentence. *See Mack v. State*, 244 Md. App. 549, 584 (2020).