

Circuit Court for Carroll County
Case No. 06-C-16-071574

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1495

September Term, 2016

GUY D. HARRIS

v.

KATHLEEN S. GREEN, WARDEN

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 23, 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.

Guy Harris, appellant, appeals the denial, by the Circuit Court for Carroll County, of his petition for a 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.

In 1981, Harris was convicted of robbery with a dangerous weapon; two counts of theft over \$300; assault with intent to murder; use of a handgun in the commission of a felony; and two counts of wearing, carrying, or transporting a firearm. In 2005, Harris filed a motion to correct illegal sentence and, following a direct appeal to this court, we remanded the case to the circuit court to: (1) vacate his sentence for robbery with a dangerous weapon; (2) vacate his sentence for one count of wearing, carrying, or transporting a firearm; and (3) consider whether his sentence for the second count of wearing, carrying, or transporting a firearm should be vacated on the grounds that the State had failed to provide Harris with pre-trial notice of its intent to seek an enhanced sentence on that charge based on his status as a subsequent offender. On remand, the circuit court issued two commitment orders, the first on April 10, 2007 and the second on November 16, 2007. In his habeas petition, Harris contended that the circuit court’s second commitment order increased the sentence that had been imposed in the first commitment order and, therefore, was illegal. Following a hearing, the circuit court denied Harris’s petition on the grounds that his sentencing claim had been previously litigated in his prior habeas petition that was denied in 2008.

“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 Harris’s sole claim in his habeas petition was that the circuit court imposed an illegal sentence when it issued its second commitment order, the denial of that petition is not appealable. *See Mateen v. Galley*, 146 Md. App. 623, 635 (2002) (“An inmate’s claim that his sentence is illegal as a result of substantive legal errors by the sentencing court should be redressed through a direct appeal or a motion to correct the sentence on the grounds of illegality”), *rev’d on other grounds Mateen v. Saar*, 376 Md. 385 (2003). Consequently, the appeal must be dismissed.

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