Circuit Court for Baltimore County
Case No. 03-K-94-003691

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1534

September Term, 2017

STEVEN LEWIS WINBORNE

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Beachley,

JJ.

Opinion by Nazarian, J.

Filed: October 25, 2018

In March 1996, a jury found Steven Winborne guilty of the first-degree murder of his wife, and he was sentenced to life imprisonment the same month. The Circuit Court for Baltimore County denied Mr. Winborne's postconviction petition in 2015 (he had dismissed an earlier petition without prejudice) on the ground that it was filed after the ten-year statute of limitations. *See* Md. Code (2001, 2018 Repl. Vol.), § 7-103 of the Criminal Procedure Article ("CP"). We denied both Mr. Winborne's application for leave to appeal that decision and his motion to reconsider.

Mr. Winborne then filed a petition for a writ of habeas corpus. The circuit court denied the petition, and he appeals. The State moved to dismiss the appeal on the ground that the appeal is not permitted under CP § 7-107(b). We agree with the State and grant its motion to dismiss.

I. BACKGROUND

Mr. Winborne filed his petition for a writ of habeas corpus *pro se* on June 5, 2017. He argued that: (1) the reasonable doubt instruction given to his trial jury did not meet the standards required by the United States Constitution; and (2) he received ineffective assistance of counsel when his attorney did not raise on direct appeal the argument that the trial court erred in not giving a manslaughter instruction he requested.

In its order denying the petition, the court explained, citing subsections (A) and (C) of Maryland Rule 15-303(e)(3),[1] that Mr. Winborne had failed to show why the grounds

[1] Maryland Rule 15-303(e)(3) provides in relevant part:

> the judge shall grant the writ [of habeas corpus] unless:

set forth in the petition had not been raised in earlier postconviction proceedings, and that it did not find that Mr. Winborne was otherwise entitled to relief.[2]

For the reasons set forth below, we decline to reach the merits of the arguments raised in Mr. Winborne's brief because his appeal must be dismissed.

> (A) the judge finds from the petition, any response, reply, document filed with the petition or with a response or reply, or public record that the individual confined or restrained is not entitled to any relief; [or]
>
> * * *
>
> (C) there is no good reason why new grounds now raised by the petitioner were not raised in previous proceedings . . . .

[2] The court's order stated in full:

> Now upon Petitioner Steven Lewis Winborne's pro se "Application for Issuance of Writ of Habeas Corpus," the issues raised in the unreported opinion and judgment of conviction Affirmed by the Court of Special Appeals, No. 912, September Term 1996, the allegations of error contained in Petitioner's original Petition for Post Conviction Relief, the Motion to Reopen Post-conviction Proceedings (#12000), the written "Statement of Reasons" with Order denying Post Conviction Relief, the denial of Petitioner's Application for Leave to Appeal by the Court of Special Appeals (#17000), this court's finding that pursuant to Md. Rule 15-303(e)(3)(A) and (C), Petitioner has failed to allege good reason why the new grounds now set forth in his Application were not raised in the previous post conviction proceedings, and this court's further finding from the Petition that the Petitioner is not entitled to relief, it is this 23rd day of August, 2017, by the Circuit Court for Baltimore County
>
> ORDERED that the "Application for Issuance of Writ of Habeas Corpus" be and it is hereby DENIED.

II. DISCUSSION

The right to seek a writ of habeas corpus is constitutionally protected, but "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). The Court of Appeals has identified four such statutes,[3] only one of which is relevant here: CP § 7-107, which is part of the Uniform Post Conviction Procedure Act ("UPPA"). *See Simms*, 221 Md. App. at 469–70 (*citing Gluckstern*, 319 Md. at 652–53). That provision first sets forth the general prohibition against appealing the denial of a petition for a writ of habeas corpus, then lays out two exceptions: one for writs fighting extradition, *see* CP § 9-110, and one for writs sought for a purpose *other than* challenging the legality of a conviction or sentence:

> (b)(1) In a case in which a person challenges the validity of confinement under a sentence of imprisonment by seeking the writ of habeas corpus or the writ of coram nobis or by invoking a common law or statutory remedy other than this title, a person

[3] The four statutes that provide authorization for appeals of a final order in a habeas corpus case are:

> (1) CP § 9–110, which authorizes appeals in extradition cases; (2) [Md. Code, § 3–707 of the Courts and Judicial Proceedings Article ("CJP")], which authorizes an application for leave to appeal in cases involving right to bail or allegedly excessive bail; (3) CJP § 3–706, which provides for an appeal if a court issued a writ of habeas corpus based on the unconstitutionality of the law under which the petitioner was convicted; and (4) CP § 7–107 . . . .

Simms, 221 Md. App. at 469.

> may not appeal to the Court of Appeals or the Court of Special Appeals.
>
> (2) This subtitle does not bar an appeal to the Court of Special Appeals:
>
> (i) in a habeas corpus proceeding begun under § 9-110 of this article; or
>
> (ii) in any other proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime, including confinement as a result of a proceeding under Title 4 of the Correctional Services Article.

CP § 7-107(b). Subsection (b)(2)(ii) also supports an exception in cases where the UPPA does not otherwise provide a remedy. *Simms*, 221 Md. App. at 469–70 (*citing Gluckstern*, 319 Md. at 652–53, 662).

This case doesn't involve an extradition, so CP § 7-107(b)(2)(ii) provides the only potential exception. And for two reasons, we find that no exception applies here.

First, Mr. Winborne's petition indisputably challenged the legality of his conviction or sentence. He argued that the reasonable doubt instruction given at trial fell short of constitutional standards and that the trial court erred in denying his request for a jury instruction on manslaughter. He asked the circuit court, and now asks us, to find that the alleged trial errors violated his rights to due process, and therefore undermined his right to a fair trial. For that reason alone, the plain language of CP § 7-107(b)(2)(ii) precludes Mr. Winborne from appealing the denial of habeas corpus relief.

Second, Mr. Winborne *did* otherwise have a remedy for raising the arguments contained in his petition, both on direct appeal and through the postconviction process. Mr. Winborne argues that he did not otherwise have a remedy because of the "ill advice given

by the Office of the Public Defender's [sic] from 1993 to 1997." From our review of the record, he likely is referring to an argument he made in connection with the denial of his late-filed 2015 postconviction petition and his subsequent (unsuccessful) attempts to appeal that denial. This argument doesn't change the outcome.

Mr. Winborne filed his first postconviction petition *pro se* in 1997. After obtaining representation, that petition was withdrawn without prejudice on Mr. Winborne's motion. But no new petition, or anything else, was filed until approximately 19 years later, in 2015, when Mr. Winborne filed a new postconviction petition, again *pro se*. That petition was untimely—he filed it many years after the ten-year limitations period had expired. *See* CP § 7-103.

Mr. Winborne then obtained representation and filed a motion to reopen the 1997 postconviction. He argued that his 1997 lawyer had informed him (wrongly) that there was no statute of limitations for postconviction proceedings, and that mis-advice constituted "extraordinary cause" to excuse his failure to file in time.[4] *See* CP § 7-103(b) (postconviction petition must be filed within ten years of sentencing "[u]nless extraordinary cause is shown"). In his motion to reopen, Mr. Winborne argued that he should have been afforded a hearing and assistance of counsel to present his testimony

[4] Notably, Mr. Winborne's petition itself did not make that assertion; the only statement in the petition about his previous filings was that "Petitioner has **not** previously filed any appeals nor did petitioner file any Petition for Post-Conviction Relief in this case," neither of which was true. (Emphasis in original.)

about the misinformation he allegedly received from his counsel and to establish "extraordinary cause" for his late filing.

In so arguing, Mr. Winborne relied on a different section of the UPPA, CP § 7-108, which provides that a person has a right to a hearing and assistance of counsel on a postconviction petition. But CP § 7-108 says nothing about a right to a hearing and counsel for the purpose of proving extraordinary cause to justify petitions filed outside the limitations period, and no case has applied § 7-108 in that fashion. The circuit court denied the motion to reopen, and we denied Mr. Winborne's application for leave to file an appeal. His subsequent motion to reconsider added the assertion that the circuit courts rule differently on whether petitioners are entitled to hearing and assistance of counsel to establish "extraordinary cause" to excuse the filing after the ten-year statute of limitations runs. We denied that motion as well.

The procedural question about whether CP § 7-108 applies to late-filed postconviction petitions is an interesting one, but isn't before us. Instead, the question for us is whether Mr. Winborne's appeal of the denial of his habeas petition falls into one of the exceptions to the general rule that such denials are not appealable. Mr. Winborne's best possible argument is that this appeal falls into the catchall exception, *i.e.*, cases in which the UPPA does not otherwise provide a remedy for the challenges raised in the petition, CP § 7-107(b)(2)(ii); *Simms*, 221 Md. App. at 469–70 (*citing Gluckstern*, 319 Md. at 652–53, 662), because he was denied the opportunity to challenge the legality of his sentence

and conviction due to bad advice by counsel in 1997 about the limitations period for postconviction proceedings.

That argument still fails. The UPPA provided an opportunity for Mr. Winborne to challenge his conviction and sentence, but it expired ten years after the imposition of his sentence. And although it's not before us, we doubt that misinformation from counsel could establish "extraordinary cause" to excuse a late filing. *See State v. Hicks*, 285 Md. 310, 319 (1979) (interpreting the phrase "extraordinary cause" as it appeared in a since-superseded statute to mean "cause beyond what is ordinary, usual or commonplace" or that "is not regular or of the customary kind"); *Ray v. State*, 410 Md. 384, 407 (2009) (interpreting the phrase "extraordinary cause" as it appears in CP § 3-107 to mean "limited to only the rarest of circumstances"). Mr. Winborne's appeal is barred by the habeas corpus statute and must, therefore, be dismissed. *See Green v. Hutchinson*, 158 Md. App. 168, 174 (2004) (dismissing appeal of habeas petition where the arguments set forth in the petition "alleged ineffective assistance of counsel, errors in the admission of evidence, and improprieties concerning jury instructions and the submission of counts to the jury" because such arguments "went directly to the legality of [the petitioner's] convictions").

APPEAL DISMISSED. APPELLANT TO PAY COSTS.