

Circuit Court for Baltimore City  
Case Nos. 198300048, 199029053, and 199029055

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1721

September Term, 2021

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DONTAE SPIVEY

v.

STATE OF MARYLAND

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Graeff,  
Zic,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 1, 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.

Dontae Spivey, appellant, challenges the striking, by the Circuit Court for Baltimore City, of a “Notice of Interlocutory Appeal.” For the reasons that follow, we shall affirm the judgment of the circuit court.

On July 13, 2021, Mr. Spivey filed a “Motion for State to Pay the Cost of DNA Testing.” On August 31, 2021, the court issued an order in which it denied the motion and ordered the Clerk of the court “to send [the order] to all interested parties.” On October 11, 2021, Mr. Spivey filed the Notice of Interlocutory Appeal. On October 20, 2021, the court issued a show cause order, in which it noted that Mr. Spivey’s “notice of appeal [was] not . . . filed within the time prescribed by Rules 8-202 or 8-204,” and ordered Mr. Spivey to “show cause in writing within fifteen (15) days after service of [the order] why the notice of appeal should not be stricken.” The court further ordered the Clerk to “send a copy [of the order] to all parties.” On December 9, 2021, the court issued an order in which it struck Mr. Spivey’s notice on the ground that he “failed to show cause.”

Mr. Spivey contends that the court erred in striking the notice because the Clerk “did not send the August 31, 2021 order . . . until” September 27, 2021, Mr. Spivey “[n]ever received the . . . show cause order,” and Mr. Spivey did not “have to show cause if [the] Notice of Appeal was filed timely.” We disagree. The Court of Appeals has stated that “[t]here is a strong presumption that . . . court clerks, like other public officers, properly perform their duties,” *Nicolas v. State*, 426 Md. 385, 418 (2012) (internal citations and quotations omitted), and there is no evidence in the record before us that the Clerk did not

mail the court’s orders of August 31 and October 20, 2021, in a timely manner.<sup>1</sup> Also, Mr. Spivey does not cite any authority that excused him from responding to the court’s show cause order, and hence, the court did not err in striking the notice of interlocutory appeal.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**

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<sup>1</sup>In support of his contention, Mr. Spivey attached to his brief a copy of the court’s August 31, 2021 order, which contains what appears to be a stamp of the Clerk’s signature and certification that the copy is a “true copy,” as well as a hand-written date that Mr. Spivey contends to be September 27, 2021. The order included in the record contains no such stamp or date. Also, the hand-written date on the copy of the order appears to be not September 27, 2021, but September 22, 2021. Assuming, *arguendo*, that the Clerk did not mail the order until September 22, 2021, Mr. Spivey still had time to file a timely notice of appeal pursuant to Rules 8-202 and 8-204.