

Circuit Court for Baltimore County
Case No. 003-K-94-004481

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1802

September Term, 2017

JAMES FINNEYFROCK

v.

STATE OF MARYLAND

Wright,
Graeff,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: October 9, 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.

In 1995, a jury in the Circuit Court for Baltimore County convicted James Finneyfrock, appellant, of the first-degree murder of his parents, and the court thereafter imposed two concurrent sentences of life imprisonment without the possibility of parole. Finneyfrock thereafter unsuccessfully challenged those convictions on direct appeal, *Finneyfrock v. State*, No. 712, Sept. Term, 1995 (filed Feb. 14, 1996) (per curiam), and in a postconviction proceeding. *Finneyfrock v. State*, No. 112, Sept. Term, 2016 (filed Sept. 9, 2016) (per curiam).

In 2017, Finneyfrock filed a petition for writ of *habeas corpus*, raising three grounds for relief:

I. A defect in the integrity of the judicial process has occurred where confusing and misleading reasonable doubt instruction has denied Petitioner of his right to a fair trial and impartial jury as guaranteed by the Sixth, Seventh Amendments and Fourteenth Amendment Due Process Clause of the United States Constitution, and Maryland's Declaration of Rights Article 21, resulting in the illegal conviction and imprisonment of the Petitioner.

II. The petitioner was denied his guaranteed Fourteenth Amendment United States Constitutional right, and Article 5 of the Maryland Declaration of Rights, to be present at every critical stage of trial.

III. The Petitioner is entitled to an evidentiary hearing on these Constitutional jury instructional issues that has denied him a fair and impartial jury trial as guaranteed him under the Sixth, Seventh and Fourteenth Amendments of the United States Constitution.

The circuit court thereafter denied his petition, and Finneyfrock now appeals from that ruling, raising the following claims:

I. Was appellant entitled to a *habeas corpus* evidentiary hearing where Maryland law at the time of appellant’s trial relied upon constitutionally infirm reasonable doubt jury instructions that denied appellant of his substantive right to a fair and impartial trial, as guaranteed under the Sixth, Seventh and Fourteenth Amendments of the United States Constitution?

II. Was appellant entitled to a *habeas corpus* evidentiary hearing where appellant was denied his guaranteed Fourteenth Amendment United States Constitutional right, and Article 5 of the Maryland Declaration of Rights, to be present at every critical stage of trial?

The State filed, in its brief before us, a motion to dismiss, contending that this appeal is not permitted by law. We agree and dismiss the appeal.

DISCUSSION

In *Simms v. Shearin*, 221 Md. App. 460 (2015), we addressed the statutory provisions that apply to appeals taken from final orders in *habeas corpus* cases. We observed that “the Court of Appeals has ‘consistently held that statutory provisions like [Maryland Code, (1974, 2014 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”), § 12-301], generally authorizing an ‘appeal from a final judgment entered in a civil or criminal case,’ do not apply to *habeas corpus* cases.” *Id.* at 469 (quoting *Gluckstern v. Sutton*, 319 Md. 634, 652, *cert. denied sub nom. Henneberry v. Sutton*, 498 U.S. 950 (1990)). Rather, an “appeal may be taken from a final order in a *habeas corpus* case only where specifically authorized by statute.” *Id.* (citations omitted).

We further noted that the Court of Appeals has identified four statutes authorizing appeals from final orders in *habeas corpus* cases: Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article (“CP”), § 9-110, “which authorizes appeals in extradition cases;” 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;” CJP § 3-707, “which authorizes an application for leave to appeal in cases involving right to bail or allegedly excessive bail;” and the CP § 7-107, part of the Maryland Uniform Postconviction Procedure Act, “which permits an appeal if the writ was sought under CP § 9-110 or for a purpose other than to challenge the legality of a conviction or sentence.” *Simms*, 221 Md. App. at 469-70.

CP § 7-107 is the only one of the four appeals statutes that could possibly apply in this case. That section provides, in pertinent part:

(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 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).

A provision substantively similar to CP § 7-107¹ was interpreted by the Court of Appeals in *Gluckstern* as barring the right of appeal in *habeas corpus* cases where the prisoner is challenging the original criminal proceeding, which had led to the incarceration, but permitting appeals “[i]n situations where the Postconviction Procedure Act did not provide a remedy, and thus was not a substitute for *habeas corpus*[.]” *Gluckstern*, 319 Md. at 662. The question before us then is whether Finneyfrock’s claims could have been brought in a postconviction proceeding, because, if they could have been, the instant appeal is barred.

Plainly, Finneyfrock, in his *habeas corpus* petition, challenges the original criminal trial which led to his present incarceration. Those claims, of a purportedly

¹ The statute at issue in *Gluckstern*, Maryland Code (1957, 1987 Repl. Vol., 1989 Cum. Supp.), Art. 27, 645A(e), is the antecedent of the current provision in the Postconviction Procedure Act but is not substantively different. It provided:

No appeals to the Court of Appeals or the Court of Special Appeals in *habeas corpus* or *coram nobis* cases, or from other common-law or statutory remedies which have heretofore been available for challenging the validity of incarceration under sentence of death or imprisonment shall be permitted or entertained, except appeals in such cases pending in the Court of Appeals on June 1, 1958, shall be processed in due course. Provided, however, that nothing in this subtitle shall operate to bar an appeal to the Court of Special Appeals (1) in a *habeas corpus* proceeding instituted under § 2-210 of Article 41 of this Code or (2) in any other proceeding in which a writ of *habeas corpus* is sought for any purpose other than to challenge the legality of a conviction of a crime or sentence of death or imprisonment therefor, including confinement as a result of a proceeding under Article 31B of this Code.

defective reasonable doubt jury instruction and of an alleged violation of his right to be present at all critical stages of trial, fall within one or both of two categories for which relief may be sought under the Postconviction Procedure Act: that “the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of the State,” CP § 7-102(a)(1), or that “the sentence is otherwise subject to collateral attack on a ground of alleged error that would otherwise be available under a writ of *habeas corpus*, writ of *coram nobis*, or other common law or statutory remedy.” CP § 7-102(a)(4). Therefore, a straightforward application of *Gluckstern* and *Simms* leads us to conclude that, in the instant case, no appeal is permitted under CJ § 7-107(b)(2). Accordingly, we grant the State’s motion to dismiss the appeal.

APPEAL DISMISSED. COSTS ASSESSED TO APPELLANT.