

Circuit Court for Prince George's County  
Case No.: C-16-CV-23-004328

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1860

September Term, 2023

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JAMES JACKSON

v.

COMMISSIONER OF CORRECTIONS,  
J. PHILLIP MORGAN

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

JJ.

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PER CURIAM

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Filed: May 16, 2024

\*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.

In 1988, a jury in the Circuit Court for Prince George’s County convicted James Jackson, appellant, of two counts of first-degree felony murder, attempted robbery with a dangerous or deadly weapon, and three counts of use of a handgun in the commission of a crime of violence. The court sentenced him to two consecutive life sentences, plus additional time. Jackson’s attempts to overturn his conviction have been unsuccessful. *See, e.g., Jackson v. State*, No. 500, Sept. Term, 1989 (filed Nov. 17, 1989) (affirming conviction on direct appeal); *Jackson v. State*, No. 657, Sept. Term, 2017 (filed May 7, 2018) (affirming denial of motion to correct illegal sentence); *Jackson v. State*, No. 920, Sept. Term, 2021 (filed Dec. 20, 2021) (affirming denial of petition for writ of actual innocence). In September 2023, Jackson filed, in the circuit court, a petition for habeas corpus relief. The court denied his petition without a hearing, and this appeal followed.

“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). There are only four statutes that authorize an appeal from a decision in a habeas case:

- Criminal Procedure (“CP”) § 9-110, which permits appeals in extradition cases;
- Courts & Judicial Proceedings (“CJP”) § 3-707, which authorizes an application for leave to appeal in cases involving right to bail or allegedly excessive bail;
- CJP § 3-706, which permits 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

- CP § 7-107, a provision of the [Uniform Post Conviction 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.

Jackson’s petition does not concern extradition or bail. And the circuit court did not issue a writ of habeas corpus, much less issue one on the basis that the law under which Jackson was convicted is unconstitutional.<sup>1</sup> So, the only possible statute that would apply in this case is Section 7-107 of the Criminal Procedure Article. But that statute authorizes appeals in habeas corpus cases “only when the petitioner challenge[s] the legality of confinement based on collateral post-trial influences and not the legality of the underlying conviction or sentence, and where the UPPA [does] not otherwise provide a remedy.” *Simms*, 221 Md. App. at 473. For example, in *Green v. Hutchinson*, 158 Md. App. 168, 174 (2004), we held that allegations of “ineffective assistance of counsel, errors in the admission of evidence, and improprieties concerning jury instructions and the submission of counts to the jury . . . went directly to the legality of Green’s convictions[,]” and, therefore, the denial of his petition for a writ of habeas corpus was not appealable under CP § 7-107.

Here, Jackson challenged the legality of his conviction on constitutional grounds. Because his claims attacked the legality of his conviction and sentence, the denial of that

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<sup>1</sup> CJP § 3-706(a) provides for an appeal only where “a person is *released or discharged* by a judge under the writ of habeas corpus on the ground that the law under which the person was convicted is unconstitutional[.]” (Emphasis added.) It does not provide for an appeal from the *denial* of a petition for habeas corpus.

petition is not appealable.<sup>2</sup> Consequently, the appeal must be dismissed.<sup>3</sup> *See* Md. Rule 8-602(b)(1).

**APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.**

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<sup>2</sup> We also note that Jackson’s claims in his petition stem from an allegation that the prosecutor’s decision to *nol pros* some counts in his indictment constructively acquitted him of the charges for which he was convicted. Although Jackson says his claims are based on “new facts recently discovered in 2023,” he has asserted functionally identical facts in this Court at least twice before—namely in Case Nos. 657, Sept. Term, 2017, and 1225, Sept. Term, 2020. In other words, Jackson’s habeas petition, in essence, repackages issues that have already been litigated. So, even if the circuit court’s order were appealable, we would affirm its judgment under the law-of-the-case doctrine. *See Nichols v. State*, 461 Md. 572, 593 (2018).

<sup>3</sup> Jackson also claims that the judge who denied his petition should have recused himself. This claim is not preserved, however, as it was not raised in the circuit court. *Conwell Law LLC v. Tung*, 221 Md. App. 481, 516 (2015).