

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1939

September Term, 2014

THURMAN SPENCER

v.

BRIAN BOTTS

Kehoe,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 3, 2015

*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 2006, Thurman Spencer, Jr., was convicted of first-degree rape, two counts of armed robbery, use of a handgun in a crime of violence, and first-degree burglary. He is currently serving a sentence of incarceration for life plus eighty (80) years. On August 11, 2014, Mr. Spencer filed a Petition for Writ of Habeas Corpus with Request for Expedited Hearing in the Circuit Court for Baltimore County pursuant to Maryland Code (1973, 2013 Repl. Vol.) Courts and Judicial Proceedings Article (“CJP”) § 3-701 *et seq.* and Maryland Rules 15-301 *et seq.* Mr. Spencer presented one ground for relief, that “[the] trial court committed reversible error in failing to instruct the jury that they could return a verdict of not guilty,” and argued that he received ineffective assistance of counsel because counsel failed to object to the jury instruction on reasonable doubt which omitted the last sentence of Maryland Pattern Jury Instruction 2:02. The circuit court denied the petition on September 15, 2014. Mr. Spencer filed a notice of appeal from that decision on October 2, 2014.

Mr. Spencer filed his corrected brief in this Court on June 19, 2015, in which he asks:¹

Did the [circuit court] err in ruling the trial court did not commit “structural error” with [its] erroneous reasonable doubt instructions?

“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, 471 (2015). “Ordinarily, no right of appeal exists from the

¹ On April 17, 2015, Mr. Spencer filed a non-conforming brief in this Court. Thereafter, the Court, on its own initiative, directed Mr. Spencer to file a corrected brief and rescheduled the case to our October 2015 session.

denial of an application for a writ of habeas corpus.” *Lomax v. Warden, Maryland Corr. Training Ctr.*, 120 Md. App. 314, 323 (1998) *aff’d*, 356 Md. 569 (1999). Statutory provisions generally authorizing an “appeal from a final judgment entered in a civil or criminal case, do not apply to habeas corpus cases.” *Green v. Hutchinson*, 158 Md. App. 168, 172 (2004) (internal quotation marks omitted) (citing *Gluckstern v. Sutton*, 319 Md. 634, 652 (1990)). “[T]he right of appeal from a final order in a habeas corpus case . . . ‘may be taken . . . only where specifically authorized by statute.’” *Lomax*, 120 Md. App. at 323 (quoting *Gluckstern*, 319 Md. at 652).

The Court of Appeals has identified four statutes that either authorize an appeal (or application for leave to appeal) or relate to the right to appeal in habeas corpus cases. *Gluckstern*, 319 Md. at 652; *see also Green*, 158 Md. App. at 172-73. First, Maryland Code (2001, 2008 Repl. Vol.) Criminal Procedure Article (“CP”) § 7-107(b), which is part of the Uniform Postconviction Procedure Act (“UPPA”), bars certain appeals challenging the validity of confinement:

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.

However, CP § 7-107(b) does not bar an appeal to this Court in a proceeding under CP § 9-110 or “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 . . .**” CP § 7-107(b)(2) (emphasis added).

“Applying CP § 7–107, Maryland appellate courts have entertained appeals from rulings on habeas corpus petitions **only when the petitioner challenged 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 472–73 (emphasis added) (citations and internal quotation marks omitted).

Second, CP § 9-110 specifically authorizes an appeal to this Court from the denial of habeas corpus relief in extradition cases. Third, CJP § 3-706 authorizes an appeal where a writ was issued on the ground that the law under which the petitioner was held is unconstitutional. And finally, CJP § 3-707 allows a petitioner to apply to this Court for leave to appeal following a “denial of relief in habeas corpus cases regarding the right to bail or allegedly excessive bail.” *Gluckstern*, 319 Md. at 652.

The issue raised in Mr. Spencer’s petition for writ of habeas corpus— notwithstanding his argument that it was a “structural error”—alleged error in the conduct of his trial that could have been (and was) raised on postconviction.² Any remedy for Mr. Spencer’s allegation of error was to be found on direct appeal or through the UPPA. *See, e.g., State v. Rose*, 345 Md. 238, 250 (1997) (considering the application of the waiver provision of the UPPA to claims of error concerning a defective reasonable doubt

² Mr. Spencer’s underlying convictions were affirmed by this Court in an unreported opinion, *Spencer v. State*, No. 168, Sept. Term 2006 (filed April 16, 2008). On postconviction, Mr. Spencer argued, *inter alia*, ineffective assistance of counsel for failure to object to the incomplete reasonable doubt instruction. On September 16, 2010, the circuit court denied his petition for postconviction relief, and, on November 14, 2011, this Court denied Mr. Spencer’s application for leave to appeal that decision.

instruction, where trial council made no objection to the instruction). Further, Mr. Spencer's issue does not fall within any of the statutory provisions allowing appeal in a habeas corpus proceeding. Rather, his argument goes directly to the legality of his conviction. Accordingly, we hold that Mr. Spencer was not permitted to appeal from the judgment denying his petition for writ of habeas corpus.

**APPEAL DISMISSED.
APPELLANT TO PAY THE COSTS.**