

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1943

September Term, 2022

DAVID BRIGHTWELL

v.

STATE OF MARYLAND

Nazarian,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 27, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

David Brightwell, appellant, appeals from the denial, by the Circuit Court for Somerset County, of his petition for writ of habeas corpus. In response, the State has filed a motion to dismiss the appeal as not permitted by law. For the reasons that follow, we shall grant the State’s motion to dismiss the appeal.

In 1997, a jury convicted appellant of armed robbery, assault with intent to murder, use of a handgun in the commission of a felony or violent crime, and other related offenses. The court sentenced him to a total term of 50 years’ imprisonment. This Court affirmed his convictions on direct appeal. *Brightwell v. State*, No. 502, Sept. Term 1998 (filed Mar. 30, 1999).

In 2022, appellant filed a petition for writ of habeas corpus, raising numerous issues related to his conviction, including that the arrest warrants issued in his case were illegal; that the State withheld exculpatory evidence and “allowed their key witness [] to commit perjury on the witness stand;” and that he received ineffective assistance of trial counsel. The circuit court denied appellant’s petition without a hearing. 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). “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 only possible statute that would apply in this case is Section 7-107 of the Criminal Procedure Article. However, that statute only authorizes appeals in habeas corpus cases “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 [Uniform Post-Conviction Procedure Act does] not otherwise provide a remedy.” *Simms*, 221 Md. App. at 473. Because all the claims raised in appellant’s habeas petition attacked the legality of his conviction and sentence, the denial of that petition is not appealable. *See Green v. Hutchinson*, 158 Md. App. 168, 174 (2004) (where the arguments in support of habeas relief “went directly to the legality of [the petitioner’s] convictions[,]” there was no right to appeal the circuit court’s order denying relief). Consequently, the appeal must be dismissed.

**MOTION TO DISMISS APPEAL
GRANTED. COSTS TO BE PAID BY
APPELLANT.**