

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1226

September Term, 2014

RICHARD PRESTON

v.

JOHN S. WOLFE

Meredith,
Woodward,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: November 16, 2016

*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.

Appellant, Richard Preston, is an inmate at the Jessup Correctional Institute.¹ He asserts that he is entitled to immediate release from confinement and seeks leave to appeal the order of the Circuit Court for Anne Arundel County denying his Petition for Writ of Habeas Corpus (“the Petition”). Appellees are John S. Wolfe, in his capacity as the warden of Jessup Correctional Institute, and the State of Maryland (collectively “the State”). Mr. Preston, in his Application for Leave to Appeal the Denial of Habeas Corpus alleges four errors,² which we have re-worded and consolidated into one:

¹ Mr. Preston was self-represented at the time of the filing of the Petition and the briefs in this case. On October 14, 2015, attorney Melvin Bilal entered his appearance on behalf of Mr. Preston and submitted a Request for Oral Argument pursuant to Maryland Rule 8-523(b)(2); no response was filed. This Court granted Mr. Bilal’s request, and he appeared on Mr. Preston’s behalf at oral argument on February 1, 2016.

² The errors, as presented by Mr. Preston, are as follows:

[The court] based the order of denial to Petitioner’s Habeas Corpus was isolated to misapplication and misinterpretation of Maryland Rule 15-301.

[The court] goes on to incorrectly claim[] that Petitioner does not challenge the legality of his current confinement or restraint . . .” but he “repeatedly reference[d] . . . his present confinement or restraint [as] unlawful, unconstitutional, and illegal.”

[The court] did not render a finding[] on . . . two (2) [of the] grounds presented in the Petitioner’s Habeas Corpus. They are:

II. Petitioner was denied his 14th Amendment Right to due process and equal protection of the law, as required under Maryland Rule 4-242, for the Petitioner[’s] plea of guilty was not knowingly, intelligently, and voluntarily rendered due to the court and counsel committing fraud, mistake, or irregularity under Maryland Rule(s) 2-535 and 4-345.

III. Petitioner is denied his 14th Amendment Right to due process and equal protection of the law, where there is a

(continued...)

Did the circuit court err in denying Mr. Preston’s Petition for Writ of Habeas Corpus?

The State responds that an appeal of the circuit court’s denial of the Petition is not permitted as a matter of law. We agree with the State and dismiss the appeal. We explain.

FACTUAL AND PROCEDURAL HISTORY

On April 20, 1982, Mr. Preston was arrested and charged with multiple felonies including murder in the first degree and conspiracy to commit murder. He remained incarcerated at the Baltimore County Detention Center from that date until the time of his sentencing, a total of 219 days.³ On August, 16, 1982, Mr. Preston pleaded guilty to murder in the first degree and conspiracy to commit murder.

On November 24, 1982, at his sentencing hearing in the Circuit Court for Baltimore County, the court briefly recounted Mr. Preston’s criminal actions: “a cousin, called a cab, got in the cab, attempted to rob the cab driver, and when the cab driver

breach of a plea agreement, by the sentencing court, as required in Md. Rule 4-243. Petitioner has exceeded the irregularity in the time of incarceration promised by sentencing court during colloquy.

Due to the Petitioner clearly stating that both Ground II. and III. were unlawful and unconstitutional, making his conviction, commitment, confinement or restraint unlawful and unconstitutional, the lower court had followed Md. Rule 15-303(d).

[The court’s] order denying Petitioner’s Habeas Corpus should be reversed or modified for Petitioner[] met the standard under Court[s] and Judicial Proceedings section 3-70[2].

³ That calculation represents the number of days from and including Tuesday, April 20, 1982 to and including Wednesday, November 24, 1982.

resisted, Mr. Preston murdered him.” Based on the facts, the sentencing court could not “find any other sentence than a life sentence to be appropriate” on the first degree murder conviction. In doing so, the court stated:

As a Judge I recognize what a life sentence means in our system. Not only is it a long period of incarceration, but it is not in fact a life sentence. Mr. Preston, you are twenty-one years old. The time that you will be incarcerated is throughout much of the prime time of your life, but nevertheless it will not be for all of your life, so in a sense to sentence one to life imprisonment is not . . . what it really says it is.

* * * *

Some people are sentenced to twenty years imprisonment on just armed robbery and serve nearly as long as a sentence for murder.

The court also sentenced Mr. Preston to “ten years . . . [which] shall run consecutively,” on the conspiracy to commit murder conviction.

On March 24, 2014, Mr. Preston filed a Petition for Writ of Habeas Corpus with Request for an Expedited Hearing in the Circuit Court for Anne Arundel County alleging that pursuant to Maryland Rule 15-302, he was being “unlawfully and unconstitutionally confined and restrained of his liberty in violation of the Constitution of the United States and the Declaration of Rights.”⁴ In support of the Petition, he asserted that he was

denied his 5th[] and 14th Amendment Rights to due process and equal protection of the law where as required by Article 27 § 638C. [he] was not credited by the sentencing court with a deduction in term of his life sentence, which results in [him] serving a sentence greater than that sentenced to.

⁴ The filing of Mr. Preston’s initial Petition was delayed until April 14, 2014, because he had not paid the requisite filing fees at the time of his initial filing.

He argues that under Maryland Code (1957, 1976 Repl. Vol.), Art. 27 § 638C. (“Art. 27 § 638C.”).⁵ he was “entitled to credit for time spent in custody” because “the court **must** give [him] credit for all [his] time spent in custody.”⁶ (Emphasis in original). In other words, the language in Art. 27 § 638C. that a “sentence shall be diminished” by the time prior to conviction that a defendant has spent in custody indicates a legislative intent to make such reductions mandatory, which, he contends, creates a “liberty interest” in the pre-sentence credit that is protected by the due process provisions of the Fifth and

⁵ The current version of the statute, which is contained in Md. Code (2001, 2008 Repl. Vol.), § 6-218 of the Criminal Procedure Article (“CRP § 6-218”), is new language derived without substantive change from former Md. Code (1957, 1976 Repl. Vol.), Art. 27 § 638C. (“Art. 27, § 638C.”).

⁶ Art. 27 § 638C.(a) provided:

(a) Credit for time spent in custody before conviction or acquittal. - Any person who is convicted and sentenced shall receive credit against the term of a definite or life sentence or credit against the minimum and maximum terms of an indeterminate sentence for all time spent in the custody of any state, county or city jail, correctional institution, hospital, mental hospital or other agency as a result of the charge for which sentence is imposed or as a result of the conduct on which the charge is based, and the term of a definite or life sentence or the minimum and maximum terms of an indeterminate sentence shall be diminished thereby. In any case where a person has been in custody due to a charge that culminated in a dismissal or acquittal, the amount of time that would have been credited against a sentence for the charge, had one been imposed, shall be credited against any sentence that is based upon a charge for which a warrant or commitment was lodged during the pendency of such custody. In all other cases, the sentencing court shall have the discretion to apply credit against a sentence for time spent in custody for another charge or offense. This section does not apply to a parolee who is returned to the custody of the Division of Correction as a result of a subsequent offense and is incarcerated prior to the date on which he is sentenced for the subsequent offense.

Fourteenth Amendments to the Constitution. Therefore, when a court refuses “to give the prisoner credit for pre-sentencing detention,” it extends “a prisoner’s sentence beyond the maximum period prescribed by law.” He also contends that the sentencing court violated the equal protection clause because his detention resulted from his inability to afford bail.

Mr. Preston further contends that he:

was denied his 14th Amendment Right to due process . . . and equal protection of the law, as required under Maryland Rule 4-242, for [his] plea of guilty was not knowingly, intelligently, and voluntarily rendered, due to the court and counsel committing fraud, mistake, or irregularity under Maryland Rule(s) 2-535 and 4-345.

According to Mr. Preston, his plea agreement was involuntary because it was “predicated on: [an] [i]nduced unkept promise and t[h]reat by trial counsel.” More specifically, he contends that trial counsel threatened him with the death penalty if he did not accept the plea agreement and promised that if he accepted a life sentence he would only serve twenty years. In addition, “both trial counsel and trial court mistakenly informed [him] of a direct consequence ([which had] a definite, immediate, and largely automatic effect on the range of [his] punishment) of [his] plea.” He points to the judge’s statement:

As a Judge I recognize what a life sentence means in our system. Not only is it a long period of incarceration but it is not in fact a life sentence. Mr. Preston, you are twenty-one years old the time you will be incarcerated is throughout much of the prime of your life, nevertheless, it will not be for all your life,

He contends that this statement amounts to a mistake under Maryland Rule 2-535.⁷

To support his argument that the sentencing court thereby “created a presumption

⁷ Maryland Rule 2-535 provides:

(continued...)

of release being granted” on a certain date, he asserts that “[c]ivil courts [have] defined the prime of life numerically between the ages of 25-45 years or age, with the capping not exceeding 50 years old.”⁸

In his third allegation of error, Mr. Preston states he was

denied his 14th Amendment Right to due process and equal protection of the law, where there is a breach of plea agreement, by the sentencing court, as required in Md. Rule 4-243. [He] has exceeded the irregularity in the time of incarceration promised by sentencing court during colloquy.

According to Mr. Preston, his “plea of guilty was induced by a procedural irregularity committed by the sentencing court during [its] colloquy, [and] where a procedural

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(b) Fraud, Mistake, Irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(c) Newly-Discovered Evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

(d) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

⁸ Mr. Preston was born in October of 1960, as of the date of the filing of the Petition he was fifty-three years-old.

irregularity exist[s] the courts are granted revisory power under Md. Rule[s] 2-535 and 4-345”⁹ And, he further argues that the procedures set forth in Maryland Rule 4-243 in regard to plea agreements were not followed.

On May 13, 2014, the court required Mr. Preston “to provide a Supplement explaining why the Circuit Court for Anne Arundel County has jurisdiction over the Petition. Maryland Rule 15-303(c)^[10] requires the petition to be referred to the administrative judge ‘of the court in which the prior proceeding was held.’”

Mr. Preston responded on June 5, 2014, with a Supplement to Petition for Writ Habeas Corpus with Request for an Expedited Hearing. In the supplement, he stated the provision cited by the court was directory and not mandatory, and that the court should

⁹ Maryland Rule 2-535 provides, in relevant part: “On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” Maryland Rule 4-345 provides, in relevant part: “(a) Illegal Sentence. The court may correct an illegal sentence at any time. (b) Fraud, Mistake, or Irregularity. The court has revisory power over a sentence in case of fraud, mistake, or irregularity.”

¹⁰ Maryland Rule 15-303(c) provides, in relevant part:
(c) Referral. If the petition is made by or on behalf of an individual confined or restrained as the result of a prior judicial proceeding, a judge to whom the petition has been made may refer the petition, without taking other action, to the administrative judge of the court in which the prior proceeding was held. In exercising the discretion to refer the petition, the judge to whom the petition has been directed shall consider the interests and convenience of the parties and the State. Upon receiving the referral, the administrative judge shall assign the petition to a judge in accordance with the assignment procedures of that court, except that, without the written consent of the individual confined or restrained, the petition shall not be assigned to any judge who sat at the proceeding as a result of which the individual was confined or restrained.

exercise its discretion under Maryland Rule 15-303(c) to “consider the interests, and convenience of the parties and the State” because he is “confined or restrained in an institution under the judicial circuit of Anne Arundel County.”

On July 9, 2014, the court issued an order denying Mr. Preston’s Petition:¹¹

ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus wherein he requests the Court to hold an evidentiary hearing and/or order Petitioner’s immediate release from confinement.

Upon review and consideration of the Petition, the Court cannot grant Petitioner’s requested relief at this time. Under Rule 15-301, a Habeas Corpus Petition and subsequent proceedings are intended to act as a means through which a petitioner may challenge the legality of his or her confinement or restraint.

Here, Petitioner does not challenge the legality of his current confinement or restraint. Rather, he asks the Court to cure alleged defects in the crediting of time served in pretrial detention that could potentially extend the termination date of his sentence in the *future*. Such relief cannot be sought through a Habeas Corpus Petition.

Accordingly, it is this 8th day of July, 2014, by the Circuit Court for Anne Arundel County, Maryland, hereby

ORDERED that the Petition for Writ of Habeas Corpus is **DENIED**.

(Emphasis in original).

On July 30, 2015, Mr. Preston filed an Application for Leave to Appeal the Denial of Habeas Corpus raising the same issues raised in his Petition.

¹¹ By not referring the case to the Administrative Judge for Baltimore County and considering the petition, the circuit court presumably concluded that it “ha[d] jurisdiction over the petition.” *See* Md. Code (1973, 2013 Repl. Vol.), § 3–701 of the Courts and Judicial Proceedings Article (“CJP § 3–701”) (“A judge of the circuit court for a county, of the Court of Special Appeals, or of the Court of Appeals has the power to grant the writ of habeas corpus and exercise jurisdiction in all matters pertaining to habeas corpus.”).

At oral argument, Mr. Preston’s counsel, citing *Coley v. State*, 76 Md. App. 731 (1988), argued that Mr. Preston’s sentence should be calculated by making a finding of his life expectancy and deducting the pre-conviction confinement credits from that life expectancy. *Id.* at 737.

DISCUSSION

Standard of Review

We review the denial of habeas corpus petitions “on both the law and the evidence,” according to the standard set forth in Maryland Rule 8-131(c). *Wilson v. Simms*, 157 Md. App. 82, 91 (2004). We “will not set aside the judgment on the evidence unless clearly erroneous.” Md. Rule 8-131(c). And, we review the “interpretation and application of Maryland constitutional, statutory and case law,” under a de novo standard. *Schisler v. State*, 394 Md. 519, 535 (2006).

Appealability

The State contends that Mr. Preston’s appeal “is not allowed by law.” More particularly, it argues that Mr. Preston has “challenged the legality of his conviction[s] and not his confinement in his petition for writ of habeas corpus and because [Md. Code (2001, 2008 Repl. Vol.), § 7-104 of the Criminal Procedure Article (“CRP § 7-104”)]¹² otherwise provides him a remedy to challenge his convictions, the appealability of the

¹² CRP § 7-104 provides: “The court may reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interests of justice.”

circuit court’s order denying Preston’s motion is controlled by CRP § 7-107, which does not permit the pending direct appeal.”

In Maryland, a person may not appeal the disposition of a petition for writ of habeas corpus unless the appeal is specifically authorized by statute. *Simms v. Shearin*, 221 Md. App. 460, 462 (2015). Four statutes permit the filing of an appeal or an application for leave to appeal from a disposition in a habeas corpus case: Md. Code (1973, 2013 Repl. Vol.), § 3–707 of the Courts and Judicial Proceedings Article (“CJP 3–707”) (leave to appeal for right to bail);¹³ CRP § 9–110(c) (appeal of denial of application for a writ of habeas corpus after an extradition);¹⁴ CJP § 3–706 (consideration of judicial memorandum where prisoner discharged under the writ of habeas corpus due to unconstitutionality of conviction);¹⁵ CRP § 7–107 (appeal under CJP § 9–110 and any

¹³ CJP § 3–707 provides, in relevant part:

- (a) If a judge refuses to issue a writ of habeas corpus sought for the purpose of determining the right to bail, or if a judge sets bail claimed to be excessive prior to trial or after conviction, but prior to final judgment, a petitioner may apply to the Court of Special Appeals for leave to appeal from the refusal.

¹⁴ CRP § 9-110(c) provides: “(c) If the application for a writ of habeas corpus after an extradition hearing only is denied by the trial court, the denial may be appealed to the Court of Special Appeals.”

¹⁵ CJP § 3-706 provides:

- (a) If 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, in whole or in part, the judge shall file a memorandum within five days after the release or discharge and transmit it with original papers in the case to the clerk of the Court of Special Appeals.

(continued...)

habeas corpus proceeding not challenging the legality of a conviction of a crime or sentence of imprisonment).¹⁶ Mr. Preston’s appeal does not involve extradition, bail, or the unconstitutionality of the statutes under which he was convicted.

Thus, the only avenue potentially available to him on appeal is under CRP § 7–107. In discussing the history of this statutory provision in *Simms v. Shearin*, 221 Md. App. 460 (2015), this Court recently pointed out that when the General Assembly enacted the Post-Conviction Procedure Act in 1958, it “streamline[d]” all the remedies available for collateral attacks on criminal convictions and sentences beyond those incident to the usual procedures of trial and review into one “simple statute,” while restricting “the once broad right to file an application for leave to appeal in habeas corpus

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- (b) (1) The Court of Special Appeals shall consider the memorandum and the original papers at the earliest feasible time and render its opinion.
(2) The opinion has the same effect as an opinion filed in a case formally heard and determined by the court on an appeal.

¹⁶ CRP § 7-107 provides, in relevant 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.

cases.” *Id.* at 471. The General Assembly further clarified its intention to limit appeals from dispositions of habeas corpus petitions when, in a 1965 amendment that is reflected in section (b)(2) of the current statute, it specified “certain classes of habeas corpus cases in which an appeal to the Court of Appeals may be taken.” *Gluckstern*, 319 Md. at 662. Maryland appellate courts applying CRP § 7-107 “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” *Simms*, 221 Md. App. at 473.

In this case, Mr. Preston contends that “his present confinement is unlawful and unconstitutional” because: (1) he “is serving a greater sentence than he would be required to serve by law” due to the sentencing court’s failure to credit him for his pre-trial incarceration; (2) his plea of guilty “was not knowingly, intelligently, and voluntarily rendered;” and (3) his plea agreement was breached.

Based on our understanding of his arguments, Mr. Preston is challenging the legality of the length of his sentence, the validity of his plea agreement, and its alleged violation. These arguments directly address the “legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime,” and therefore, an appeal is expressly prohibited under CRP § 7–107(b)(2)(ii). *See Green v. Hutchinson*, 158 Md. App. 168, 174 (2004) (concluding that Green’s arguments in his petition, “ineffective assistance of counsel, errors in the admission of evidence, and improprieties concerning

jury instructions and the submission of counts to the jury,” went to the legality of his convictions).¹⁷

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

¹⁷ We express no opinion about the merits of any potential claims that Mr. Preston may have under the Post-Conviction Procedure Act or the Maryland Rules.