

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1485

September Term, 2014

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CHADWICK LESTER

v.

GREGG L. HERSHBERGER

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Krauser, C.J.,  
Berger,  
Reed,

JJ.

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Opinion by Reed, J.

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Filed: March 28, 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.

On May 30, 2012, Appellant, Lester Chadwick, filed a petition for writ of habeas corpus in the Circuit Court for Harford County against Gregg L. Hershberger, then-warden of the Roxbury Correctional Institution in Hagerstown, Maryland, alleging, among other things,<sup>1</sup> that the State violated his constitutional right to assistance of counsel during his trial. The circuit court denied the petition. On appeal, Appellant presents us with a single question, which we rephrase:<sup>2</sup>

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

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<sup>1</sup> Appellant made three allegations in support of his habeas petition:

- I. The State erred and violated the Petitioner’s Constitutional right to Due Process when they lacked jurisdiction to try and convict Petitioner because they failed to comply with Petitioner’s Intrastate Detainer Agreement Act request.
- II. The State erred and violated Petitioner’s Constitutional right to the assistance of counsel when they denied the Petitioner the assistance of counsel in all stages.
- III. The State erred and violated Petitioner’s Constitutional right to Due Process when they set a trial date in Circuit Court prior to affording Petitioner any pretrial procedures.

However, his appeal to this court from the circuit court’s denial of the petition is based solely on the argument that “the State denied Appellant his constitutional and statutory right to the assistance of counsel at his May 6, 1998 trial proceeding.”

<sup>2</sup> Appellant presented the following question *verbatim*:

1. Did the state err and violate appellant’s constitutional right to due process when the state denied appellant his constitutional and statutory right to the assistance of counsel at his May 6, 1998, trial proceeding?

In addition, Appellee, in his Motion to Dismiss, raises the threshold question whether Appellant's is the type of habeas case for which there is a right of appeal. For the following reasons, we grant Appellee's Motion to Dismiss.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On January 24, 1998, while serving a sentence in the Baltimore City Detention Center, Appellant was notified that an arrest warrant had been lodged as a detainer against him for a charge of armed robbery that was pending in the District Court for Harford County. Invoking his rights under the Intrastate Detainer Act, Appellant filed a Certificate of Inmate Status and made a written request for final disposition of the charges. His case was transferred to the Circuit Court for Harford County, where a trial date was set for May 6, 1998.

Appellant appeared before the court on May 6, 1998, unrepresented by counsel and informed the State's Attorney that he had neither been served with a copy of the indictment nor afforded an initial appearance or arraignment. The State, therefore, served him with an indictment and provided him with discovery. In addition, the court informed him of the nature of the charges against him, advised him to obtain counsel, and explained that if he appeared unrepresented again then he could be tried without an attorney. The trial was rescheduled for June 24, 1998.

On June 23, 1998, the State requested a postponement. Thereafter, the trial was rescheduled for October 7, 1998,<sup>3</sup> and again for January 27, 1999. At the conclusion of the trial, which lasted from January 27 to January 29, 1999, a jury found Appellant guilty of robbery with a deadly weapon and other related offenses. Appellant was sentenced on April 16, 1999, to 75 years' imprisonment, with all but 60 years suspended, to be followed by 5 years' probation. On appeal, we vacated Appellant's conviction for conspiracy to commit robbery, but affirmed all his remaining convictions.

On April 13, 2009, Appellant filed a *pro se* petition for post-conviction relief, which was supplemented by a petition filed by his counsel on January 11, 2010. A hearing on the petitions was held on July 9, 2010, and thereafter, on August 6, 2010, Appellant's request for post-conviction relief was denied.

Appellant did not appeal the decision to deny him post-conviction relief. Instead, on April 30, 2012, he filed a petition for writ of habeas corpus in the Circuit Court for Baltimore City. On May 24, 2012, the habeas petition was transferred to the Circuit Court for Harford County.<sup>4</sup> A hearing was held on October 15, 2012, the Honorable William O. Carr presiding, and by Memorandum Opinion dated July 30, 2014, Judge Carr denied

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<sup>3</sup> The Petition for Writ of Habeas Corpus indicates that Petitioner was represented by counsel on October 7, 1998. The record indicates that the appearance of counsel was entered on June 17, 1998, June 24, 1998, and October 7, 1998.

<sup>4</sup> The Circuit Court for Baltimore City transferred the petition to Harford County because "Petitioner is confined as the result of a prior judicial proceeding held in Harford County and the interests and convenience of the parties are better served in Harford County."

Appellant’s petition for habeas corpus relief. On August 26, 2014, Appellant filed a timely Application for Leave to Appeal pursuant to Md. Rule 8-204.

## DISCUSSION

### I. RIGHT OF APPEAL IN A HABEAS CORPUS PROCEEDING

#### A. Parties’ Contentions

Appellant argues that his right to due process under both the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights, as well as his right to assistance of counsel under both the Sixth Amendment of the U.S. Constitution and Article 21 of the Maryland Declaration of Rights, were violated at his May 6, 1998, appearance before the circuit court. Although he acknowledges the Supreme Court’s holding in *United States v. Gouveia*, 467 U.S. 180 (1984), that the Sixth Amendment right to counsel extends only to “critical” proceedings, he points out that § 16-204(b)(2) of the Public Defender Act and Md. Rule 4-214(b) “expressly specify [sic] and grant [sic] a right to counsel to indigents in *all* stages of a proceeding.”<sup>5</sup> (emphasis added). Appellant asserts that his right to assistance of counsel under these two statutes was violated because he was brought before the circuit court on May 6, 1998, “prior to being

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<sup>5</sup> Md. Code Ann., Crim. Proc. § 16-204(b)(2)(i) states that “[e]xcept as provided in subparagraph (ii) of this paragraph, representation shall be provided to an indigent individual in all stages of a proceeding listed in paragraph (1) of this subsection, including, in criminal proceedings, custody, interrogation, bail hearing before a District Court or circuit court judge, preliminary hearing, arraignment, trial, and appeal.” Likewise, Md. Rule 4-214(b) states: “When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal.”

afforded an opportunity to secure counsel, and prior to counsel being appointed to him considering that he was indigent.”

Appellant also contends that the circuit court failed to comply with Md. Rule 4-215(a), which sets forth the procedures to be followed at a defendant’s first appearance before the court without counsel, and Md. Rule 4-215(b), which specifies what the court must do before accepting a defendant’s express waiver of counsel. Specifically, Appellant argues that the court violated Rule 4-215(a) by not making sure that he was provided a copy of the charging document, not advising him of the nature of the charges against him and their allowable penalties, and not conducting a waiver inquiry pursuant to Rule 4-215(b).

Mr. Hershberger filed a Motion to Dismiss and a Brief. First, he moves to have Appellant’s case dismissed on two grounds. He argues that pursuant to *Green v. Hutchinson*, 158 Md. App. 168, *cert. denied*, 383 Md. 212 (2004), habeas appeals like Appellant’s challenging the legality of a conviction or sentence are prohibited under Maryland law. In addition, he contends that even if Appellant’s habeas appeal is not prohibited by law, Appellant failed to provide a record that meets the requirements of Md. Rule 8-501(a). He points to seven pretrial, trial, or post-trial hearings that Appellant refers to in his brief for which there are no transcripts in the record.

In the event dismissal is unwarranted, Mr. Hershberger urges us to find that the circuit court properly denied Appellant’s habeas petition. Again citing *Green*, he argues that there is no right of appeal “where the habeas petitioner challenges the legality of his

conviction or sentence.” Furthermore, he contends that because “[Appellant’s] direct appeal was affirmed more than a decade ago and his postconviction petition was denied five years ago,” the habeas appeal should be denied as a matter of law.

### **B. Standard of Review**

Md. Code Ann., Cts. & Jud. Proc. § 12-301 states that “[t]he right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law.” However, “[t]he Court of Appeals ‘has consistently held that . . . [this provision] does not apply to habeas corpus cases. An appeal may be taken from a final order in a habeas corpus case only where specifically authorized by statute.’” *Green*, 158 Md. App. at 172 (quoting *Gluckstern v. Sutton*, 319 Md. 634, 652 (1990)). Therefore, regarding Mr. Hershberger’s Motion to Dismiss, the issue is whether there is statutory authorization for Appellant’s habeas appeal. This is a question of law which we resolve *de novo*. See *Schisler v. State*, 394 Md. 519, 535 (2006) (“As the question before the Court involves the interpretation and application of Maryland constitutional, statutory and case law, we shall review the case *sub judice* under a *de novo* standard of review”).

If dismissal is not warranted in the present case, then

[w]e review the denial of an application for habeas corpus relief under the standard set forth in Maryland Rule 8–131(c). We will review the case on both the law and the evidence, and we will not set aside the judgment on the evidence unless clearly erroneous. Additionally, we note that Maryland Rule 15–303(e)(3)(A) provides that the court shall grant the writ unless “the judge finds from the petition, any response, reply, document filed with the petition or with a response or reply, or

public record that the individual confined or restrained is not entitled to any relief.”

*Wilson v. Simms*, 157 Md. App. 82, 91 (2004) (internal citation omitted).

### C. Analysis

As we noted in *State v. Thornton*, the Court of Appeals has

identified four statutes that permit appeals or applications for leave to appeal in habeas corpus cases—Cts. & Jud. Proc. art., § 3-707, applicable to the denial of relief in habeas corpus cases regarding the right to bail or allegedly excessive bail; [Crim. Proc. art. § 9-110], applicable to the denial of habeas corpus relief in extradition cases; Cts. & Jud. Proc. art., § 3-706, applicable where a writ is issued on the ground that the law under which the petitioner is held is unconstitutional; and [Crim. Proc. art. § 7-107], which is part of the [Postconviction] Procedure Act.

84 Md. App. 312, 313 (1990) (internal citation and quotation omitted). Appellant’s case neither involves the right to bail or allegedly excessive bail, nor is it an extradition case, and Appellant does not contend that the law under which he is held is unconstitutional. Therefore, his right to appeal the circuit court’s denial of his habeas petition hinges on the application of the Postconviction Procedure Act,<sup>6</sup> the relevant section of which provides:

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<sup>6</sup> See *Green*, 158 Md. App. at 173 (quoting *Gluckstern*, 319 Md. at 658):

The purpose of the [Postconviction] Procedure Act was to create a simple statutory procedure, in place of the common law habeas corpus and coram nobis remedies, for collateral attacks upon criminal convictions and sentences. . . . Although for constitutional reasons the General Assembly did not restrict the authority of judges to issue writs of habeas corpus, *it did in the [Postconviction] Procedure Act legislate with regard to appeals in habeas corpus cases.*

(emphasis in original).

(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.

Crim. Proc. art. § 7-107.

Thus, in no uncertain terms, Maryland law prohibits “a person [who] challenges the validity of confinement under a sentence of imprisonment by seeking the writ of habeas corpus . . . [to] appeal to the Court of Appeals or the Court of Special Appeals.” *Id.* at § 7-107(b)(1). There are, however, two exceptions. *See id.* at § 7-107(b)(2)(i) and (ii). The first is “in a habeas corpus proceeding begun under § 9-110 of this article,” *id.* at § 7-107(b)(2)(i), and the second is “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.” *Id.* at § 7-107(b)(2)(ii). As

neither of these exceptions apply to the present case,<sup>7</sup> Appellant has not right to appeal the circuit court’s decision to deny him habeas relief.

The issue Appellant presents on appeal is “the type that could have been raised in a petition for postconviction relief.” *Green*, 158 Md. App. at 173. Section 7-102 of the Postconviction Procedure Act sets forth the various bases for postconviction petitions:

(a) Subject to subsection (b) of this section, §§ 7-103 and 7-104 of this subtitle and Subtitle 2 of this title, a convicted person may begin a proceeding under this title in the circuit court for the county in which the conviction took place at any time if the person claims that:

(1) the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of the State; . . . or

(4) 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.

Furthermore, there is a right to appeal within 30 days from the denial of postconviction petitions. Crim. Proc. art. § 7-109(a). We say this to illustrate the fact that Appellant was not completely devoid of avenues by which to appeal from a final order relating to whether

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<sup>7</sup> Crim. Proc. art. § 9-110 contemplates procedures to be followed in extradition cases, which Appellant’s is not. Likewise, Appellant is not seeking habeas corpus relief “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.” *Id.* at § 7-107(b)(2)(ii). Appellant seeks habeas corpus relief on the grounds that the court did not afford him his statutorily- and constitutionally-protected right to assistance of counsel. Thus, his “arguments went directly to the legality of [his] convictions.” *Green*, 158 Md. App. at 174. *See id.* at 175 (citing multiple cases in which a habeas appeal was permitted because it involved a challenge other than to the “legality of a conviction;” each involved a violation of an agency guideline or procedure or Executive policy, not a violation of a statute or constitutional provision).

his right to assistance of counsel was violated at the May 6, 1998, proceeding—*i.e.*, if he had raised the issue in a postconviction petition, then he could have appealed from *that* petition being denied.

In fact, Appellant indicates in his brief that he did file a petition for postconviction relief in 2010 and that it was denied the same year. However, he does not—and the record does not—indicate the grounds for the postconviction petition or whether he filed an Application for Leave to Appeal from its denial. Instead, all the record shows is that almost two years after the postconviction petition was denied<sup>8</sup> he filed a petition for writ of habeas corpus challenging the legality of his convictions and sentences.

Because there is no right to appeal when a habeas petition merely challenges the legality of a conviction, we hereby grant Appellee’s Motion to Dismiss.

**APPELLEE’S MOTION TO DISMISS  
GRANTED. COSTS TO BE PAID BY  
APPELLANT.**

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<sup>8</sup> The postconviction petition was denied on August 6, 2010, and Appellant filed for habeas corpus relief on May 30, 2012.