UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2388

September Term, 2014

EARL E. BURKE

v.

STATE OF MARYLAND

Wright,
Kehoe,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: September 30, 2016

Earl E. Burke appeals from the dismissal of his second petition for post-conviction relief from his 1982 conviction for felony murder. At the time when his first post-conviction petition was denied in 1988, Maryland law gave Burke the ability to file at least one more post-conviction petition. Through a 1995 statute that expressly applied to virtually all criminal convictions that predated its enactment, the General Assembly reduced the permissible number of post-conviction petitions from two to one. On the basis of this statutory one-petition rule, the circuit court dismissed Burke's second post-conviction petition, which he filed in 2013. Chief among the issues on appeal, Burke contends that this retroactive application of the one-petition rule violates the constitutional prohibition against ex post facto laws.

We reject that contention and conclude that the circuit court did not err when it dismissed Burke's petition.

FACTUAL AND PROCEDURAL BACKGROUND

A. Burke's Convictions

In 1982, Burke was charged with murder and other crimes based on his involvement in the 1981 armed robbery of a gas station that resulted in the shooting death of an off-duty police sergeant.[1] Burke was originally charged in Anne Arundel County, the jurisdiction in which the crime had occurred. His case was later transferred to the

[1] The State produced evidence that Burke drove an accomplice to the gas station knowing that the accomplice intended to rob it, that Burke agreed to drive around until his accomplice was ready to be picked up, that Burke shared in the proceeds of the robbery, and that Burke hid the gun used in the robbery.

Circuit Court for Kent County. Burke was tried, convicted, and sentenced in Kent County.

At the close of all evidence in Burke's criminal trial, the trial judge instructed the jury on its role in determining both the facts and the law:

> Insofar as the law is concerned these instructions are binding upon you where the law is not in dispute. However, where the law may be in dispute – where there may be some question as between the State and the defense, the instructions are not binding upon you. You may decide that. These instructions are only advisory as to that aspect. Counsel can argue what the law is, where the law is in dispute. When you decide the law, you decide what the law is, not as you think it should be.

A few moments later, the judge reiterated: "These instructions are only meant to give you the law as advisory and directory, as I told you before, and to have you use these instructions in making your determination of guilt or innocence."

These instructions on the jury's role were based on Article 23 of the Maryland Declaration of Rights, which declares that "[i]n the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction."

In *Stevenson v. State*, 289 Md. 167 (1980), the Court of Appeals held that allowing the jury to be "Judges of Law" under Article 23 did not violate a defendant's right to a jury trial under the Sixth Amendment or the guarantee of due process under the Fourteenth Amendment of the United States Constitution. In so doing, however, the Court announced that the jury's role in determining the law under Article 23 was generally "limited to deciding 'the law of the crime[.]'" *Id.* at 178 (citation omitted). The Court explained:

> Because of th[e] division of the law-judging function between judge and jury, it is incumbent upon a trial judge to carefully delineate for the jury the following dichotomy: (i) that the jury, under Article 23, is the final arbiter of disputes as to the substantive "law of the crime," as well as the "legal effect of the evidence," and that any comments by the judge concerning these matters are advisory only; and (ii) that, by virtue of this same constitutional provision, all other aspects of law (e. g., the burden of proof, the requirement of unanimity, the validity of a statute) are beyond the jury's pale, and that the judge's comments on these matters are binding upon that body. In other words, the jury should not be informed that all of the court's instructions are merely advisory; rather only that portion of the charge addressed to the former areas of "law" may be regarded as non-binding by it, and it is only these aspects of the "law" which counsel may dispute in their respective arguments to the jury.

Stevenson, 289 Md. at 179-80; *see also Montgomery v. State*, 292 Md. 84, 89 (1981) (holding that trial court should instruct jury that instructions are advisory "when an instruction culminates in a dispute as to the proper interpretation of the law of the crime for which there is a sound basis").

Burke's criminal trial occurred in 1982, shortly after the *Stevenson* and *Montgomery* decisions. Although Burke now contends that the instructions at his trial deviated from the requirements of *Stevenson* and *Montgomery*, his trial counsel did not object to those portions of the instructions.

The jury convicted Burke of first-degree felony murder and the use of a handgun in the commission of a felony or crime of violence. On December 13, 1982, the court sentenced him to life imprisonment plus a consecutive term of 15 years. On direct appeal, Burke's attorney did not raise any issue regarding the jury instructions at the trial. This Court affirmed the judgments in an unreported opinion. *Earl Edward Burke v. State of Maryland*, No. 503, Sept. Term 1983 (filed Jan. 19, 1984) (per curiam).

B. Burke's First Petition for Post-Conviction Relief

The Maryland Uniform Postconviction Procedure Act, both at the time of Burke's convictions and in its present form, authorizes post-conviction relief where a court imposed a sentence or judgment in violation of a person's constitutional rights and where the claim of error has not been waived or finally litigated in prior proceedings. *See* Md. Code (2001, 2008 Repl. Vol.), § 7-102 of the Criminal Procedure Article ("CP"); Md. Code (1957, 1987 Repl. Vol.), Art. 27, § 645A(a)(1). At the time of Burke's sentencing, the statute "did not place any limit on the number of post conviction petitions which a petitioner was entitled to file." *Mason v. State*, 309 Md. 215, 217-18 (1987). Since that time, however, "the General Assembly has acted to limit the number of postconviction petitions that a person may file for each conviction." *Gray v. State*, 158 Md. App. 635, 645 (2004), *aff'd*, 388 Md. 366 (2005).

In 1986, the General Assembly enacted legislation "[for] the purpose of limiting the number of petitions a person may file for post conviction relief[.]" 1986 Md. Laws, ch. 647. Effective July 1, 1986, the Act provided that "[a] person may not file more than 2 petitions, arising out of each trial, for relief under this subtitle." *Id.* Because the legislature gave no clear indication as to whether this restriction should have retrospective effect, the Court of Appeals construed the 1986 legislation "as permitting two, but no more than two, petitions after July 1, 1986 involving convictions arising out of any one trial, without regard to the number of petitions filed prior to the effective date" of the statute. *Mason*, 309 Md. at 222.

In 1988, Burke filed his first petition for post-conviction relief. Counsel for Burke did not raise any issue regarding jury instructions as grounds for relief. The court denied the petition as to each of the issues that Burke raised.

C. The 1995 Amendments to the Post Conviction Procedure Act

In 1995, as part of the Death Penalty Reform Act, the General Assembly again reduced the number of post-conviction petitions that each petitioner could file. By Chapter 110 of the Laws of 1995, the legislature amended § 645A(a)(2) of Article 27 as follows:

> (2)(i) A person may file only one petition, arising out of each trial, for relief under this subtitle.
>
> (ii) The court may in its discretion reopen a postconviction proceeding that was previously concluded if the court determines that such action is in the interests of justice.

In sections 2 and 3 of Chapter 110, the General Assembly expressed its intent that these amendments would apply retroactively except to the extent that a second petition was pending on the effective date:

> SECTION 2. AND BE IT FURTHER ENACTED, That, subject to Section 3 below, the provisions of this Act shall apply to all criminal cases, regardless of whether the case arises out of an offense that is committed before or after the effective date of this Act or whether the trial or sentencing of the defendant occurs before or after the effective date of this Act.
>
> SECTION 3. AND BE IT FURTHER ENACTED, That the provisions of this Act that amend Article 27, § 645A of the Code do not apply to a case in which a second postconviction petition was filed prior to the effective date of this Act. In such a case, the court shall process the case in due course as required under Article 27, § 645A prior to the effective date of this Act.

Chapter 110 was signed into law on April 11, 1995, about six months before its effective date of October 1, 1995.

As the Court of Appeals later explained, the effect of Chapter 110 "was that a petitioner, who had previously filed a petition relating to a particular trial, had until September 30, 1995, to file another petition under the statute relating to the same trial." *Grayson v. State*, 354 Md. 1, 5 (1999). In other words, the amendments "placed a deadline of September 30, 1995, upon the filing of a petition under the Post Conviction Procedure Act challenging a criminal conviction if the petitioner had earlier filed one or more petitions under the Act relating to the same conviction." *Id.* at 13.[2]

Burke did not file a second petition for post-conviction relief before that statutory deadline.

D. Burke's Other Efforts to Obtain Relief from His Convictions

A few years later, in 1998, Burke sought to collaterally attack his convictions through a petition for a writ of habeas corpus that included a request for a writ of error coram nobis. Once again, Burke's attorney did not raise any issue about the trial court's statement that some of its instructions were "advisory." The court dismissed the request for coram nobis relief and denied the petition for a writ of habeas corpus.

[2] By a separate enactment, Chapter 258 of the Laws of 1995, the General Assembly amended the Act to provide that "[a] petition under this subtitle may not be filed later than 10 years from the imposition of sentence." Section 2 of Chapter 258 specified that this provision would be construed prospectively to apply only to post-conviction proceedings for sentences imposed on or after October 1, 1995. The 10-year limitations period has no application to persons such as Burke, who were sentenced before that date. *State v. Williamson*, 408 Md. 269, 277 (2009).

In 2006, Burke also challenged the life sentence from his felony murder conviction through a motion to correct an illegal sentence. The circuit court denied that motion, and this Court affirmed that order in an unreported opinion. *Earl Edward Burke v. State of Maryland*, No. 2346, Sept. Term 2006 (filed July 11, 2007).

E. Burke's Second Petition for Post-Conviction Relief

On September 10, 2013, Burke filed a second petition for relief in the Circuit Court for Kent County under to the Uniform Postconviction Procedure Act, now codified at CP §§ 7-101 to 7-301.[3] That petition is at issue in this appeal.

In the introductory portion of his petition, Burke argued in detail that he had the right to file a second petition for post-conviction relief even though the current statute (as a result of the 1995 amendments) provided that "[f]or each trial or sentence, a person may file only one petition for relief under this title." CP § 7-103(a). Burke asserted that he had "the right to file an unlimited number of post-conviction petitions" based on the law in effect at the time of his crimes and sentences. He contended that, at minimum, he had "the right to file at least two petitions for post-conviction relief" under the 1986 amendment. Burke also contended that the one-petition rule did not apply to him and that retroactive application of that rule to him "would violate his right to be free from *ex post facto* laws pursuant to both the federal Constitution and the Maryland Declaration of Rights."

[3] When the Criminal Procedure Article was first created in 2001, the General Assembly derived most of the language of Subtitle 7 without substantive change from section 645A of former Article 27. *See* Revisor's Notes to 2001 Md. Laws, ch. 10.

The substance of Burke's 2013 petition focused on the trial court's statements that its jury instructions were "advisory" to the extent that the law was "in dispute[.]" Burke asserted that he had been deprived of due process of law as a result of the court's failure to instruct the jury that its instructions were binding on bedrock principles such as the State's burden of proving his guilt beyond a reasonable doubt. Burke argued that his counsel in the 1982 trial should have been aware of the constitutional standard established by the 1980 *Stevenson* opinion and that his trial counsel rendered ineffective assistance by failing to object to the jury instructions.

Much of Burke's petition focused on the Court of Appeals' decision in *Unger v. State*, 427 Md. 383 (2012). At Unger's 1976 trial, his defense counsel did not object to the court's statements that all of its instructions on the law were only "advisory" and that the jurors were not bound by anything that the judge said about the law. *Id.* at 392-93. Many years later, the circuit court granted post-conviction relief on the ground that Unger had been denied due process of law as a result of the court's instructions. *Id.* at 395-96. The Court of Appeals concluded that the circuit court had correctly granted Unger a new trial. *Id.* at 417. The Court determined that Unger's failure to object to the instructions in 1976 did not amount to a waiver of those grounds for post-conviction relief, because the 1980 *Stevenson* opinion and 1981 *Montgomery* opinion established a new state constitutional standard. *Unger*, 427 Md. at 416. In addition, the Court suggested that, if the constitutional standard had already been in place before Unger's trial, then "there would be a sound basis for arguing that Unger's trial counsel should have been aware of

Article 23's limited scope, should have objected to the advisory nature of the instructions, and that, therefore, trial counsel's representation was deficient." *Id.* at 408.

Relying on *Unger*, Burke argued that the issue had not been waived by his attorney's failure to object during the 1982 trial, but that if the issue had been waived, then he had been denied the effective assistance of counsel.

F. The State's Belated Response to Burke's Petition

When Burke filed his second post-conviction petition on September 10, 2013, he served a copy of the petition by mail on the State's Attorney for Kent County. The State's Attorney did not file a response.

The court granted a postponement so that the petition could be served on the State's Attorney for Anne Arundel County, whose office had prosecuted Burke's criminal case. The court issued a new hearing notice to the Anne Arundel County State's Attorney, setting a hearing for June 20, 2014. On April 29, 2014, Burke filed an amended certificate of service, stating that he had sent a copy of his petition and related documents to the Anne Arundel County State's Attorney.

Over three weeks later, on May 22, 2014, the State filed what it styled as a "Motion for Appropriate Relief." The State asked the court to cancel the scheduled hearing and to allow the State until June 6, 2014, to file its response to Burke's petition.

One day after the State filed that motion, the court issued an order granting the relief requested by the State. The court ordered "that the State shall respond to [Burke's] petition for Post Conviction Relief no later than June 6, 2014[.]"[4]

On June 6, 2014, the State filed its answer, which included a motion to dismiss the petition with prejudice. Among other things, the State contended that Burke's petition was barred by the one-petition rule in CP § 7-103(a). The State argued that the General Assembly intended to apply the one-petition rule to all pre-1995 convictions and that its retroactive application did not violate any prohibition against ex post facto laws. On the merits, the State argued that the jury instructions at Burke's trial did not violate his constitutional rights because the court at Burke's trial said that its instructions were "advisory" only where "the law may be in dispute."

Burke filed three motions in reaction to the belated response that the court had permitted the State to file. In one motion, Burke asked the court to reconsider its decision to grant the State additional time to respond to his petition. In another motion, he asked the court to strike the motion to dismiss that had accompanied the State's answer. The court denied both of those motions.

In his third motion, Burke asked for leave to amend his post-conviction petition so that he could "fully and properly address the issues raised by the State in its Answer."

[4] Burke filed a response to the State's "Motion for Appropriate Relief" after the court had granted the motion. Burke contended that the court should deny that State's motion because it was untimely, was not supported by affidavit, and included no statement of grounds and authorities. He renews those arguments in his appeal.

The court neither granted nor denied the motion, but Burke submitted an amended petition a few weeks later.

G. Hearing and Ruling on the Petition

On August 14, 2014, the circuit court held a hearing to resolve Burke's post-conviction petition.

The court first heard arguments on the State's motion to dismiss. The State reiterated its argument that CP § 7-103(a) barred Burke from filing a second petition, and Burke responded with his argument that the retroactive application of the one-petition rule against him would violate constitutional prohibitions against ex post facto laws. The court decided that it would defer its ruling on the dismissal motion until after a full hearing on the merits.

Burke himself was the only witness at the hearing. His testimony supplemented the exhibits that had been submitted with his petition.

Four days after the hearing, the court issued an order dismissing Burke's post-conviction petition with prejudice. The court relied solely on CP § 7-103(a) and did not reach the merits of Burke's petition. The court wrote:

> Upon consideration of the memorandums as well as the arguments made at the hearing, the Court finds that Petitioner is not entitled to relief. Pursuant to Criminal Procedure Article § 7-103(a), for each trial or sentence, a person may file only one petition for relief. Petitioner does not dispute that he first filed for post conviction relief shortly after his trial, in 1988. Petitioner's subsequent Petition for Post Conviction relief, filed on September 10, 2013, is barred by the statutory one-petition rule.

Thereafter, Burke filed a timely application for leave to appeal, which this Court granted.[5]

QUESTIONS PRESENTED

On appeal, Burke contends that two of the court's orders were in error. First, Burke challenges the interlocutory order from May 23, 2014, which granted the State's request for an extension of time to respond to his petition. Second, Burke seeks reversal of the final order from August 18, 2014, which granted the State's motion to dismiss his post-conviction petition.

Burke's brief contains six lengthy questions,[6] which we will address in this consolidated form:

1. Did the circuit court abuse its discretion when it granted an extension of time for the State to file a response to Burke's post-conviction petition?

2. Did the circuit court err in dismissing Burke's post-conviction petition based on CP § 7-103(a)?

For the reasons discussed below, we answer these questions in the negative.

DISCUSSION

I. Extension of Time to File a Response

As part of his challenge to the dismissal of his post-conviction petition, Burke contends that the circuit court should not have permitted the State to respond to his

[5] The State moved to dismiss Burke's appeal because he had not ordered a transcript of the post-conviction hearing. This Court denied the motion, but ordered Burke to obtain the necessary transcript, which he has done.

[6] The full text of Burke's questions is reproduced in an appendix to this opinion.

petition at all. Burke contends that the court erred when it granted the "Motion for Appropriate Relief," in which the State requested additional time to respond to Burke's petition. We see no abuse of discretion in the decision to extend the filing deadline.

A. The Motion for Appropriate Relief

On April 24, 2014, after the court determined that the State's Attorney for Anne Arundel County (rather than for Kent County) should handle the petition, it sent a hearing notice to Anne Arundel County. Five days later, Burke sent copies of his petition and related documents to the Anne Arundel County State's Attorney.[7]

On May 22, 2014, over three weeks after the petition and hearing notice had been mailed to Anne Arundel County, an Assistant State's Attorney filed the "Motion for Appropriate Relief." The motion requested that the court cancel the scheduled hearing and extend the deadline for the State's response until June 20, 2014, about four weeks later.

The State's two-page motion cited no authorities and included no affidavit or exhibits, but it made a series of factual assertions about why the State wanted an extension. It stated that the State's Attorney for Anne Arundel County had received a hearing notice on May 1, 2014, but that "the attorney handling post convictions . . . was

[7] When a court receives a post-conviction petition, the clerk is required to send prompt notice of the filing to the State's Attorney. *See* Md. Rule 4-403. Nothing in the docket or elsewhere in the record indicates when the clerk did so or to which State's Attorney's Office the clerk sent notice of the *filing* of the petition. A series of hearing notices stated that a *hearing* had been scheduled on the petition. In this discussion, we shall assume that these hearing notices and the service of petition by mail on the State's Attorney qualify as notice of the filing of the petition.

in a murder trial and did not return to post conviction work until May 19, 2014." It also stated that no one in the Anne Arundel County office was aware of Burke's petition until it received the hearing notice and that the attorneys "were unable to find" a copy of the petition. The Assistant State's Attorney wrote that he had traveled to Kent County to "copy the materials which ha[d] been filed by Mr. Burke."

One day after receiving the motion, the court granted the State's request and setting a new deadline of June 20, 2014, for the State to submit its response to Burke's petition.

On appeal, Burke asserts that the court was "not legally correct" when it granted the State's motion. Burke contends that the court was required to deny the relief that the State requested, based on procedural and formal defects in the State's motion. He argues that: (1) the State's motion was untimely; (2) the motion was not supported by an affidavit; and (3) the motion lacked a statement of grounds and authorities. We conclude that the court had discretion to grant an extension of time notwithstanding any of those alleged defects.

B. The Court's Discretion to Extend the State's Response Time

As a general rule, when a court order or the Maryland Rules "require or allow an act to be done at or within a specified time, the court, on motion of any party and for cause shown, may (1) shorten the period remaining, (2) extend the period if the motion is filed before the expiration of the period originally prescribed or extended by a previous order, or (3) on motion filed after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect." Md. Rule 1-204(a). The

decision to grant such an extension rests within the circuit court's discretion. *See Maryland Green Party v. State Bd. of Elections*, 165 Md. App. 113, 142 (2005). Courts commonly exercise this power to extend a filing deadline *nunc pro tunc* after the deadline has passed. *Harrison-Solomon v. State*, 442 Md. 254, 268 (2015).

Maryland Rule 4-404, which specifically governs the timing of the response to a post-conviction petition, is even more permissive than the general rule for extensions of time. It provides: "The State's Attorney shall file a response to the petition within 15 days after notice of its filing, *or within such further time as the court may order*." Md. Rule 4-404 (emphasis added). In other words, the court "may" issue an order giving the State's Attorney more than 15 days to file a response to a post-conviction petition. The rule includes no requirement that the court issue such an extension "on motion" or "for cause shown" or that the court find "excusable neglect" as a ground to extend a deadline after it has passed. The language indicates that the court's discretion to grant the State "further time" to respond is virtually unfettered, subject only to general restraints that the court must not exercise that discretion arbitrarily, or for improper reasons, or in a way that would work substantial and unfair prejudice. Furthermore, because Rule 4-404 prescribes no consequences for untimeliness of the State's response to a post-conviction petition, the court has discretion to determine any appropriate consequences "in light of the totality of the circumstances and the purpose of the rule." Md. Rule 1-201(a).

This Court construed a rule that is analogous to Rule 4-404 in *Department of Public Safety and Correctional Services v. Neal*, 160 Md. App. 496 (2004), *cert. denied*, 386 Md. 181 (2005). The *Neal* case involved a petition for judicial review of an agency

decision reinstating a correctional services employee. *Id.* at 499. The employee did not file a response within 30 days after the department filed its petition, but she later filed an opposition to a motion to stay enforcement of the agency decision. *Id.* at 507. The circuit court allowed the employee to participate in the judicial review proceedings even though she had not filed a timely response. *Id.* at 508-09.

On review, this Court focused on Md. Rule 7-204(c), which governs responses to a judicial review petition. That rule provides: "A response shall be filed within 30 days after the date the agency mails notice of the filing of the petition unless the court shortens or extends the time." This Court reasoned that "Rule 7-204 expressly grants the court discretion to extend the time for filing a response to the petition[,] and the language of Rule 7-204 does not preclude the court from exercising that discretion to extend the filing deadline retroactively, after it has passed." *Neal*, 160 Md. App. at 509. This Court concluded that the circuit court did not abuse its discretion in treating the employee's filing as a belated response to the petition and excusing its untimeliness. *Id.* at 510.

In sum, the court in *Neal* had discretion to extend the response deadline for the judicial review petition, after the fact, even though the party did not expressly move for an extension and even though the party did not assert any factual or legal grounds for granting an extension. The language of Rule 4-404, requiring the State to respond to a post-conviction petition within 15 days "or within such further time as the court may order[,]" is no more restrictive than the language of Rule 7-204, setting a 30-day deadline for responding to a judicial review petition "unless the court shortens or extends the

time." Consistent with *Neal*, we conclude that the circuit court acted within its discretion when it granted the extension of time.

In addition to his objection based on timeliness, Burke asserts that the court should have denied the extension request because of formal defects in the written motion. Burke observes that the motion failed to "state with particularity the grounds and the authorities in support of each ground." Md. Rule 2-311(c). Additionally, Burke complains that the motion failed to comply with Rule 2-311(d), which provides that a motion "that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based." Relying on *Scully v. Tauber*, 138 Md. App. 423, 431 (2001), Burke argues that the court had "no right to consider any 'fact' set forth" in the State's motion that was not set forth in an affidavit under Rule 2-311(d), such as the assertions about the difficulties that the State's attorneys experienced in locating a copy of Burke's petition.[8]

Burke's insistence on compliance with the formal requirements of Rule 2-311 is unavailing, however, because the circuit court had discretion to extend the filing deadline even without a formal motion. In *Tavakoli-Nouri v. Mitchell*, 104 Md. App. 704, 709-10

[8] In *Scully v. Tauber*, 138 Md. App. at 427, a party moved to vacate a default judgment, relying on facts that were set forth in an affidavit. The circuit court denied the motion in part because of contradictory factual assertions in an opposition, which was not supported by an affidavit. *Id.* at 428-30. Holding that the court abused its discretion, this Court reasoned that the facts set forth in the moving party's affidavit were appropriately before the court, but that the facts set forth in the unsworn opposition were not. *Id.* at 431. *Scully v. Tauber* thus stands for the proposition that a party cannot effectively dispute a sworn assertion by making an unsworn assertion. Because this case does not involve a conflict between sworn and unsworn assertions, *Scully v. Tauber* is inapplicable.

(1995), this Court held that a circuit court had discretion to grant (and indeed should have granted under the circumstances) a party's request for a reasonable continuance even though he had not set forth the supporting facts in an affidavit. Writing for this Court, Chief Judge Wilner pointed out that the rule authorizing the court to grant a continuance "is not worded in such a way as to require that a request for continuance be made by motion" and that even if the rule did require a formal motion, the court should have determined the consequences of the party's noncompliance in light of the totality of circumstances and purpose of the rule. *Id.* at 709 (citations omitted).

Because Rule 4-404 permits the court to grant additional time for the State to respond to a post-conviction petition and does not require that the court grant such an extension "on motion," the court in this case was authorized to extend the filing deadline notwithstanding the formal defects in the State's written request. Under the circumstances, the court did not even need to rely on any "fact" stated in the State's motion (or any "authority" omitted from the motion) as a basis for granting relief. The existing record already revealed that the case had been assigned to a State's Attorney's office in another county and that the petition itself was complex.[9] On those bases alone, the circuit court had sufficient reason to grant a modest extension that resulted in only a three-week delay of the post-conviction hearing.

[9] Burke's petition was 35 pages long with a 125-page appendix. The petition included a summary of the extensive procedural history, substantive arguments regarding due process and ineffective assistance of counsel, and anticipatory discussions of waiver, limitations, laches, harmless error, and retroactivity of the one-petition rule.

Finally, we are unpersuaded by Burke's assertions that he "was definitely prejudiced" as a result of the decision to grant the State's motion. Burke theorizes that, if the court had not granted an extension, the State would have been unable to respond, and the court would have decided the merits of the case in his favor rather than dismiss it. The possibility that the other party might raise meritorious arguments and prevail on the merits of those arguments if allowed additional time to respond is not, however, the type of "prejudice" that justifies denying a motion to extend time. *See Neal*, 160 Md. App. at 510-11 (concluding that the losing party in judicial review action "[c]learly" sustained "no prejudice" from the court's decision to accept an untimely response because the losing party had notice of the other party's arguments and an ample opportunity to address them before the hearing); *see also Bonner v. Dir. of Patuxent Inst.*, 237 Md. 445, 447 (1965). Burke not only had a fair opportunity to address the arguments in the State's response, but he took advantage of that opportunity by amending his petition.

In any event, Burke's argument, that the court would not have dismissed his petition under CP § 7-103 but for the extension of time, fails even on its own terms. The issues of whether CP § 7-103 barred the petition and whether applying that statute would violate prohibitions against ex post facto laws were already before the court because Burke himself had introduced those issues in his initial petition. Thus, even if the court had refused to permit the State to respond to Burke's petition in any way (whether orally or in writing), the court still would have had the responsibility to consider the issues in the petition and to determine for itself whether Burke was entitled to relief. If the one-

petition rule barred Burke's petition, and if the rule is constitutional, the court would have been authorized to dismiss the petition without any response at all from the State.

In conclusion, the court properly exercised its discretion under Rule 4-404 when it extended the time for responding to Burke's petition. *See Neal*, 160 Md. App. at 510.

II. The Order Dismissing the Post-Conviction Petition

The real centerpiece of Burke's appeal is his contention that the circuit court erred when it dismissed his post-conviction petition on the ground that he could file "only one petition" under CP § 7-103(a). Burke advances three separate grounds for reversal, based on: (1) the form of the State's motion; (2) the form of the court's dismissal order; and finally (3) the substance of the court's dismissal ruling. We see no error.

A. Absence of an Affidavit in Support of the Motion to Dismiss

In an argument that is reminiscent of those discussed in Part I above, Burke contends that the court should have denied the State's motion to dismiss because it was not supported by an affidavit. Burke asserts that the State's motion "was based on facts not already contained in the post conviction proceedings record."

As his only example, Burke quotes a passage from the State's motion that discusses *Libby v. Magnusson*, 177 F.3d 43 (1st Cir. 1999), which rejected an ex post facto challenge to a federal statute that restricted the filing of successive federal habeas corpus petitions. Burke argues that the State's discussion of the background and holding of that case were the types of "facts" that need to be supported by a witness's affidavit under Rule 2-311(d). Burke asserts that the State's motion was "replete with many more" similar facts that were not contained in the record.

It would be generous to say that this argument lacks merit. The circuit court did not base its judgment on any "fact" set forth in the State's motion, because the court made no factual determinations in deciding a legal question about the applicability of a Maryland statute. Moreover, Maryland courts are required to "take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States, and of every jurisdiction having a system of law based on the common law of England." Md. Code (1974, 2013 Repl. Vol.), § 10-501 of the Courts and Judicial Proceedings Article. Ordinarily, therefore, a party need not produce an affidavit about the content of statutes and opinions that support a legal argument. Instead, it will ordinarily suffice for a party to supply accurate citations to official versions of those legal authorities.

B. Absence of a Supporting Statement in the Court's Dismissal Order

As a separate issue, Burke complains that the order dismissing his post-conviction petition was not accompanied by a statement summarizing the court's resolution of the issues raised in the petition. Burke relies on Md. Rule 4-407, which governs the court's final order in a post-conviction proceeding:

> **(a) Statement.** The judge shall prepare and file or dictate into the record a statement setting forth separately each ground upon which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the action taken thereon. If dictated into the record, the statement shall be promptly transcribed.
>
> **(b) Order of Court.** The statement shall include or be accompanied by an order either granting or denying relief. If the order is in favor of the petitioner, the court may provide for rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

"The purpose of the requirement of a ruling with respect to each ground raised in the postconviction petition is to provide a comprehensive state-court review of a defendant's claims and to eliminate delay and multiple postconviction hearings and federal hearings." *State v. Borchardt*, 396 Md. 586, 636-37 (2007). The written or dictated statement should "identify [the petitioner's] complaints with sufficient precision and completeness that, on an application for leave to appeal or in subsequent collateral proceedings, the court can determine with some assurance what, in fact, was litigated." *Pfoff v. State*, 85 Md. App. 296, 303 (1991).

As the State points out, Rule 4-407 does not expressly address whether the court must issue a supporting statement when it dismisses a successive petition pursuant to CP § 7-103(a). The State argues that it would be "illogical and unnecessary" to construe the rule to require a detailed statement in those circumstances. Certainly, it would make little sense to send this case back to the circuit court with directions to set forth "each ground upon which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the action taken thereon[,]" when the court made no such rulings because it determined that Burke had no right to file his petition in the first place. *Cf. Gilliam v. State*, 331 Md. 651, 692 (1993) (holding that even where it may have be preferable for the post-conviction court to set out its rulings more fully, it is not always necessary to remand for additional rulings).

In *Gray v. State*, 388 Md. 366, 375-76 (2005) ("*Gray II*"), the Court of Appeals addressed the relationship between Rule 4-404, which requires a written statement for post-conviction petitions, and CP § 7-103, which limits petitioners to filing only one such

petition. In 2003, Gray petitioned to reopen post-conviction proceedings that had been unsuccessful in 1999. *Gray II*, 388 Md. at 369.[10] The order denying Gray's petition to reopen the proceedings did not include a statement regarding the issues raised in the petition to reopen. *Id.* at 374. After this Court affirmed the judgment in *Gray v. State*, 158 Md. App. 635 (2004) ("*Gray I*"), the Court of Appeals granted certiorari "to determine whether a circuit court is required under the Maryland Rules to render a supporting statement and memorandum explicating a decision to deny a request to reopen a postconviction proceeding." *Gray II*, 388 Md. at 369.

Although the Court recognized "that Md. Rule 4-407(a) applies to initial postconviction proceedings" (*id.* at 381), it concluded that the rule does not require the court to prepare a supporting statement when deciding a request to reopen a post-conviction proceeding. *Id.* at 369. The Court observed that neither Rule 4-407(a) nor the statute that it implements expressly states whether the rule applies to the denial of a petition to reopen post-conviction proceedings. *Id.* at 376. The Court then recounted the "historical development of the Uniform Postconviction Procedure Act" – specifically, the 1986 and 1995 amendments – which "over time, reveal[ed] a legislative attempt to limit the number of postconviction petitions that can be filed." *Id.* at 377. The Court reasoned that requiring a detailed supporting statement when a court declines to reopen proceedings "would ignore the purpose of the postconviction legislation as revealed by its

[10] CP § 7-104 states: "The court may reopen a post-conviction proceeding that was previously concluded if the court determines that the action is in the interests of justice." This language derives from a provision adopted in the 1995 amendments.

development over time – that is, to lessen the burden on the courts created by endless postconviction proceedings." *Id.* at 378 (citation omitted). The Court added, "'if each request to reopen a closed proceeding required an in[-]depth assessment as to each of the issues upon which the petition was based, the effect would be an unlimited number of postconviction proceedings disguised as requests to reopen the proceeding.'" *Id.* at 380-81 (quoting *Gray I*, 158 Md. App. at 644-45).

In light of *Gray II*, we conclude that Rule 4-407(a) does not require the court to issue a detailed supporting statement when the court dismisses a successive post-conviction petition on the ground that the petitioner has filed a previous petition. Unlike in *Gray*, Burke characterized his second attempt to obtain post-conviction relief as an entirely new petition instead of as a request to reopen his prior post-conviction proceedings. In the context of this case, however, that distinction makes no material difference. To construe Rule 4-407(a) to require a detailed supporting statement on a successive petition that is barred by CP § 7-103(a) "would ignore the purpose of the postconviction legislation" by increasing rather than lessening the burden on the courts. *Gray II*, 388 Md. at 378. A contrary interpretation would require the court to make rulings on each ground raised by each successive petition even though the General Assembly has prohibited petitioners from filing those successive petitions.[11]

[11] At no point in the proceedings has Burke characterized his second post-conviction petition as a request to reopen the prior proceedings under CP § 7-104. We do not reach the issue of whether a court might have had some obligation to grant a request to reopen the proceedings under the circumstances of this case. Even though it purported to dismiss Burke's petition "with prejudice," the court, on any subsequent request to reopen Burke's post-conviction proceedings under CP § 7-104, should (continued…)

C. Retroactive Application of CP § 7-103(a)

The final issue presented by Burke's appeal is by far the most substantive: Burke contends that the circuit court erred when it concluded that his second post-conviction petition was barred by the one-petition rule of CP § 7-103(a).

The facts relevant to this issue are relatively simple. Burke was sentenced in 1982, when the Uniform Postconviction Act did not limit the number of post-conviction petitions that he could file. Burke unsuccessfully petitioned for post-conviction relief in 1988, after the Act had been amended to provide that a person could file no more than two post-conviction petitions. Burke filed his second post-conviction petition in 2013, after the Act had been further amended to provide that a person could file only one such petition. The circuit court dismissed Burke's second petition on that ground.[12]

Burke does not argue that the court erred in any matter of statutory interpretation. He does not dispute that, when the General Assembly amended the Act in 1995, the legislature intended that the limit of "only one petition" per person would apply to persons like him, who had been sentenced before that enactment. Instead, Burke

exercise its discretion in light of the "interests of justice" standard set forth in *State v. Adams-Bey*, ___ Md. ___, 2016 WL 4498773, at *6-9 (Aug. 25, 2016).

[12] The State incorrectly suggests that Burke's 2013 post-conviction petition should be regarded as his third post-conviction petition because Burke petitioned for a writ of habeas corpus in 1998. In fact, CP § 7-103(a) states that "a person may file only one petition for relief *under this title*." (Emphasis added.) Habeas corpus petitions are authorized by Subtitle 7 of Title 3 of the Courts and Judicial Proceedings Article, not by Title 7 of the Criminal Procedure Article.

maintains that applying CP § 7-103(a) against him would amount to an unconstitutional, ex post facto application of law.

On two prior occasions, the Court of Appeals commented on (but did not decide) whether the one-petition rule bars successive post-conviction petitions from persons, like Burke, who had already filed one petition prior to the effective date of the 1995 amendments. In *Grayson v. State*, 354 Md. 1, 8 (1999), a petitioner had filed an initial post-conviction petition before 1995 and a second petition after 1995. The Court prefaced some of its analysis by noting that the petitioner "appear[ed] to concede that the 'one petition' limitation under Ch. 110 of the Acts of 1995 is viable and applies retroactively to bar the filing, after September 30, 1995, of a new petition under the Post Conviction Procedure Act challenging a trial if the petitioner had earlier filed one or more petitions under the Act challenging the same trial." *Id.* at 9.

In *Williamson v. State*, 408 Md. 269, 270 & n.1 (2009), the petitioner had filed at least one prior post-conviction petition before 1995 and a second petition after 1995. In reversing a dismissal of that second petition, the Court recognized that the issue of retroactive application of the one-petition rule might recur on remand. *Id.* at 277. The Court cautioned that it had not decided that issue in *Grayson*, but had merely accepted a concession for the purpose of that case. *Id.* The Court concluded by saying "that any retrospective analysis must include potential *ex post facto* consideration." *Id.*

Adopting a rather literal reading of these remand instructions from the final sentence of *Williamson*, Burke asserts that the circuit court erred "by failing to include any potential ex post facto considerations in [its] analysis and ruling[.]" But

notwithstanding that the circuit court's order did not expressly discuss ex post facto issues, we do not doubt that it considered those issues when, in its words, it ruled in the State's favor on the basis of "the memorandums as well as the arguments made at the hearing." There is no need for a remand to have the circuit court provide further written "analysis" of potential ex post facto considerations.

The question of whether the application of a statute violates the ex post facto clauses of the federal and state constitutions is a legal issues. *See, e.g.*, *In re Nick H.*, 224 Md. App. 668, 681 (2015). Consequently, we conduct a de novo review of the circuit court's implicit determination that the retroactive application of the one-petition rule would not violate the prohibitions on ex post facto laws. *Id.*

Article I, Section 10, of the United States Constitution provides that "[n]o State . . . shall pass any . . . ex post facto Law[.]" Article 17 of the Maryland Declaration of Rights likewise declares: "That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed, or required." The Court of Appeals has historically interpreted Article 17 as having the same meaning as its federal counterpart. *See, e.g.*, *Sec'y, Dep't of Pub. Safety & Corr. Servs. v. Demby*, 390 Md. 580, 608 (2006).

Justice Samuel Chase, who had previously served on the drafting committee for the Maryland Declaration of Rights, delivered the classic explanation of which laws fall within the constitutional prohibition against ex post facto laws:

> 1st. Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2nd. Every law that aggravates a crime, or makes it greater than it was, when committed. 3rd. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender.

Calder v. Bull, 3 U.S. (3 Dall.) 386, 390 (1798).

Burke does not attempt to explain how a law removing his ability to file another petition for post-conviction relief fits any traditional category of an ex post facto law. Instead, Burke relies on other language from the Court of Appeals, stating that the prohibition against ex post facto laws "'extends broadly to any law passed after the commission of an offense which . . . in relation to that offense, *or its consequences*, alters the situation of a party to his disadvantage.'" *Gluckstern v. Sutton*, 319 Md. 634, 664 (1990) (quoting *Anderson v. Dep't of Health & Mental Hygiene*, 310 Md. 217, 224 (1987) (quoting *Kring v. Missouri*, 107 U.S. 221, 235 (1883) (5-4 decision)) (further quotation marks omitted; emphasis from *Anderson*).

Burke fails to mention that, two weeks after the Court of Appeals issued the *Gluckstern* opinion, the Supreme Court expressly overruled *Kring*'s broad construction of the Ex Post Facto Clause. In *Collins v. Youngblood*, 497 U.S. 37 (1990), the Court concluded that "[t]he holding in *Kring* can only be justified if the *Ex Post Facto* Clause is thought to include not merely the *Calder* categories, but any change which 'alters the situation of a party to his disadvantage.'" *Id.* at 50. According to the Court, "such a reading of the Clause departs from the meaning of the Clause as it was understood at the

time of the adoption of the Constitution, and is not supported by later cases." *Id.* Consequently, Burke cannot establish any violation of the federal Constitution simply because the retroactive application of the 1995 legislation altered his situation to his "disadvantage."

Burke's remaining argument, based on the coextensive provision from Article 17 of the Maryland Declaration of Rights, relies on *Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535 (2013) ("*Doe I*"). In that case, the Court of Appeals determined that Doe, a person who had committed certain offenses before the 1995 enactment of the sex offender registration statute, could not be compelled to register as a sex offender under the 2009 and 2010 amendments to that statute. The judges provided different rationales for reaching that result.

Judge Greene authored a plurality opinion, joined by Judge Eldridge and Chief Judge Bell. The plurality concluded that the retroactive application of the sex offender registration requirements violated Article 17 of the Maryland Declaration of Rights. *Id.* at 537. In relying exclusively on Article 17, the plurality invoked the idea that the protections offered by the Maryland Declaration of Rights are often broader than the protections provided by a parallel federal provision. *Id.* at 549. The plurality emphasized that Article 17's ex post facto prohibition was "rooted in a basic sense of fairness, namely that a person should have 'fair warning' of the consequences of his or her actions[.]" *Id.* at 552. According to the plurality, "Article 17's 'prohibition extends broadly to any law passed after the commission of an offense which . . . in relation to that offense, *or its consequences*, alters the situation of the party to his disadvantage.'" *Id.* at 560 (quoting

Gluckstern, 319 Md. at 664 (further citations omitted)); *see also Doe I*, 430 Md. at 551-52 (stating that "the 'two critical elements' that 'must be present' for a law to be unconstitutional under [Article 17's] *ex post facto* prohibition are that the law is retroactively applied and the application disadvantages the offender"). The plurality found a violation of Article 17 because the sex offender registration requirements had been retroactively imposed upon Doe and that those requirements changed the consequences of Doe's offense to his disadvantage. *Id.* at 559.

The *Doe I* plurality openly recognized that its interpretation of Article 17 diverged from the Supreme Court's interpretation of the Ex Post Facto Clause of the federal Constitution. The plurality observed that *Collins v. Youngblood* had disavowed the "disadvantage" analysis and had limited the federal ex post facto prohibition to the traditional categories listed in *Calder v. Bull*. *See Doe I*, 430 Md. at 554-55 & n.14. The plurality declined to follow the approach taken in *Smith v. Doe*, 583 U.S. 84 (2003), a post-*Collins* case in which the Supreme Court upheld retroactive application of Alaska's sex offender registration statute because the "intent" of the statute was to create a civil regulatory scheme and that the "effects" of the statute were not so punitive as to negate the legislature's non-punitive intent. *Doe I*, 430 Md. at 556. Rather than "follow the Supreme Court's analysis of the parallel federal protection applied in *Smith*[*v. Doe*], thereby narrowing the scope of Article 17's protections" (*id.* at 557), the plurality opted to "continue to protect against laws that retroactively 'disadvantage' an offender." *Id.*

The four judges who did not join the *Doe I* plurality refused to endorse such a broad construction of Article 17. Judge McDonald, joined by Judge Adkins, reasoned

that "neither the language nor the history of [Article 17], taken as a whole, offers a principled reason for differentiating its prohibition against *ex post facto* laws from the parallel prohibition in the federal Constitution." *Id.* at 577-78 (McDonald, J., concurring). Judge McDonald's concurrence nevertheless concluded that retroactive application of the registration requirements against Doe violated both Article 17 and Article I, § 10, of the federal Constitution, because "the cumulative effect of the 2009 and 2010 amendments of [Maryland's] sex offender registration law took that law across the line from civil regulation to an element of punishment for offenders." *Id.* at 578 (McDonald, J., concurring).

In an opinion in which he concurred only in the result, Judge Harrell concluded that the plurality's analysis of Article 17 was "faulty and, therefore, so [wa]s its conclusion" that the application of the statute violated the prohibition against ex post facto laws. *Id.* at 569 (Harrell, J., concurring). Judge Harrell analyzed the ex post facto challenge using the intent-effects test described in *Smith v. Doe*. *Id*. at 570-71 (Harrell, J., concurring). In his view, the registration requirements should not be applied against Doe because his plea agreement had not included the requirement that he register as a sex offender. *Id*. at 576-77 (Harrell, J., concurring).

In a solo dissent, Judge (now Chief Judge) Barbera agreed "that the Plurality's interpretation of Maryland's *ex post facto* prohibition is unsupported by the language or history of Article 17 of the Maryland Declaration of Rights." *Id.* at 578 (Barbera, J., dissenting). Judge Barbera reasoned that the proper test for determining whether the application of the statute violated the ex post facto prohibition in Article 17 was the two-

part inquiry described in *Smith v. Doe* – i.e., whether the intent of the legislature was to impose punishment, and, if not, whether the regulatory scheme was so punitive in its effects or purpose as to negate any intent to establish civil proceedings. *Doe I*, 430 Md. at 584 (Barbera J., dissenting). In Judge Barbera's view, the sex offender registration statute was "nonpunitive in either intent or effects," and so its retroactive application did not violate Article 17. *Id.* at 596 (Barbera, J., dissenting).

Overall in *Doe I*, "the divided Court did not reach a holding on whether to apply the 'disadvantage' standard or the 'intent-effects' to test future *ex post facto* challenges" to the sex offender registration statute. *Quispe del Pino v. Maryland Dep't of Pub. Safety & Corr. Servs.*, 222 Md. App. 44, 55-56 (2015).

In a subsequent challenge to another retroactive application of the sex offender registration laws, this Court used the following rule to determine the holding of *Doe I*: "[W]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of [four judges], the holding of the court may be viewed as that position taken by those Members who concurred in the judgment on the narrowest grounds." *In re Nick H.*, 224 Md. App. at 684-85 (quoting *Wilkerson v. State*, 420 Md. 573, 594 (2011) (which quoted *Marks v. United States*, 430 U.S. 188, 193 (1977)) (internal quotation marks omitted). This Court reasoned that Judge McDonald's interpretation of Article 17, as having the same meaning as the federal Ex Post Facto Clause, was the narrowest ground taken by the judges who concurred in the judgment. *In re Nick H.*, 224 Md. App. at 685. Recognizing that neither the disadvantage test nor the intent-effects test commanded a majority, this Court nonetheless decided that the intent-effects test was the

proper test to employ in evaluating the Article 17 challenge to the statute. *Id.* at 686. The Court reached that conclusion because, in a prior case, a majority of the Court of Appeals had used the intent-effects test to determine whether part of the sex offender registration statute could be construed as punishment for ex post facto purposes. *Id.* (citing *Young v. State*, 370 Md. 686 (2002)).

In this case, Burke's argument depends on the analysis of the three-member plurality in *Doe*. Burke asserts that, at the time he filed his first post-conviction petition in 1988 (the first of two permitted under the law at the time), he could not have had fair warning that the law would be amended in 1995 to transform that 1988 petition into his one and only permissible petition. Burke concludes that "[a]pplying the 1995 amendment of a one petition limit to [him] would significantly disadvantage [him]" and therefore would be unconstitutional under Article 17.

Citing *In re Nick H.*, the State responds that "the test for whether the retroactive application of a Maryland statute violates ex post facto prohibitions is not whether it operates to the disadvantage of the defendant, but rather whether it [a]ffects the punishment for crimes that occurred before the effective date of the statute." In his reply brief, Burke argues that *In re Nick H.* pertains only to the sex offender registration statute and should not extend to other statutes. We agree with Burke's observation that *In re Nick H.* decided no more than was necessary to resolve the issues presented to it. Nevertheless, Burke offers no reason why this Court should apply a different constitutional test for analyzing the retroactive amendments to the Uniform Postconviction Procedure Act. It would be anomalous for this Court, without any good

reason, to displace the "intent-effects" test used in *In re Nick H.* in favor of the "disadvantage" test that the majority of the members of the Court of Appeals declined to apply in *Doe I*.

Finally, we reject the assertion in Burke's reply brief that the retroactive application of CP § 7-103(a) would be invalid under the intent-effects test. In general, a post-conviction proceeding is "'not part of the criminal proceeding itself, and it is in fact considered to be civil in nature.'" *Grandison v. State*, 425 Md. 34, 55 (2012) (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987)). The specific purpose of the 1986 and 1995 amendments was not to impose additional punishments on offenders, but to limit the number of permissible post-conviction petitions in a way that would "lessen the burden on the courts." *Gray II*, 388 Md. at 378. As applied to Burke, the 1995 amendments did not increase his punishment beyond what the law permitted in 1982 when he committed his offenses. His sentence (life imprisonment plus a consecutive term of 15 years) remains the same both before and after the 1995 amendments. The General Assembly did not change the punishment for Burke's offense when it removed one opportunity to collaterally attack a conviction and sentence.

CONCLUSION

To summarize, there is no merit in Burke's various contentions that the circuit court lacked discretion to extend the time for the State to file its response to his petition, that the court was required to deny the State's motion to dismiss based on its lack of an affidavit, or that the court was required to issue a detailed summary with its dismissal order.

We recognize that there is some intuitive appeal to Burke's argument that the General Assembly retroactively altered his situation to his disadvantage. Indeed, when Burke filed his first post-conviction petition, he could not have anticipated that the legislature would later transform that petition into his last post-conviction petition. Yet this retroactive application of the 1995 amendments, however disadvantageous it may be to Burke, does not violate the prohibitions against ex post facto laws under either the United States Constitution or the Maryland Declaration of Rights. The circuit court did not err when it dismissed Burke's petition by retroactively applying CP § 7-103(a).[13]

JUDGMENT OF THE CIRCUIT COURT FOR KENT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[13] In his brief, Burke also asserts, without any supporting authority, that the circuit court no longer had power to dismiss his petition after holding a hearing on the dismissal motion and on the merits and that he has a "vested right" to file an unlimited number of post-conviction petitions. We do not address those "arguments," because they have been presented as conclusory statements that are unsupported by any legal authorities. *See, e.g.*, *HNS Dev., LLC v. People's Counsel for Baltimore Cnty.*, 425 Md. 436, 459 (2012).

APPENDIX

I. Was the court's granting of the Appellee's Motion to Dismiss after the court heard the merits of the Appellant's Post Conviction Petition legally correct when Maryland Rule 4-407 (a) requires the court to set forth separately each ground upon which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the action taken thereon?

II. Was the court's granting of the Appellee's Motion for Appropriate Relief (which requested an extension of time to file a Response to the Post Conviction Petition), legally correct when it was untimely file and when Maryland Rule 4-404 requires the Appellee to file a response to the petition within 15 days after the notice of its filing, or within such further time as the court may order?

III. Was the court's granting of the Appellee's Motion for Appropriate Relief (which requested an extension of time to file a Response to the Post Conviction Petition) legally correct when it was not supported by an Affidavit, and when Maryland Rule 2-311(d) requires that a motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based?

IV. Was the court's consideration of the Appellee's Answer to the Post Conviction Petitions and the court's granting of the Appellee's Motion to Dismiss legally correct, when the Appellee's Motion for Appropriate Relief (which requested an extension of time to file an Answer to the Post Conviction Petition) did not contain a Statement of Grounds and Authorities and when Maryland Rule 2-311 (c) requires that a written Motion and a response to a Motion shall state with particularity the grounds and the authorities in support of each ground?

V. Was the court's granting of the Appellee's Motion to Dismiss, after the Appellee failed to support the Motion to Dismiss with an Affidavit, legally correct when Maryland Rule 2-311(d) requires that a motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it was based?

VI. Was the trial court's ruling that the Appellant's (second) Post Conviction Petition is barred by the statutory "one-petition" rule, as set forth in Criminal Procedure Article § 7-103(a), legally correct when Maryland law allowed an unlimited number of post conviction petitions to be filed at the time of the Appellant's convictions in 1982?