

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 180

September Term, 2016

---

DARRYL LEE MORGAN

v.

STATE OF MARYLAND

---

Krauser, C. J.,  
Nazarian,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: April 7, 2017

\*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.

Convicted of first degree murder and other offenses, Darryl Lee Morgan, appellant, filed a motion to reopen his post-conviction proceedings that was denied by the Circuit Court for Montgomery County on December 21, 2015. On January 4, 2016, thirteen days later, Morgan filed a motion to alter or amend the judgment. That motion was denied on February 12, 2016. On February 25, 2016, Morgan then filed a request for in banc review of the December 21, 2015, order, which was denied as untimely filed. Morgan appealed, and we subsequently issued an order limiting the appeal to a single issue: whether the circuit court erred in denying Morgan’s notice of in banc review as untimely filed. For the reasons that follow, we affirm.

Maryland Rule 2-551(b) provides that notice of in banc review must be “filed within ten days after entry of judgment” unless a timely motion is filed pursuant to Rules 2-532, 2-533, or 2-534, in which case “the notice for in banc review shall be filed within ten days after entry of an order deny or disposing of such a motion.” Morgan’s notice of in banc review was filed on February 25, 2016, sixty-six days after the circuit court denied his motion to re-open post-conviction proceedings. Although Morgan filed a motion to alter or amend the December 21, 2015, order, it was filed more than ten days after that order was entered and, therefore, it was untimely. *See* Maryland Rule 2-534 (stating that a motion to alter or amend a judgment must be “filed within ten days after entry of judgment”). Because the motion to alter or amend judgment was untimely it did not toll

the time for Morgan to request in banc review. Consequently, the circuit court did not err in denying his request for in banc review as untimely filed.

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