

Circuit Court for Howard County
Case No. 13-C-16-108673

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1249

September Term, 2016

LAWRENCE MILLS

v.

HOWARD COUNTY STATE'S
ATTORNEY'S OFFICE

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 8, 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.

Lawrence Mills, appellant, was acquitted of driving under the influence (“DUI”) following a two-day jury trial in the Circuit Court for Howard County. He asserts that Maryland State Trooper Anthony Hassan lied to the court in his testimony during the trial. Accordingly, Mills contacted the Howard County State’s Attorney’s Office, appellee, and requested that perjury charges be brought against Trooper Hassan. Appellee declined to prosecute. On August 23, 2016, Mills filed a Petition for a Writ of Administrative Mandamus Judicial Review and Appropriate Relief, pursuant to Rule 7-402. That same day, the circuit court dismissed Mills’s petition, writing, “[n]o cognizable relief available. Dismiss.” Mills filed a timely appeal, challenging the dismissal of his petition for a writ of administrative mandamus. For the reasons stated below, we affirm.

At the outset, we note that administrative mandamus is inapplicable to this case. Rule 7-401(a) provides that administrative mandamus is “for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.” Administrative mandamus is, therefore, appropriate to challenge the decision of the Maryland Board of Physicians sanctioning a physician for prescribing opiates without providing adequate care and oversight, *Barson v. Md. Bd. of Physicians*, 211 Md. App. 602 (2013), or the denial of a former employee’s grievance, *Perry v. Dep’t of Health & Mental Hygiene*, 201 Md. App. 633 (2011). Appellee’s decision to decline prosecution is not a quasi-judicial order or action of an administrative agency, and, therefore, administrative mandamus pursuant to Rule 7-402 is inapplicable. As such, the court properly dismissed Mills’s petition.

Even if Mills had properly classified his action as a writ of mandamus pursuant to Rule 15-701, we would affirm. “The fundamental purpose of a writ of mandamus is ‘to compel inferior tribunals, public officials, or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear right.’” *Balt. Cnty. v. Balt. Cnty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 569-70 (2014) (quoting *Town of La Plata v. Faison-Rosewick, LLC*, 434 Md. 496, 511 (2013)). The Court of Appeals has observed that a writ of mandamus is “‘appropriate where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials, but not where there is any vestige of discretion in the agency action or decision.’” *Id.* at 570 (quoting *Faison-Rosewick*, 434 Md. at 511). “[A] writ of mandamus will not be issued where the right is unclear of the party seeking it, doubtful, or **where the act sought to be compelled is within the discretion of the decision-maker against whom the writ is sought.**” *Id.* (emphasis added) (internal citations omitted).

The exercise of prosecutorial discretion is not appropriately overruled by a writ of mandamus. The Court of Appeals has remarked: “In such prosecutions of persons accused of crime, [the State’s Attorney’s Office] must exercise a sound discretion to distinguish between the guilty and the innocent. [It] must be trusted with broad official discretion to institute and prosecute criminal causes[.]” *Brack v. Wells*, 184 Md. 86, 90 (1944). Notably, “[t]he office is one not purely ministerial, but involves the exercise of learning and discretion.” *Id.* “As a general rule,” therefore, “whether the State’s Attorney does or does

not institute a particular prosecution **is a matter which rests in his discretion**. Unless that discretion is grossly abused or such duty compelled by statute or there is a clear showing that such duty exists, **mandamus will not lie.**” *Id.* (emphasis added). *See also State v. Romulus*, 315 Md. 526, 537 (1989) (“In Maryland, the powers of the State’s Attorneys are nowhere specifically enumerated and defined . . . with the result that our State’s Attorneys are vested with the broadest official discretion.” (quoting *Murphy v. Yates*, 276 Md. 475, 489 (1975))).

Mills has not alleged that appellee grossly abused its discretion, that the prosecution was compelled by statute, or that a duty existed. Even if understood as a writ of mandamus pursuant to Rule 15-701, we would affirm the court’s decision.

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