

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 2027

September Term, 2022

IN RE:
EXPUNGEMENT OF RICHARD M.

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 27, 2023

* This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal arises from an attempt by the Circuit Court for Wicomico County to comply with our mandate in a previous appeal, which held, among other things, that an expungement order, although entered by mistake, could not be rescinded because it had become final before the State first challenged it. *In re Expungement Petitions of Richard M.*, 256 Md. App. 445, 466-67 (2022). We quote our opinion in the prior case for background:

Appellant, with several others, committed an armed robbery at the Salisbury, Maryland branch of the Bank of Delmarva in December 2016. The following month, on January 17, 2017, a criminal information was filed, in Case No. C-22-CR-17-000029 (“Case No. 029”), charging appellant with thirty-eight offenses related to that bank robbery. One week later, an indictment was filed, in Case No. C-22-CR-17-000042 (“Case No. 042”), charging appellant with thirty-four offenses arising from the same December 2016 bank robbery. Several weeks after that, on February 16, 2017, nolle prosequi was entered as to the criminal information. Then, on July 10, 2017, a superseding indictment was filed, in Case No. C-22-CR-17-0000477 (“Case No. 477”), charging appellant with fifty-eight offenses arising from the same December 2016 bank robbery. One week later, nolle prosequi was entered as to the indictment in Case No. 042. As of that date, July 17, 2017, appellant stood charged only under the indictment in Case No. 477.

The matter proceeded to a two-day jury trial in the Circuit Court for Wicomico County in Case No. 477. The jury found appellant guilty of sixteen counts of armed robbery and related offenses, and the court sentenced him to prison terms totaling seventy years. This Court affirmed those judgments on appeal.

Id. at 450-51 (citations omitted) (footnote omitted).

Appellant filed petitions for expungement in Cases No. 029 and 042 on the basis that the charges in those cases had been nolle prossed. *Id.* at 451, 452. The circuit court denied the petition in Case No. 029, *id.* at 452, but because the State erroneously had consented to expungement in Case No. 042, the circuit court granted appellant’s petition

in that case, even though, as a matter of law, the charges in that case were ineligible for expungement.¹ *Id.* at 453. Belatedly, the State realized its mistake, and, more than 30 days after the order granting the expungement petition in Case No. 042 had been docketed, the State filed a motion, requesting that the court rescind its previous order. *Id.* The court purported to do so. *Id.*

On appeal, we held that the circuit court properly exercised its discretion in denying appellant’s expungement petition in Case No. 029, *id.* at 466, but that its order, purporting to rescind its grant of the petition in Case No. 042, exceeded the court’s revisory power, and therefore, the court’s erroneous grant of the expungement petition in that case remained in effect. *Id.* at 467. Recognizing the difficulty the circuit court and the State would have in complying with our mandate, we provided guidance, encouraging the court to apply Maryland Rule 4-512 “so as to minimize the damage ensuing from the erroneous grant of expungement in this case.” *In re Expungement Petitions of Richard M.*, 256 Md. App. at 467. We said:

Under Rule 4-512(b), the circuit court has the authority to unseal expunged records by written order “on good cause shown,” and it has the authority to issue an order permitting “access to expunged records in the interest of justice.” Given that the records in Case No. 042 are co-mingled with those in Case No. 477, which resulted in appellant’s convictions and which is the

¹ As a matter of law, none of the charges was eligible for expungement because the charges in Cases No. 029, 042, and 477 are a “unit,” and the charges in Case No. 477 resulted in convictions. *See* Md. Code (2001, 2018 Repl. Vol.), Criminal Procedure Article (“CP”), § 10-107(a)(1) (providing that “if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit”); *id.* § (b)(1) (providing that if “a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge or conviction in the unit”).

subject of ongoing postconviction proceedings, we encourage the circuit court to exercise its authority under Rule 4-512(b) to ensure that postconviction proceedings be conducted without hindrance. We further observe that Rule 4-512(g) confers authority on the circuit court to issue an order that the records in Case No. 042 be exempt from destruction for as long as necessary after the expiration of the minimum retention period provided in Rule 4-512(f).

Id. at 469.

Following remand, the State filed a motion, requesting that the circuit court order that the records in Case No. 042 be removed to a secure area rather than obliterated and that they be retained until the expiration of the retention period in the companion cases, Nos. 029 and 477. M. opposed the motion and demanded that the court obliterate the records in Cases No. 029, 042, and 477. On January 6, 2023, the circuit court issued an order, directing that the records in Case No. 042 be expunged by electronically sealing them in MDEC. The court further ordered that the records be retained “until the later of the retention periods” in the companion cases, Nos. 029 and 477. M. noted a timely appeal from the circuit court’s order, raising three issues:

1. Did the circuit court lack authority to revise the enrolled judgment of June 3rd, 2021, after the case was remanded by this Court following the issuance of the mandate in the prior appeal;
2. Whether Case No. 278 “is a unit to the expunged” Case No. 042; and
3. Whether, when expungement is granted to one case in a unit, that expungement extends to all other cases in the same unit.

For reasons we explain, none of these issues has any merit, and we therefore affirm.

First, M. mischaracterizes the circuit court’s January 6th order. The court did not “revise the enrolled judgment of June 3rd, 2021” but, rather, followed our instructions on

remand. Second, Case No. 278 is an entirely separate case that was not the subject of the prior appeal, has no relationship to this case, and is beyond the scope of this appeal. It arose from an entirely separate set of crimes appellant committed. As the State correctly explains in its brief, “[t]o the extent that M. seeks to expunge case 278, he must file a separate expungement petition.” Finally, appellant asks us to turn the “unit” rule on its head; here, merely because the circuit court mistakenly granted expungement in Case No. 042 does not require that it grant expungement in any other cases, such as Cases No. 029 and 477, that, together with Case No. 042, comprise a single “unit.” As the State aptly explains, “M. does not get to parlay a single mistake into erasing all consequences from his armed robbery conviction.”

**ORDER OF THE CIRCUIT COURT FOR
WICOMICO COUNTY AFFIRMED.
COSTS ASSESSED TO APPELLANT.**