

Circuit Court for Allegany County
Case No: C-01-CV-19-00198

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2335

September Term, 2019

HORACE MONTAGUE

v.

FRANK BISHOP

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 12, 2021

*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.

Horace Montague, appellant, is an inmate at the North Branch Correctional Institute (“NBCI”) in Cumberland, Maryland. In January 2019, Mr. Montague submitted a Public Information Act Request (“PIA Request”) to the warden, Frank Bishop, appellee, seeking the “[t]he full name of the Sergeant, [Officer-in-Charge], or Traffic Department Supervisor or staff who housed/placed an inmate...with [him who is] a part of an SIG organization.”

Because he did not receive a timely response to his PIA Request, Mr. Montague filed a petition for judicial review in the Circuit Court for Allegany County pursuant to § 4-362 of the General Provisions Article. In his petition, Mr. Montague alleged that Mr. Bishop had failed to respond to his PIA Request and, as relief, sought that the “records requested be produced for inspection,” that the warden pay “actual and/or punitive damages and any other reasonable costs equivalent to reasonable [a]ttorney fees,” and that the court “impose a fine of \$1,000.00.”

After the filing of Mr. Montague’s petition for judicial review, Robert Herbold, a case management specialist authorized by the warden to respond to the PIA Request, sent written correspondence to Mr. Montague identifying, as requested, an NBCI traffic officer, an intelligence officer, and a manager of housing unit 3. Mr. Herbold’s letter also advised Mr. Montague that none of the officers identified were “directly responsible for the entire cell move process” because “no single officer is assigned that duty.”

In November 2019, the circuit court held a hearing on Mr. Montague’s petition for judicial review. On November 19, 2019, the circuit court issued a memorandum and order, denying the relief requested by Mr. Montague. In doing so, the court found that “the [warden] provided, albeit untimely, the information sought by Mr. Montague.” With

regard to the monetary damages and \$1,000 fine requested by Mr. Montague, the court acknowledged that § 4-362 of the General Provisions Article permitted it to award damages that “the [c]ourt considers appropriate.” However, because “[t]here [was] no showing that Warden Bishop knowingly and willfully was late in responding to [Mr. Montague’s] request” and because there was “no showing of any actual damages to [Mr. Montague],” the court declined to find the warden liable for any damages.

On December 23, 2019, Mr. Montague noted an untimely appeal to the court’s November 19, 2019 order. Pursuant to Maryland Rule 8-202(a), a notice of appeal must be “filed within 30 days after entry of the judgment or order from which the appeal is taken.” Accordingly, Mr. Montague’s appeal should have been noted on or before December 19, 2019. We, therefore, dismiss Mr. Montague’s appeal. *See* Maryland Rule

8-602(b)(2) (“The Court shall dismiss an appeal if...the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202).¹

**APPEAL DISMISSED. COSTS TO
BE PAID BY APPELLANT.**

¹ Even had Mr. Montague noted a timely appeal, we do not discern that the circuit court committed any clear error in rendering its findings. *See* Maryland Rule 8-131(c) (the Court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous.”). Contrary to Mr. Montague’s assertions on appeal, there was competent evidence on the record to support the court’s finding that “[t]here [was] no showing that Warden Bishop knowingly and willfully was late in responding to [his] request.” Specifically, the affidavit of Robert Herbold stated that he “did not receive Mr. Montague’s request until it was forwarded...on June 4, 2019 from the Office of Attorney General.” Mr. Herbold further attested that upon receipt of the PIA Request, he responded to Mr. Montague the following day. Based on this attestation, it was reasonable for the court to conclude that Mr. Herbold, as agent of the warden, did not have prior knowledge of Mr. Montague’s PIA Request and was not willfully tardy in responding to his request. Moreover, the record does not reflect that Mr. Montague suffered any actual damages in the delayed response to his PIA Request.