

Circuit Court for Allegany County
Case No. C-01-CV-23-000029

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2352

September Term, 2022

STEPHEN NOLAN

v.

SECRETARY OF THE DEPARTMENT OF
PUBLIC SAFETY AND
CORRECTIONAL SERVICES

Friedman,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 5, 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.

Stephen Nolan, appellant, appeals from the dismissal without prejudice, by the Circuit Court for Allegany County, of a petition for judicial review, and the court’s denial of a request for waiver of prepaid costs. For the reasons that follow, we shall affirm the judgments of the circuit court.

Mr. Nolan is incarcerated in the North Branch Correctional Institution in Cumberland. On October 7, 2022, Mr. Nolan filed in the Inmate Grievance Office (“IGO”) of the Department of Public Safety and Correctional Services a grievance in which he contended that a correctional officer improperly opened “legal mail” that Mr. Nolan had attempted to send to the IGO. The IGO administratively dismissed the grievance on the grounds that “[o]pening of legal mail on a single occasion does not rise to a constitutional violation,” and Mr. Nolan had “failed to allege or substantiate that the resultant delay in [the] correspondence . . . caused any adverse action by the IGO.” (Emphasis omitted).

On January 19, 2023, Mr. Nolan filed in the circuit court a petition for judicial review of the IGO’s decision and a request for waiver of prepaid costs. The court denied the request on the grounds that Mr. Nolan “[d]oes not meet the financial eligibility guidelines” and “[i]s not unable by reason of poverty to pay the prepaid costs,” and the petition “appear[ed], on its face, to be frivolous.” (Emphasis omitted.) On February 9, 2023, the court dismissed the petition without prejudice on the ground that Mr. Nolan “failed to . . . submit the proof necessary to demonstrate that [he] fully exhausted the administrative remedies available before seeking review” as required by Md. Code (1974, 2020 Repl. Vol., 2022 Supp.), § 5-1003(b)(1) of the Courts & Judicial Proceedings Article (“[w]hen a prisoner files a civil action, the prisoner shall attach to the initial complaint

proof that administrative remedies have been exhausted”). On February 21, 2023, Mr. Nolan filed a “Motion to Submit Proof of Exhaustion,” to which he attached the decisions of the warden of his institution, the Commissioner of Correction, and the IGO regarding his grievance. On February 23, 2023, Mr. Nolan filed a notice of appeal.

Mr. Nolan first contends that, for numerous reasons, the court erred in dismissing the petition. We first note that Mr. Nolan filed a notice of appeal from the dismissal of the petition instead of an application for leave to appeal, in violation of Md. Code (1999, 2017 Repl. Vol., 2022 Supp.), § 10-210(c)(2) of the Correctional Services Article (a “party aggrieved by the decision of the circuit court” in reviewing the disposition of an inmate grievance “may file an application for leave to appeal to” this Court). But, had Mr. Nolan filed an application for leave to appeal, and this Court granted the application, we would still affirm the judgment of the circuit court. Mr. Nolan does not dispute that he did not attach to his petition proof of exhaustion of administrative remedies, and did not submit such proof to the court until after the court dismissed the petition. Also, Mr. Nolan does not specify any evidence contrary to the IGO’s conclusion that “the resultant delay in [the] correspondence” did not “cause[] any adverse action by the IGO.” Hence, the court did not err in dismissing the petition.

Mr. Nolan next contends that, for numerous reasons, the court erred in denying the request for waiver of prepaid costs. We disagree. § 5-1002(c) of the Courts & Judicial Proceedings Article states, in pertinent part, that a “court may waive payment of the entire required filing fee for a civil action filed by a prisoner only on a written showing under oath by the prisoner that . . . [t]he prisoner possesses a reasonable likelihood of success on

the merits of the claim.” Mr. Nolan did not include such a showing in the request, and hence, the court did not err in denying the request.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ALLEGANY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**