

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2417

September Term, 2015

GARY WESLEY, SR.

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: January 6, 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.

Gary Wesley, Sr., appellant, was convicted by a jury, in the Circuit Court for Baltimore County, of second degree murder and second degree assault. In 2015, Wesley filed a motion titled: “Motion to Vacate the Conviction/Judgment Under the Court’s Supervisory Power Pursuant to Maryland Rule 4-331(c)(3).” In that motion, Wesley asserted that “[t]he DNA evidence presented in court was not tested and therefore did not legally [] prove [him] guilty” and that “this irregularity . . . create[d] a fraud, under Maryland Rule 4-331.” Wesley’s motion also requested “DNA testing of the evidence” but did not specify what evidence he wanted tested. The circuit court denied Wesley’s motion without a hearing. On appeal, appellant contends that the circuit court erred in denying his motion. For the reasons that follow, we affirm.

In his motion, Wesley stated that he was seeking relief pursuant to Maryland Rule 4-331(c)(2) which states that the court may grant a new trial at any time “on the ground of newly discovered evidence which could not have been discovered by due diligence” if “the motion is based on DNA identification testing . . . the results of which, if proved, would show that the defendant is innocent of the crime of which [he] was convicted.” Wesley’s motion, however, did not: (1) identify what the newly discovered evidence was, (2) explain how the evidence was newly discovered, or (3) suggest how it would prove his actual innocence. Consequently, the circuit court did not err in denying the motion.

On appeal, Wesley now claims that his motion was also a request, pursuant to Section 8-201 of the Criminal Law Article, for DNA testing of the splintered doorframe that he used to commit second degree assault. However, even if we were to construe Wesley’s motion as a motion for DNA testing, it was still properly denied by the circuit

court because the motion did not identify the item he wanted tested or set forth, even in a cursory manner, how DNA testing might produce exculpatory or mitigating evidence. *See* Maryland Code Crim. Proc. Art., § 8-201 (c)(1) (stating that the court shall order DNA testing if it finds “a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing”).

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