

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2737

September Term, 2015

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WILLIAM J. CLAYBROOKS

v.

FRANK BISHOP, WARDEN

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

JJ.

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Opinion by Beachley, J.

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Filed: December 15, 2016

\*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.

William J. Claybrooks, appellant, presents one question for our review: Did the circuit court err in denying his petition for writ of habeas corpus? Because appellant has no right to appeal, we shall grant the State's motion to dismiss.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On May 14, 1993, following a four-day trial in the Circuit Court for Prince George's County, a jury convicted appellant of first degree felony murder, use of a handgun in the commission of a felony, attempted first degree murder, and related charges. He was sentenced to two consecutive life terms without parole, plus forty years. On July 7, 1994, this Court affirmed appellant's convictions and sentences. The Court of Appeals subsequently denied appellant's petition for writ of certiorari.

On March 4, 2004, appellant filed a petition for postconviction relief which he amended on April 23, 2004.<sup>1</sup> In his postconviction proceeding, appellant alleged that the trial court violated his rights under Maryland Rule 4-215(e) by failing to determine the merits of his motion to discharge his counsel. He also alleged ineffective assistance of both trial and appellate counsel, and a *Brady*<sup>2</sup> violation. After a hearing in March 2005, the Circuit Court for Prince George's County issued a memorandum and order denying postconviction relief. On October 26, 2005, this Court denied appellant's application for leave to appeal the dismissal of his postconviction petition.

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<sup>1</sup> Appellant had previously filed a petition for postconviction relief in 1997 but withdrew that petition in 1998.

<sup>2</sup> 373 U.S. 83 (1963).

On August 11, 2015, appellant filed a *pro se* petition for writ of habeas corpus in the Circuit Court for Prince George's County. In his petition for writ of habeas corpus, appellant alleged several errors which he had previously raised in his postconviction petition. He alleged that "[t]he trial court failed to recognize petitioner's timely filed *pro se* petition to discharge his attorney and petitioner was forced to trial with attorney he told the court he did not want, and attorney refused to alert the court." He also argued that the postconviction court "failed [to] apply well established law." On December 18, 2015, the circuit court denied appellant's habeas petition without a hearing. This appeal ensued. We shall resolve this case by granting the State's motion to dismiss the appeal.

### **DISCUSSION**

Appellant contends that the circuit court erred in denying his petition for writ of habeas corpus. The basis of appellant's habeas petition is that in 1993 the trial court failed to rule on his motion to discharge counsel pursuant to Maryland Rule 4-215(e). He also argues that the circuit court failed to comply with Rule 15-311 by neglecting to state the reasons for denying the petition for writ of habeas corpus. We need not address either of these arguments, however, because appellant does not have the right to appeal the circuit court's order.

The Court of Appeals "has consistently held that . . . [a]n appeal may be taken from a final order in a habeas corpus case only where specifically authorized by statute." *Gluckstern v. Sutton*, 319 Md. 634, 652 (1990). Recently, this Court identified the four statutes which provide such authorization:

(1) CP § 9-110, which authorizes appeals in extradition cases; (2) CJP § 3-707, which authorizes an application for leave to appeal in cases involving the right to bail or allegedly excessive bail; (3) CJP § 3-706, which provides for an appeal if a court issued a writ of habeas corpus based on the unconstitutionality of the law under which the petitioner was convicted; and (4) CP § 7-107, a provision in the UPPA, which permits an appeal if the writ was sought under CP § 9-110 or for a purpose other than to challenge the legality of a conviction or sentence.

*Simms v. Shearin*, 221 Md. App. 460, 469 (2015) (footnote omitted) (citing *Gluckstern*, 319 Md. at 652-53).

None of the above statutes authorize an appeal in appellant's case. This case does not involve extradition as contemplated by Md. Code (2001, 2008 Repl. Vol.) § 9-110 of the Criminal Procedure Article ("CP"). Nor does it involve the right to bail or allegations of excessive bail under Md. Code (1973, 2013 Repl. Vol.) § 3-707 of the Courts and Judicial Proceedings Article ("CJP"). Moreover, CJP § 3-706 is inapplicable because appellant was not discharged or released on the ground that the law he was convicted under was unconstitutional.

The only possible statute under which we could consider appellant's appeal is CP § 7-107. In *Simms*, we held that CP § 7-107 authorizes appeals in habeas corpus cases "only when the petitioner challenge[s] the legality of the confinement based on collateral post-trial influences and not the legality of the underlying conviction or sentence, and where the UPPA [does] not otherwise provide a remedy." *Simms*, 221 Md. App. at 473. In *Green v. Hutchinson*, 158 Md. App. 168, 174 (2004), this Court held that allegations of ineffective assistance of counsel, errors in the admission of evidence, and improprieties in jury instructions "went directly to the legality of Green's convictions," and therefore were

not appealable under CP § 7-107. *Accord, Simms, supra.* In contrast, Maryland courts have considered habeas petitioners' challenges to the conditions of their confinement to be collateral and appealable. *See Md. Corr. Inst. v. Lee*, 362 Md. 502 (2001) (permitting the appeal of a habeas corpus petition challenging the application of commitment policies by the Division of Corrections); *Lomax v. Warden, Md. Corr. Training Ctr.*, 120 Md. App. 314 (1998) (allowing the appeal of a habeas corpus petition challenging statements made by the Governor regarding parole of inmates sentenced to life imprisonment); *Frost v. State*, 336 Md. 125 (1994) (permitting appeal of habeas corpus petition alleging Parole Commissioner's authority to rescind diminution credits violated the ex post facto clause).

We conclude that *Simms* and *Green* are controlling and therefore mandate dismissal of this appeal. In his petition for writ of habeas corpus, appellant alleges the trial court committed error by failing to rule on his motion to discharge counsel. This allegation challenges the validity of his conviction, not a collateral matter such as the conditions of his confinement. Further, the Uniform Postconviction Procedure Act provides a remedy for appellant's allegation that the trial court erred in not ruling on his motion to discharge counsel; indeed, appellant already pursued that remedy in his unsuccessful petition for postconviction relief. Because no statute authorizes an appeal of the denial of appellant's habeas corpus petition in this case, we grant the State's motion to dismiss.

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