Circuit Court for Baltimore City
Case Nos. 107215075, 077, 079, 081, 083, 085, 087

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1934

September Term, 2016

BAGADA DIONAS

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 11, 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.

Bagada Dionas, appellant, was convicted of second-degree murder, three counts of first-degree assault, and four counts of wearing or carrying a deadly weapon, following a jury trial in the Circuit Court for Baltimore City. On appeal, Dionas presents three issues for our review, which we have slightly rephrased: (1) whether the trial court erred in permitting the State to introduce Sean White's testimony from his first trial because, he claims, that testimony constituted inadmissible hearsay; (2) whether the trial court erred by allowing the State to question him about a prior conviction for robbery with a dangerous weapon; and (3) whether the State presented sufficient evidence to support his convictions. For the reasons that follow, we affirm.

During its case-in-chief, the State called Sean White as a witness. White stated that he did not want to be a part of the case and refused to answer most of the prosecutor's questions, despite the court ordering him to testify. The court ultimately determined that White was an "unavailable witness" and allowed the State to introduce White's testimony from appellant's first trial pursuant to Maryland Rule 5-804(b)(1).[1]

Dionas asserts that White's testimony constituted inadmissible hearsay, stating: "Notwithstanding [the] record . . . it was error to introduce into evidence the prior testimony of Sean White." Dionas, however, presents no argument, and cites no legal authority, to support his position. In fact, he does not even identify what requirements of Rule 5-804(b)(1) that he claims were not satisfied. Therefore, we will not address this issue on

[1] Rule 5-804(b)(1) provides that if a declarant is unavailable as a witness, his or her testimony "given as a witness in any action of or proceeding" is admissible "if the party against whom the testimony is now offered . . . had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination."

appeal. *See* Md. Rule 8–504(a)(5) (stating a brief shall contain "[a]rgument in support of the party's position"); *accord Diggs & Allen v. State*, 213 Md. App. 28, 70 n.13 (2013) (refusing to address appellant's claim on appeal where he presented "no argument as to why it was incorrect, nor authority in support of his attack").[2]

Dionas next contends that the trial judge erred by allowing the prosecutor to cross-examine him about his previous conviction for robbery with a dangerous weapon. But immediately after the prosecutor asked Dionas if he had been convicted of that offense defense counsel objected, and the trial court sustained the objection. Thereafter, Dionas did not ask the trial court to strike the prosecutor's question or request any additional relief. Consequently, there is nothing for this Court to review on appeal. *See Klauenberg v. State*, 355 Md. 528, 545 (1999) (holding there are no grounds to appeal when defendant receives the remedy he requested from the trial court).

Finally, Dionas claims there was insufficient evidence to support his convictions. He concedes that this contention is not preserved for appellate review, because defense

[2] In any event, Dionas concedes that (1) White's prior testimony was given under oath; (2) White refused to testify despite being ordered to testify by the court; (3) defense counsel elected to cross-examine White, instead of introducing White's cross-examination from the first trial; and (4) defense counsel ultimately indicated that he was satisfied with the cross-examination that he conducted. Therefore, even if this issue were properly before us, we would find no error in the trial court's decision to admit White's testimony. *See generally Dulyx v. State*, 425 Md. 273, 284-85 (2012) (noting that to be admissible under the hearsay exception permitting the use of former testimony, the prior testimony must have been given under oath; the witness must be unavailable to testify; and the accused must have had the opportunity and a similar motive to develop the witness's testimony through cross-examination); *see also Tyler v. State,* 342 Md. 766, 778 (1996) ("If a witness simply refuses to testify, despite the bringing to bear upon him of all appropriate judicial pressures, the conclusion that as a practical matter he is unavailable can scarcely be avoided[.]" (citation omitted)).

counsel did not provide any specific reasons in support of the motion for judgment of acquittal. *See Peters v. State*, 224 Md. App. 306, 354 (2015) ("[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal." (citation omitted)). We decline Dionas's further request to exercise our discretion to address the issue pursuant to Maryland Rule 8-131(a).

Relying on *Testerman v. State,* 170 Md. App. 324 (2006), Dionas alternatively asks us to conclude that defense counsel's failure to present a specific argument in support of the motion for judgment of acquittal constituted ineffective assistance of counsel. "Post-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel . . . omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to the allegations of the counsel's ineffectiveness." *Mosley v. State,* 378 Md. 548, 560 (2003). Unlike *Testerman*, the record regarding defense counsel's strategy and legal theories in the instant case is not sufficiently developed to permit a fair evaluation of appellant's claim that defense counsel was ineffective. Consequently, *Testerman* does not require us to consider Dionas's claim of ineffective assistance of defense counsel on direct appeal, and we decline to do so.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.