

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 377

September Term, 2016

STEPHEN MICHAEL SCHALIZKI

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: June 2, 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.

Stephen Michael Schalizki appeals the denial, by the Circuit Court for Harford County, of his motion for the appointment of a “panel attorney” to represent him with respect to a petition for post-conviction relief which he had filed *pro se*. The State urges us to dismiss the appeal on the grounds that the court’s denial of Schalizki’s request for a panel attorney is not an immediately appealable order. We agree with the State and, accordingly, we dismiss the appeal.

In 2011, following a jury trial, Schalizki was convicted of incest and sexual abuse of a minor. On appeal, this Court affirmed the judgments. *Stephen Michael Schalizki v. State of Maryland*, No. 490, September Term, 2011 (filed August 20, 2012). In February 2014, Schalizki filed a *pro se* petition for post-conviction relief. Thereafter, an attorney from the Office of the Public Defender, Collateral Review Division, entered his appearance as counsel for Schalizki. Schalizki, however, was apparently unhappy with this lawyer because he claims the attorney refused to file a supplement to his petition for post-conviction relief and, as Schalizki describes it, “would not argue the issues [he] wanted raised.” Accordingly, Schalizki filed a motion to withdraw his petition for post-conviction relief without prejudice, which the court granted.

In January 2016, Schalizki filed a new petition for post-conviction relief, again *pro se*. He also filed a motion for the appointment of a “panel attorney” to represent him in the matter, which the circuit court denied.¹ Schalizki’s appeals that decision.

¹ “The [Office of the Public Defender] may provide representation” to indigent individuals “through its own staff of assistant public defenders, or through a panel attorney – a private attorney qualified and willing to provide representation, paid with
(continued)

Just prior to noting this appeal, an attorney entered his appearance on Schalizki’s behalf in the circuit court post-conviction proceeding. That attorney, like the first counsel, is from the Office of the Public Defender, Collateral Review Division.²

In this appeal, Schalizki asserts that the circuit court erred in denying his request for a panel attorney. Although he acknowledges that a lawyer on staff with the Office of the Public Defender has been assigned to his case, he claims that having an attorney who is “from the same defender agency” as his first attorney “would run the high risk of having ‘a friend’ or ‘co-worker’ take over the case with the same result of lack of interest to represent.” But he states in his brief that he “is not accusing the current appointed attorney of any of this and, in fact, the current attorney is showing interest.”

The “exercise of appellate jurisdiction in Maryland is normally dependent upon a final judgment rendered by the trial court[.]” *In re: Franke*, 207 Md. App. 679, 685 (2012) (quoting *Washington Suburban Sanitary Commission v. Bowen*, 410 Md. 287, 294 (2009)). Given that the circuit court has not ruled on the merits of Schalizki’s petition for post-conviction relief, there is not a final judgment in this matter.

There are, however, limited exceptions that allow for an immediate appeal despite the lack of a final judgment: “appeals specifically allowed by statute; immediate appeals

public funds.” *Dykes v. State*, 444 Md. 642, 649 (2015) (citing sections 16-204 and 16-208 of the Criminal Procedure Article of the Maryland Code). “In either case, an indigent defendant is not entitled to a specific appointed attorney.” *Id.*

² No one disputes that Schalizki is entitled to the assistance of counsel with respect to his petition for post-conviction relief. See Section 7-108(a) of the Criminal Procedure Article of the Md. Code.

permitted under Maryland Rule 2-602, and appeals from interlocutory rulings allowed under the common law collateral order doctrine.” *Id.* (quoting *Salvagno v. Frew*, 388 Md. 605, 615 (2005)). Schalizki does not cite any statute or rule permitting this appeal and we are not aware of any. And we are not convinced that Schalizki’s appeal would be permitted under the collateral order doctrine, which “is limited in scope” and must “be tightly construed.” *Norman v. Sinai Hospital*, 225 Md. App. 390, 394 (2015) (quotation omitted).

An order that may be appealed immediately under the collateral order doctrine must satisfy certain conditions, including that “it must be effectively unreviewable on appeal from a final judgment.” *Id.* (citation omitted). Here, Schalizki’s claim that the court erred in denying his request for the appointment of a panel attorney could be reviewed in conjunction with an application for leave to appeal the court’s ruling on the merits of his petition for post-conviction relief. *Accord Peat, Marwick, Mitchell & Company v. Los Angeles Rams*, 284 Md. 86 (1978) (holding that the denial of the defendant’s motion to “disqualify” plaintiff’s counsel from the lawsuit was not immediately appealable under the collateral order doctrine as the issue could be reviewed on appeal from the final judgment). Notably, the court’s ruling at issue here did not deprive Schalizki of his right to counsel, but only of his preference for a panel attorney.

Even if the court’s denial of Schalizki’s request for a panel attorney were immediately appealable, we would dismiss the appeal as moot. *Office of the Public Defender v. State*, 413 Md. 411, 422 (2010) (“If no existing controversy is present, the case is moot and an appellate court ordinarily will not consider the case on its merits.”).

The Office of the Public Defender has assigned counsel to Schalizki’s case and Schalizki raises only a speculative, general complaint that his present attorney might ultimately prove to be disinterested in his case, while at the same time acknowledging that “in fact, the current attorney is showing interest.”

Finally, even if the order was immediately appealable and the issue was not moot, we would affirm the circuit court’s decision denying Schalizki’s request for a panel attorney. “While an indigent defendant is entitled to appointed counsel, that right should not be mistaken for a right to select the attorney of one’s choice.” *Dykes v. State*, 444 Md. 642, 648 (2015). “The right to counsel ‘guarantees an effective advocate for each criminal defendant rather than . . . ensur[ing] that a defendant will inexorably be represented by the lawyer whom he prefers.’” *Id.* (quoting *Alexis v. State*, 437 Md. 457, 475 (2014)) (further quotation omitted). Schalizki’s complaint with his first counsel centered on his perception that the lawyer was not interested in his case because he would not raise certain issues Schalizki wanted raised. But as the Court of Appeals noted years ago, “[c]ounsel are appointed, at State expense, to afford prisoners the benefit of professional advice, in order to insure that substantial errors, remediable under post conviction procedure, are brought to the courts’ attention, not to lend professional countenance to frivolous or fanciful claims.” *Parker v. Warden*, 222 Md. 598, 600 (1960).

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.