UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 690

September Term, 2016

DOROLDO ALBERT EDWARDS

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: May 18, 2017

Appellant, Doroldo Albert Edwards, appeals from the Circuit Court for Baltimore County, Maryland, following the denial of his Motion to be Provided Copy of Application for Search Warrant, under the Maryland Public Information Act ("MPIA"), *see* Md. Code (2014, 2016 Supp.), §§ 4-101 *et seq.* of the General Provisions ("Gen. Prov.") Article. Appellant contends that the circuit court erred in denying his motion because the search warrant from his underlying criminal case should no longer be sealed and is relevant to ongoing claims he intends to pursue concerning his convictions of two counts of attempted first degree murder. The State responds by moving to dismiss appellant's appeal on the grounds that "no matters were pending in the circuit court when Edwards filed his motion for the release of a search warrant," and because there is an "absence of a record to support his argument on the merits."

For the following reasons, we shall deny the State's motion to dismiss, on the grounds that the record reveals that appellant is seeking relief under the MPIA. But, we shall affirm the circuit court's denial of appellant's motion on the merits.

BACKGROUND

Appellant was convicted by a jury sitting in the Circuit Court for Baltimore County, Maryland, of two counts each of first degree attempted murder of Karon Baxter and Omar Chavis, as well as other related counts. He was sentenced to two concurrent life terms, with all but thirty-five years suspended, on the attempted murder convictions, and two concurrent five-year terms for two convictions of use of a handgun in the commission of a crime of violence. Appellant appealed, and this Court affirmed appellant's convictions and

sentences in an unreported opinion. *See Edwards v. State*, No. 2744, Sept. Term, 2003 (filed May 20, 2005, mandate issued June 20, 2005). The Court of Appeals denied appellant's petition for writ of certiorari on August 12, 2005. *See Edwards v. State*, 388 Md. 405 (2005).

Appellant then filed a petition for post conviction relief on October 20, 2005, and that petition was withdrawn without prejudice on August 31, 2007. Thereafter, appellant filed a new petition for post conviction relief on May 2, 2013. Following a hearing in the circuit court, that petition was denied on June 13, 2013. Appellant's application for leave to appeal that denial was denied by this Court on March 21, 2014, with the mandate issued on April 21, 2014. *See Edwards v. State*, No. 1250, Sept. Term 2013 (application for leave to appeal, per curiam). Appellant filed a motion for reconsideration of sentence in the circuit court on November 21, 2014, and that motion was denied on March 13, 2015.

On February 29, 2016, appellant filed a Motion for Inspection of Warrant, asking for a copy of the search warrant from his underlying case, claiming that it was pertinent to his plans to ask for additional post conviction relief. Appellant asked the circuit court to "unseal the Warrant and the 'return' so that he may use the Warrant, the Application for the search Warrant, and the findings – during Post Conviction proceedings, in support of his ineffective assistance of counsel claims." The State responded on March 8, 2016 to appellant's motion stating, in part, "[t]he State has reviewed the case file currently in its

possession. The search warrant is not currently in the State's possession." The circuit court denied appellant's Motion for Inspection of Warrant on March 11, 2016.[1]

Subsequently, on April 6, 2016, appellant filed a Motion to be Provided Copy of Application for Search Warrant. In support thereof, appellant cited the Uniform Postconviction Procedure Act, *see* Md. Code (2001, 2008 Repl. Vol., 2016 Supp.), Section 7-101 *et seq.* of the Criminal Procedure ("Crim. Proc.") Article, and, for the first time, the MPIA. Appellant asserted that, whereas the circuit court issued a search warrant, that, following execution of same, a pair of boots were seized. In this motion, appellant claimed that his trial counsel provided ineffective assistance at trial with respect to blood evidence found on these boots.[2] Asserting that he intended to file further collateral proceedings, including ineffective assistance and prosecutorial misconduct, appellant stated that: "amid collateral proceedings, the Petitioner asserts the right to obtain a copy of the search warrant

[1] Appellant filed a belated Rebuttal to the State's Answer after the court ruled on his Motion for Inspection of Warrant. In that pleading, appellant stated that "[b]ecause the State is not in possession of the Warrant, the Warrant should still be provided in recognition of Edwards' efforts to seek collateral review and relief in pleadings that commence *after* those identified by the State." (emphasis in original). No appeal was taken from the court's March 11, 2016 order denying relief.

[2] According to appellant's brief in the original direct appeal, "[t]he parties stipulated that a drop of blood was recovered from a boot located during the execution of a search of Appellant's residence." *Edwards v. State*, No. 2744, Sept. Term, 2003 (filed May 20, 2005) (Kenney, J., unreported). And, "[t]esting revealed that the blood could not have been that of [Omar] Chavis; it was inconclusive as to whether it was [Karon] Baxter's." *Id*.

issued in the case, and the Application for Issuance of said warrant. Upon permission of the court, Edwards will pay for copies."[3]

By letter, the State responded to appellant's motion under the MPIA as follows:

> Mr. Edwards,
>
> On or about April 6, 2016 the Baltimore County State's Attorney's Office received your letter, in which you requested:
>
> 1) Copies of the Application for Search Warrant issued in the above captioned case.
>
> After thoroughly searching through the Office's case file regarding case no. 03-CR-2639, I have no documents that pertain to your request. The records, which you have requested, are not in our custody and therefore cannot be provided to you for inspection under the Maryland Public Information Act.
>
> You do have the option to submit a request to the Baltimore County Police Department or the Circuit Court Clerk's Office.
>
> Sincerely,
> Jackson W. Protzman
> Public Information Act Clerk
> State's Attorney's Office
> For Baltimore County
>
> cc: Judge Jakubowski
> Baltimore County Police Department

[3] Although appellant's ability to file an additional post conviction proceeding is questionable, *see* Crim. Proc. § 7-103 (a) (providing that "[f]or each trial or sentence, a person may file only one petition for relief under this title"), we recognize that "[a]s long as a convicted defendant is still serving a sentence or is on parole or probation, the possibility of filing a post-conviction petition or a writ of federal habeas corpus or a writ of *coram nobis* is always present." *Blythe v. State*, 161 Md. App. 492, 561 (2005). In any event, in this appeal, we are not concerned with appellant's reasons for making a request under the MPIA, but only with whether that specific issue is properly before us and, if so, whether the circuit court erred in denying appellant's MPIA motion.

On April 19, 2016, the Honorable Ruth Jakubowski denied appellant's Motion to be Provided Copy of Application for Search Warrant, noting additionally that "[n]o hearing is required." Less than thirty days later, on May 18, 2016, appellant filed pleadings, entitled an Application for Leave to Appeal, Motion for Waiver of Filing Fees, and Motion for Transmittal of Record, in the circuit court. Pertinent to the case before us, appellant maintained that he was seeking the search warrant under the MPIA. Appellant asserted that he had a right of appeal from the circuit court's denial of his motion under the MPIA, that it was the State's burden to provide a valid basis for the denial, and that, in this case, "the Court failed to identify any valid reason for the denial of the records sought, – that an appellate court could 'hang it's proverbial hat on.'" Appellant summarized his argument as follows:

> With the State having concluded its investigation, and secured evidence after acquisition of a Search Warrant, the investigation is closed, and the documents sought are public Records. Since evidence was improperly used, and counsel was ineffective from failing to properly represent the Appellant, he should not be deprived of the opportunity to use the evidence against trial counsel, and the State's Attorney. Therefore, Appellant asks that the lower court's decision be overturned because the decision was arbitrary or capricious, inconsistent with the law, and contrary to Appellant's statutory and constitutional rights.

DISCUSSION

On appeal, appellant contends that the circuit court erred in denying his Motion to be Provided Copy of Application for Search Warrant, on various grounds. Appellant asserts that, thirteen (13) years following the execution of the warrant, there was no reason for the search warrant to remain sealed, and that the warrant should be provided to him

under the MPIA. The State responds by first moving to dismiss appellant's appeal on the grounds that "no matters were pending in the circuit court when Edwards filed his motion for the release of a search warrant." The State also seeks dismissal on the grounds that appellant has failed to produce any transcripts pursuant to Maryland Rules 8-413 and 8-414. The State repeats these same arguments in its argument on the merits.

Initially, we shall consider the State's motion to dismiss. Although not entirely clear, the State's appellate argument appears to be that there was no final order or judgment in the circuit court for this Court to review. Generally, a party has the right to appeal from a final judgment. *See* Md. Code (1973, 2013 Repl. Vol., 2016 Supp.) § 12-301 of the Courts and Judicial Proceedings ("C.J.P.") Article ("[A] party may appeal from a final judgment entered in a civil or criminal case by a circuit court"). This Court has determined:

> A ruling of the circuit court constitutes a final judgment when it either determines and concludes the rights of the parties involved or denies a party the means to prosecut[e] or defend[] his or her rights and interests in the subject matter of the proceeding. In determining whether a particular court order or ruling is appealable as a final judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case.

In re Katerine L., 220 Md. App. 426, 437-38 (2014) (alterations in original) (citations and internal quotation marks omitted); *see also Am. Bank Holdings, Inc. v. Kavanagh*, 436 Md. 457, 463 (2013) ("[A] ruling of the circuit court, to constitute a final judgment, must be an 'unqualified, final disposition of the matter in controversy[.]'") (citation omitted); *Hoile v. State*, 404 Md. 591, 611 (2008) ("It is a long-standing principle of our appellate

jurisprudence that generally, 'an appeal in a criminal case is premature until after final judgment'") (citation omitted).

Unfortunately, the State on appeal fails to recognize that appellant's motion in the circuit court was filed pursuant to the MPIA. This, despite the fact that a timely response was sent to appellant by the Public Information Act Clerk for the State's Attorney's Office for Baltimore County. *See* Gen. Prov. § 4-203 (a) ("The custodian shall grant or deny the application promptly, but not more than 30 days after receiving the application"). We recognize, however, that the State's appellate oversight was compounded by the fact that appellant misfiled what ordinarily is a separate civil action in his original criminal case. But, neither this misfiling, nor appellant's filing of an application for leave to appeal instead of a notice of appeal, persuades us to grant the State's motion to dismiss. *See Blythe v. State*, 161 Md. App. 492, 506 (2005) (observing that, while "not for a moment condoning slipshod labeling practices," nonetheless observing that dismissal is an "extreme sanction" where the plaintiff "mistitled and misfiled" his MPIA action); *see also Simms v. State*, 409 Md. 722, 731-32 (2009) (concluding that a pleading prepared by a *pro se* litigant requesting DNA testing should be construed liberally).

Moreover, despite these irregularities, the circuit court apparently had no difficulty deciphering appellant's motion when it denied that motion without a hearing. Under these circumstances, we conclude that the circuit court's denial conclusively resolved appellant's Motion to be Provided Copy of Application for Search Warrant and, therefore, was a final

order and/or judgment. Accordingly, we shall deny the State's motion to dismiss this appeal.

As for the merits of appellant's motion, the MPIA provides that, "[e]xcept as otherwise provided by law, a custodian shall permit a person . . . to inspect any public record at any reasonable time." Gen. Prov. § 4-201 (a) (1). A public record is defined as "any documentary material" that is "made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business," and it covers material in "any form," including a recording or a tape. Gen. Prov. § 4-101 (h) (1). And, the MPIA generally permits access to public records unless disclosure would result in "an unwarranted invasion of the privacy of a person in interest[.]" Gen. Prov. § 4-103 (b). The Act is to be construed liberally in favor of disclosure with "the least cost and least delay" to the person requesting inspection of the public record. *Id*.

The Court of Appeals has explained the MPIA as follows:

> In numerous cases, this Court has reiterated that "the provisions of the Public Information Act reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government." We have also held that, "'in order to effectuate the Public Information Act's broad remedial purpose,'" the Act "'must be liberally construed.'"
>
> The "well-established general principles governing the interpretation and application of" the Act create "'a public policy and a general presumption in favor of disclosure of government or public documents.'" Furthermore, the defendant-custodian "has the burden of sustaining a decision to deny inspection of a public record." The Public Information Act's strong preference for public access to government documents must be

> considered whenever a court is applying the particular provisions of the statute.

Maryland Dep't of State Police v. Maryland State Conference of NAACP Branches, 430 Md. 179, 190-91 (2013) (internal citations omitted); *see also Faulk v. State's Attorney for Harford Cty*., 299 Md. 493, 506 (1984) ("The purpose of the Maryland Public Information Act, enacted by Chapter 698 of the Laws of 1970, is virtually identical to that of the FOIA, enacted in 1966 by Pub.L. No. 89-487, 80 Stat. 250").

Appellant's motion requested a copy of the search warrant from his underlying criminal case. Ordinarily, when a search warrant is executed, a copy of the warrant, the application and the affidavit are to be left with an authorized occupant of the premises searched. *See* Crim. Proc. § 1-203 (a) (5); Md. Rule 4-601 (e). After the execution of the warrant, a copy of the return is to be given to the authorized occupant. Crim. Proc. § 1-203 (a) (6); Md. Rule 4-601 (f). Even when an affidavit is sealed pursuant to court order, that order will expire after a certain time and the previously sealed affidavit is to be delivered to the person from whom the property was taken. Crim. Proc. § 1-203 (e). And, copies of the executed search warrant and return shall also be filed with the Clerk. Crim. Proc. § 1-203 (a) (6); Md. Rule 4-601 (g).[4]

[4] Despite these provisions, the Maryland Rules prohibit disclosure of the contents of a search warrant or any accompanying papers by a public officer or employee absent authorization by a judge. Md. Rule 4-601 (j) (1) (B). An unauthorized disclosure may subject said person to prosecution for criminal contempt of court. Md. Rule 4-601 (j) (2).

Our review of the record persuades us that the time for sealing of the search warrant had long expired and appellant was entitled to a copy of the search warrant at issue. The letter from the State's Attorney's Office for Baltimore County apparently concurred because there is nothing in that letter affirmatively denying appellant the right to inspect and receive a copy of the search warrant.

Appellant's dilemma, however, is that the State's Attorney's Office was unable to locate a copy of the search warrant. "Obviously, a custodian cannot properly be ordered to produce records under the Act when those records simply do not exist." *Office of Governor v. Washington Post Co.*, 360 Md. 520, 540 (2000). Considering that appellant has not raised any issue as to the adequacy of the search by the State's Attorney's Office, *see generally, Miller v. U.S. Dep't of State*, 779 F.2d 1378, 1383 (8th Cir. 1985) ("[T]he search need only be reasonable; it does not have to be exhaustive"), we hold that the circuit court did not err in denying appellant's Motion to be Provided Copy of Application for Search Warrant.[5]

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

[5] The MPIA does not address the adequacy of the agency's search for records, but we may consider case law under FOIA for guidance. *See* Office of the Attorney General, Maryland Public Information Act Manual, § 2-5 (14th ed., October 2015). We also note the State's Attorney for Baltimore County suggested appellant consider submitting additional requests to the Baltimore County Police Department and/or the Circuit Court Clerk's Office. However, as to the clerk's office, we note that Maryland law permits the destruction of records in criminal cases after twelve (12) years. *See* C.J.P. § 2-205; Md. Rule 16-818.