

Circuit Court for Baltimore County
Case No. 03-K-16-005628

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 35

September Term, 2023

MICHAEL EARL AMICK

v.

STATE OF MARYLAND

Arthur,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 5, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In 2018, a jury sitting in the Circuit Court for Baltimore County found appellant Michael Earl Amick guilty of second-degree murder of his wife, Roxanne. The court sentenced him to 30 years' imprisonment. This Court affirmed that judgment on direct appeal. *Amick v. State*, No. 2016, Sept. Term, 2018 (filed June 25, 2019), *cert. denied*, 466 Md. 217 (2019) (“*Amick I*”).

In 2021, Amick filed a motion for new trial on the ground of newly-discovered evidence. The circuit court denied the motion. On appeal, this Court affirmed. *Amick v. State*, No. 1352, Sept. Term, 2021 (filed June 28, 2022) (per curiam), *cert. denied*, 482 Md. 17 (2022) (“*Amick II*”).

On September 1, 2022, Amick filed a petition for a writ of actual innocence. The circuit court denied that petition without a hearing, and he noted this appeal. We shall dismiss the appeal on the ground that it is untimely.

BACKGROUND

On September 13, 2006, Roxanne Amick left home for a shopping trip, but never returned. *Amick I*, slip op. at 1. Amick called 911 the following morning to report that she was missing. *Id.* at 2. On September 15, 2006, the police found her body, several miles from her home, wrapped in blankets, lying in a patch of poison ivy. *Id.* at 3.

The police questioned Amick. *Id.* at 3, 4. They observed that he had a rash on his arms and had him examined by doctors at two different hospitals. *Id.* at 4. Both doctors determined that the rash had been caused by poison ivy and that he had been exposed to it at or around the time of Roxanne's disappearance. *Id.* The police recovered several

pieces of physical evidence and tested them for DNA, but the results were inconclusive.

Id. at 4-5.

The authorities did not charge Amick at that time. *Id.* at 4-6. He moved to Hawaii. *Id.* at 6 n.7.

In 2015, using new and more sensitive analytical techniques, forensic scientists detected a mixture of Amick’s and Roxanne’s DNA on two pieces of evidence. *Id.* at 5, 6. In 2016, while Amick was visiting his family in Maryland, the police arrested him. *Id.* at 6.

In 2018, a jury acquitted Amick of first-degree murder, but found him guilty of second-degree murder. On direct appeal from that judgment, this Court rejected Amick’s claim of instructional error. *Id.* at 1.

In 2021, Amick filed a motion for a new trial on the ground of newly-discovered evidence under Maryland Rule 4-331(c). *Amick II*, slip op. at 2-3. In that motion, Amick relied on a report, issued in 2021 by a forensic expert whom he had hired for that purpose. The report called into question the results of the autopsy that had been performed on Roxanne in September 2006, as well as the trial testimony of the assistant medical examiner who had performed that autopsy. *Id.* at 2-3, 7-8.

The circuit court denied Amick’s Rule 4-331(c) motion. *Amick II*, slip op. at 4. This Court affirmed, holding that, through the exercise of due diligence, the allegedly newly-discovered evidence could have been discovered before trial and, in any event, in

time to move for a new trial within ten days after the verdict under Rule 4-331(a). *Id.* at 7-8.¹

In September 2022, Amick filed a petition for a writ of actual innocence under § 8-301 of the Criminal Procedure Article of the Maryland Code (2001, 2018 Repl. Vol.) On the basis of his forensic expert’s report, he argued that the medical examiner’s testimony regarding the cause of death was “unsupported by any evidence in” the autopsy report. In addition, he augmented his earlier expert report with another report, issued in October 2021, by a second expert, who criticized the medical examiner’s autopsy report. Finally, Amick claimed that, through a Maryland Public Information Act request, he had recently obtained a copy of his own handwritten notes, made in 2006, which, he claimed, had been disparaged by the prosecutor during closing argument, but had “never [been] shared with” either Amick or his trial counsel.

On January 5, 2023, the State answered Amick’s petition. Later the same day, the circuit court denied Amick’s petition.

More than three weeks later, on January 30, 2023, Amick filed a response to the State’s answer. On February 3, 2023, the circuit court entered an order, stating that it had considered and denied Amick’s response. The clerk docketed the order on that same day.

On March 1, 2023, Amick filed a notice of appeal.

DISCUSSION

¹ Amick also raised claims of ineffective assistance of counsel, which this Court declined to review because they should have been raised in a postconviction petition rather than a motion for new trial. *Amick II*, slip op. at 8.

Maryland Rule 8-202(a) provides, with exceptions not relevant here, that “the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” The 30-day time limit is not “jurisdictional.” *Rosales v. State*, 463 Md. 552, 568 (2019). Ordinarily, however, this Court should dismiss an untimely appeal for “failure to comply with the Maryland Rules[.]” *Id*; *see* Md. Rule 8-602(b)(2) (stating that an appellate court “shall dismiss an appeal” if “the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202”).²

The court summarily dismissed Amick’s petition on January 5, 2023. The order dismissing the petition was the final judgment subject to immediate appeal. *See Douglas v. State*, 423 Md. 156, 171 (2011) (holding that the denial of a petition for writ of actual innocence is a final, appealable judgment because it “concludes a petitioner’s rights as to all claims based on the newly discovered evidence alleged in the petition”).

Although Amick filed what he called a “response” to the State’s answer within 30 days of the judgment, he did not file a notice of appeal until March 1, 2023, 55 days after the denial of his petition.

In a criminal case,³ the 30-day period for noting an appeal is tolled only when a defendant has filed a motion for a new trial within ten days after the “verdict.” Md. Rule

² The State raised the untimeliness of the notice of appeal in its brief. Therefore, we need not “examine whether waiver or forfeiture applies to a belated challenge to an untimely appeal.” *Rosales v. State*, 463 Md. at 568.

³ A “proceeding under [the actual innocence statute] is not a separate collateral proceeding[.]” but is, “in essence, akin to a motion for new trial on the ground of newly
(continued)

4-331(a); Md. Rule 8-202(b). An order denying a petition for a writ of actual innocence is not a “verdict.” But even if it were, Amick did not respond to the State’s answer within ten days after entry of the order denying his petition. Therefore, Amick’s response to the State’s answer could not possibly toll the time for noting an appeal. Accordingly, Amick’s notice of appeal was untimely, and we must dismiss the appeal. Md. Rule 8-602(b)(2).⁴

APPEAL DISMISSED. COSTS ASSESSED TO APPELLANT.

discovered evidence, albeit unencumbered by the time limits of Rule 4-331(c).” *Hunt v. State*, 474 Md. 89, 106 (2021).

⁴ Even if Amick’s appeal had been timely, it would have been unmeritorious. His experts’ reports do not qualify as newly-discovered evidence under § 8-301 of the Criminal Procedure Article: the autopsy was performed more than a decade before Amick’s trial, so he had more than sufficient time, before the trial, to marshal expert testimony challenging the conclusions reached by the assistant medical examiner in her autopsy report. Similarly, Amick’s own handwritten notes do not qualify as newly-discovered evidence; nor is there any indication that they contain the kind of explosive new evidence that would support a petition for a writ of actual innocence. *See Faulkner v. State*, 468 Md. 418, 426-27 (2020) (evidence that points to another suspect); *State v. Hunt*, 443 Md. 238, 252-53 (2015) (evidence that expert falsified his credentials); *State v. Ebb*, 452 Md. 634, 657 (2017) (witness confessing that he lied in court). Moreover, if we treated Amick’s response to the State’s answer as a revisory motion and treated this appeal as an appeal from the denial of a revisory motion, the appeal would still be unmeritorious. In that event, the sole issue would be whether the court abused its discretion in declining to revise the judgment. *Cf. Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 231-32 (1998). Because the court’s ruling was not wrong in the first instance, its decision not to revise its ruling could not possibly have risen to the level of an abuse of discretion.