

Circuit Court for Prince George's County
Case No. CT82532

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 40

September Term, 2021

HARLOW B. SAILS

v.

STATE OF MARYLAND

Fader, C.J.
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 30, 2021

*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.

In 1983, a jury in the Circuit Court for Prince George’s County convicted Harlow B. Sails, appellant, of first-degree murder, two counts of robbery with a dangerous weapon, and two counts of use of a handgun in the commission of a felony or crime of violence. We affirmed his convictions on direct appeal. *See Sails v. State*, No. 603, Sept. Term 1983 (filed Jan. 30, 1984). In 2020, appellant filed a motion to correct illegal sentence, wherein he claimed that the trial court had given the jury “misleading and prejudicial instructions” with respect to the State’s burden of proof. In addition, he raised claims of prosecutorial misconduct and ineffective assistance of counsel based on the fact that neither the prosecutor nor defense counsel had objected to the allegedly defective instructions. The trial court denied the motion without a hearing.

On appeal, appellant claims that the circuit court erred in denying his motion on the merits and in not holding a hearing. The State counters that the appellant’s claims were not cognizable in a motion to correct illegal sentence and that no hearing was required because the court did not modify or vacate his sentence. The State has also filed a motion to dismiss the appeal as having been untimely filed. For the reasons that follow, we shall dismiss the appeal.

Maryland Rule 8-202(a) provides that a party must file his or her notice of appeal “within 30 days after entry of the judgment or order from which the appeal is taken.” Although not jurisdictional, this requirement is a “binding rule on appellants” unless “waiver or forfeiture applies to a belated challenge to an untimely appeal.” *Rosales v. State*, 463 Md. 552, 568 (2019).

Here, the circuit court’s order denying appellant’s motion to correct illegal sentence was entered on the docket on January 26, 2021. Therefore, appellant was required to file his notice of appeal no later than February 25, 2021. However, he did not file his notice of appeal until March 4, 2021.¹ Although appellant asserts that he did not receive the court’s order until February 16, 2021, the time to file a notice of appeal runs from the date the order being appealed was entered on the docket, not the date the order was received. *See* Md. Rule 8-202(a). Finally, we note that the challenge to the timeliness of appellant’s appeal was not waived or forfeited by the State because Md. Rule 8-603(c) provides that a motion to dismiss pursuant to Md. Rule 8-602(b) “may be included in the appellee’s brief.” Consequently, we shall grant the motion to dismiss.²

**APPELLEE’S MOTION TO DISMISS
GRANTED. COSTS TO BE PAID BY
APPELLANT.**

¹ Pursuant to Maryland Rule 1-322(d), pleadings or papers filed by self-represented litigants who are incarcerated are deemed to be filed on the date that they are deposited in the receptacle designated for the prison’s outgoing mail. However, there must be proof of the date of filing in the form of either a date stamp affixed by the facility on the envelope, or a certificate of filing attached to the pleading that a court finds to be credible. The record does not demonstrate, and appellant does not contend, that he deposited the notice of appeal in the prison’s mail system prior to February 25, 2021. In fact, the certificate of service attached to the notice of appeal indicates that it was mailed on March 1, 2021.

² Even if the appeal had been timely filed, we would affirm the judgment of the circuit court because appellant’s claims regarding the court’s jury instructions would not render his sentence inherently illegal within the meaning of Rule 4-345(a). *See generally Colvin v. State*, 450 Md. 718, 725 (2016) (noting that a “motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.” (citation omitted)).