

Circuit Court for Baltimore County
Case No.:03- K-14-003188

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 265

September Term, 2021

ANTHONY HARRIS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: November 29, 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.

Pursuant to a 21-count indictment filed in the Circuit Court for Baltimore County, appellant Anthony Harris was charged with possession with intent to distribute a controlled dangerous substance, possession of a firearm in relation to a drug trafficking crime, and related offenses. On March 1, 2016, he appeared in court with counsel and, pursuant to a plea agreement with the State, entered a conditional plea of guilty to possession with intent to distribute heroin and to the aforementioned firearm offense.¹ The court sentenced Mr. Harris to a total term of 15 years' imprisonment, to be served without the possibility of parole.

In October 2020, the circuit court granted Mr. Harris's request for an evaluation for substance abuse by the Department of Health & Mental Hygiene, Alcohol and Drug Abuse Administration, pursuant to Md. Code, Health General §§ 8-505 and 8-507. Two months later, a medical report was filed with the court. In February 2021, the self-represented Mr. Harris filed a "Motion for Status Hearing" and requested that the court hold a hearing on his request for treatment.

On February 23, 2021, Mr. Harris filed a "Motion for Reconsideration and/or Modification of Sentence" in which he requested "a reduction and or modification of sentence, or be allow[ed] the 8-507 due to the fact he was evaluated for 8-505 in December 2020." As further grounds, he cited "the COVID pandemic and the JRA," as well as "the

¹ A conditional plea of guilty "means a guilty plea with which the defendant preserves in writing any pretrial issues that the defendant intends to appeal." Md. Code, Courts & Judicial Proceedings § 12-302(e). Although a notice of appeal was subsequently filed, Mr. Harris voluntarily withdrew it.

Senate Bill 591 Maryland Second Look Act.”² On March 9, 2021, the State filed a response opposing Mr. Harris’s request for any modification of his sentence. The court denied the motion on March 10, 2021.

Mr. Harris filed another paper on March 25, 2021 captioned “Motion for Health General,” in which he asked for a hearing on his “request for drug/alcohol treatment.” On March 26, 2021, the court inscribed the following on the motion: “Reviewed and respectfully denied at this time.” That ruling was docketed on March 29th. On April 26, 2021, Mr. Harris filed a notice of appeal “from the judgment and sentence” on his “Motion for Substance Abuse Evaluation ... and Civil Commitment for Substance Abuse Treatment” and asserted that it “was not in accordance with [his] plea agreement.” On May 3, 2021, a separate notice of appeal was docketed, in which Mr. Harris simply “note[d] an appeal from the judgment and sentence of this Court” without identifying precisely what he was appealing. We presume that the second notice of appeal was also from the court’s March 29th order.³

On March 26, 2021, Mr. Harris filed a “Motion for Reconsideration” asking the court to reconsider his “motion for modification” of sentence and stating that he had been

² Senate Bill 591 was introduced in the 2020 session of the Maryland General Assembly and, if enacted, would have permitted the filing of a motion for modification of sentence under certain circumstances. The bill, however, did not pass out of committee and it did not become law.

³ The Motion for Health General has two notations from the Clerk of the Circuit Court for Baltimore County: one reflects that the court’s March 26th ruling denying relief was entered on March 29, 2021, and the second one (directly below the first) states that the order was entered on April 20, 2021. This may explain why Mr. Harris filed two notices of appeal.

evaluated by the Department and recommended for treatment. On June 8, 2021, the court inscribed on the motion: “Reviewed. Please schedule for hearing.” A hearing was held on August 25, 2021. If transcribed, it is not in the record before us. The hearing sheet, however, states: “[Defendant’s] Motion – Denied for request for commitment[.] Will consider granting motion in June of 2023.” Mr. Harris did not appeal that ruling.

In our view, the only matter before us is Mr. Harris’s appeal of the court’s March 26th ruling (entered on March 29th and April 20th) denying his request for a hearing on his motion for drug treatment. For the reasons to be discussed, we shall grant the State’s motion to dismiss the appeal.

DISCUSSION

On appeal, Mr. Harris asserts that the court granted his request for a Health-General, § 8-505 evaluation, but denied his request for treatment under Health-General § 8-507 “without giving [him] a hearing[.]” He also claims that his sentence is illegal because it was not in accord with the terms of his plea agreement, a claim he raises for the first time on appeal.

The State moves to dismiss the appeal for several reasons. First, the State, citing *Fuller v. State*, 397 Md. 372, 380 (2007), points out that the denial of a request for commitment to a substance abuse treatment program pursuant to Health-General, § 8-507 is ordinarily not an appealable judgment. But the State also maintains that Mr. Harris appealed only the court’s March 26th denial of his request for a hearing on his motion for substance abuse treatment, which it claims is also not an appealable judgment. Moreover, the State asserts that the court’s failure to grant his requested hearing is moot because the

circuit court held a hearing in August 2021, after he had filed his notice of appeal in this case. As for Mr. Harris’s claim that the court breached his plea agreement by failing to authorize drug abuse treatment outside the prison walls, the State responds that that issue cannot be adequately reviewed absent the transcript from the plea hearing, but in any event, there was no breach.

In his reply brief, Mr. Harris attached a copy of the transcripts from his plea and sentencing hearings. He also maintains that the court in fact breached his plea agreement “when it only heard the State’s opposition to the placement of the motion for 8-507 without allowing [him] an [sic] hearing to freely argue for placement[.]” He further asserts that he had “assumed he would get placement for Health General Article 8-507 if he stay infraction free” because the court had told him to stay “infraction free,” which he has done. Not to grant his commitment to a treatment facility, he maintains, is “cruel and unusual punishment” given the Department’s recommendation for treatment. Finally, he asserts that “the August 25, 2021 hearing is a moot point due to the fact that [he] had file[d] an [sic] timely appeal from the denial of Health General 8-507 due to breach of the plea agreement.”

As noted, in our view, the only issue before us is the court’s denial of Mr. Harris’s “Motion for Health General” in which he asked for a hearing on his “request for drug/alcohol treatment.” We agree with the State that that ruling is not appealable because it is not a final judgment and it did not preclude Mr. Harris from filing another request for treatment. *See Fuller*, 397 Md. at 394. Moreover, we agree with the State that the March 26th ruling denying Mr. Harris’s request for a hearing on his motion for substance abuse

treatment was rendered moot when the court subsequently granted the request and convened a hearing on August 25, 2021. Although Mr. Harris complains in this appeal that, contrary to the terms of his plea agreement, the court failed to allow him to advocate for placement in a treatment facility at the hearing, that issue is not before us because he did not file a notice of appeal after the August 25th hearing and ruling.

Finally, even if the issue were properly before us, we are not persuaded that Mr. Harris’s sentence is illegal because it was not in accord with the terms of his plea agreement. The written plea agreement, in relevant part, provided: “That the State will not oppose a motion for evaluation under Health-General 8-505, but will oppose placement of the Defendant pursuant to Health General 8-507. The Defendant is free to argue for placement under Health General 8-507 when applicable.” Those terms were placed on the record of the March 1, 2016 plea hearing, when the State in reviewing the plea terms stated: “The State would not be opposed to 8-505 which would be evaluation. However, we would be opposed to 8-507, though defense counsel is free to argue for how [sic] the drug treatment.”

At the May 13, 2016 sentencing hearing, after the court pronounced sentence, Mr. Harris inquired whether he would be “getting accepted” to the “8-507.” The court replied:

You can’t get to the 8-507 part until you get to the 8-505 part. 8-505 would be an evaluation that would be done. And I think my answer to that is that I’m not willing to consider that until you have done some time and remained infraction free. So, and then I will consider it. I’m not making you no promises sir. This is a very significant lifestyle that you’ve chosen that is most concerning with respect to public safety. So, shall we say three years of infraction free incarceration.

I'm going to put in my notes, may consider 8-505 after three years infraction free.

In short, the court never bound itself to authorize treatment under Health-General § 8-507. Rather, the court agreed to *consider* a Health-General § 8-505 evaluation after three years of infraction-free incarceration. And in fact, in November 2020 the court did grant Mr. Harris's request for an evaluation under Health-General § 8-505. Thus, based on the record before us in this appeal, the court did not violate the terms of Mr. Harris's plea agreement when on March 26th it denied his "Motion for Health General."

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**