

Circuit Court for Baltimore City
Case No.: 117047029

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 482

September Term, 2024

STATE OF MARYLAND

v.

MALCOLM COLEMAN

Wells, C.J.,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: March 25, 2025

* 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).

Following a trial in November 2017 in the Circuit Court for Baltimore City, a jury found Malcolm Coleman, appellee, guilty of attempted first-degree murder, conspiracy to commit murder, first-degree assault, reckless endangerment, use of a handgun in a crime of violence, and conspiracy to commit that offense, plus unauthorized use of a motor vehicle, possession with intent to distribute cocaine, and simple possession of cocaine.¹ On February 7, 2018, the court imposed an aggregate sentence of life imprisonment with all but forty years suspended.

In Coleman’s direct appeal to this Court, we vacated one of the conspiracy sentences but otherwise affirmed his convictions. *Armstead & Coleman v. State*, Nos. 2504 & 2556, Sept. Term, 2017, slip op. at 2 (filed unreported Mar. 25, 2020).

Thereafter, on March 16, 2023, appellee filed a petition seeking relief under Maryland’s Uniform Postconviction Procedure Act pursuant to § 7-101 *et seq.* of the Criminal Procedure (“CP”) Article of the Maryland Code raising a variety of claims. On January 4, 2024, the post-conviction court granted appellee post-conviction relief and vacated all his convictions.²

Thereafter, the State sought leave from this Court to appeal from the post-conviction court’s ruling. On May 9, 2024, we granted the State’s application for leave to appeal and transferred the case to our regular appellate docket for briefing. On appeal, the State presents us with the following question which we have condensed and re-phrased:

¹ Appellant was tried jointly with his co-defendant Shareef Armstead.

² The post-conviction court also granted post-conviction relief in the form of the right to file a belated motion for modification of sentence.

Did the post-conviction court err in finding that appellee was denied his right to effective assistance of counsel for not objecting to hearsay statements attributed to Delaney McCloud and Aisjah Peterkin?^{3,4}

APPELLEE’S MOTION TO DISMISS THIS APPEAL

First, we consider appellee’s Motion to Dismiss this Appeal, filed within his appellate brief.

The beginning point of that review is January 4, 2024, the date on which the circuit court entered its memorandum opinion and order granting appellee post-conviction relief. On January 31, 2024, the State filed a motion seeking an extension of time to file an application for leave to appeal from the post-conviction court’s January 4 order. In that motion, the State alleged that it only became aware of the January 4 order on January 24, 2024, and that it was unable to obtain a copy of it until January 30, 2024. Citing to Maryland Rule 1-204(a), and noting that its motion to extend time was filed within the

³ The State presented its questions as follows:

1. Did the post-conviction court err in finding that trial counsel was ineffective for not objecting to a hearsay statement attributed to Delaney McCloud?
2. Did the hearing judge err in finding that trial counsel was ineffective for not objecting to a hearsay statement attributed to Aisjah Peterkin?

⁴ In his Brief of Appellee, appellee asserts that the post-conviction court erred by (1) not granting relief on a claim of ineffective assistance of counsel for failing to seek a severance, and (2) not “expressly” ruling on his “cumulative effect” claim. We decline to address these additional questions because appellee did not seek leave to appeal from the post-conviction court’s decision and because the Order we filed granting the State’s application for leave to appeal specifically limited the scope of this appeal to the issues raised in the State’s application. “[T]his Court . . . has the ability to limit the scope of an appeal when it grants an application for leave to appeal.” *Moultrie v. State*, 240 Md. App. 408, 418 (2019), *abrogated on other grounds by Franklin v. State*, 470 Md. 154 (2020).

thirty-day period for filing an application for leave to appeal, the State claimed to have shown sufficient cause to merit an extension of time under the rule.⁵ In the motion, the State asked for a thirty-day extension. What contributed to the State’s claimed inability to obtain a copy of the court’s order is not made clear in the record.

On February 9, 2024, appellee filed a written opposition to the State’s motion for an extension of time. In that motion, appellee’s counsel averred, *inter alia*, that she had received a copy of the post-conviction court’s ruling by January 10, 2024, at the latest, and questioned the State’s inability to file a timely application for leave to appeal. On March 1, 2024, which was fifty-seven days after the post-conviction court filed its decision in this matter, the State filed its application for leave to appeal.⁶ Then, on March 6, 2024, the post-conviction court granted the State’s motion to extend time purporting to give the State thirty days from that date to file an application for leave to appeal.

Appellee’s motion to dismiss this appeal is premised on his assertion that this Court lacks jurisdiction over this matter because the State’s application for leave to appeal was not timely filed in compliance with the thirty-day time limit in Maryland Rule 8-204(b).⁷

⁵ Maryland Rule 1-204(a), titled “**Motion to shorten or extend time requirements**,” provides that, generally, a court may extend or shorten the time provided by the rules or a court order to require or allow an act to be done. However, it also provides that the “court may not shorten or extend the time for filing[.]” among other things, “an application for leave to appeal[.]”

⁶ March 1, 2024, is thirty-seven days after the State claimed to have become aware of the post-conviction court’s order, thirty-one days after the date it claims that it obtained a copy of it, and thirty days after it filed its motion for an extension of time.

⁷ Appellee argues, in the alternative, even if the court had the authority to enlarge the time deadline for filing an application for leave to appeal, the State had not shown good
(continued...)

In response to appellee’s motion to dismiss, the State, in its Reply Brief, claims that appellee waived his untimeliness argument by failing to make it in a response to the State’s application for leave to appeal. In addition, the State argues that, in the circumstances, the circuit court did not abuse its discretion in granting the State’s motion because, according to the State, it was not seeking to “‘extend the time’ allowed to draft the application” rather it sought additional time to “correct a service deficiency[.]” Finally, the State argues that Maryland’s Supreme Court “abrogated the jurisdictional nature of Rules-based deadlines” in *Rosales v. State*, 463 Md. 552, 566 (2019).

We are constrained in the circumstances of this case to grant appellee’s motion and dismiss this appeal for want of jurisdiction. We explain.

“In Maryland, appellate jurisdiction, except as constitutionally created, is statutorily granted.” *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 565 (2010). Moreover, “matters of jurisdiction are always before this Court and are exceptions to the general rule that we will consider only such questions as have been raised and decided below.” *Carrier v. Crestar Bank, N.A.*, 316 Md. 700, 722 (1989) (cleaned up).

In *Rosales v. State*, Maryland’s Supreme Court took up the question of whether the thirty-day time limitation for noting a direct appeal found in Maryland Rule 8-202 was jurisdictional (as it had been historically treated) or a mere claim-processing rule. 463 Md. at 557. The Court determined that the time limitation, as a creature of a court rule instead of a statute, was a claim-processing rule. *Id.* at 568. The Court held that a time limitation

cause to do so. Appellee points, particularly, to the State’s dilatory responses throughout the post-conviction proceedings.

found only in a court rule is not jurisdictional, and any claim concerning the time limitation is subject to waiver and/or forfeiture if not properly raised by a party. *Id.* at 567-68.

That said, what the parties in this case have failed to observe is that the thirty-day time limit for filing an application for leave to appeal from the denial of post-conviction relief is found in **both** the Maryland Rules and the Maryland Code. Maryland Rule 8-204(b)(2)(A) provides, with an exception not pertinent here, that an application for leave to appeal “shall be filed within 30 days after entry of the judgment or order from which the appeal is sought.” Similarly, CP § 7-109(a) provides that “[w]ithin 30 days after the court passes an order” granting or denying post-conviction relief “a person aggrieved by the order, including the Attorney General and a State’s Attorney, may apply to the Appellate Court of Maryland for leave to appeal the order.”

In *Keys v. State*, 195 Md. App. 19, 27 (2010), we observed that when “an application for leave to appeal is granted, and it is determined that the application was not filed timely, . . . the appeal must be dismissed” because of a lack of jurisdiction. That aspect of *Keys* is unaffected by *Rosales* because the time deadline for filing an application for leave to appeal is statutory. *See Michael v. State*, 85 Md. App. 735, 738 (1991) (stating that “the rationale for requiring strict adherence to the time requirements in the case of appeals of right is no less persuasive where application for leave to appeal is sought”).

Here, the State's application for leave to appeal was filed well after the expiration of the thirty-day statutory deadline in CP § 7-109 for filing such an application. As a result, we acquired no jurisdiction, and this appeal must be dismissed.

APPEAL DISMISSED. COSTS TO BE PAID BY THE STATE.