

Circuit Court for Montgomery County  
Case No. 103211C

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 533

September Term, 2017

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THOMAS JOHNSON

v.

STATE OF MARYLAND

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Eyler, Deborah S.,  
Meredith,  
Alpert, Paul E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Alpert, J.

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Filed: May 15, 2018

\*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.

Thomas Johnson, appellant, filed a motion to vacate an order by the Circuit Court for Montgomery County that directed the Division of Parole and Probation to refer for collection appellant's unpaid restitution that was part of his sentence and a condition of his probation in a 2005 case. The court denied the motion and this appeal followed. We shall dismiss the appeal for reasons stated below.

### **FACTS**

On March 14, 2005, appellant was convicted in the Circuit Court for Montgomery County of crimes related to stealing money from his grandfather (the “theft case” – cc# 100278C).<sup>1</sup> Appellant was sentenced by the court to a total of four years imprisonment, all but 14 months suspended, and five years of supervised probation. As both a part of his sentence and as a condition of his probation, he was required to pay restitution in the amount of \$132,580 to his grandfather. Less than a year later, on February 13, 2006, appellant pled guilty in the instant case to willfully failing to file a tax return and perjury (the “income tax case” – cc# 103211C). He was sentenced to concurrent sentences of three years of imprisonment, all suspended, and five years of supervised probation for each conviction.

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<sup>1</sup> Specifically, appellant was convicted of theft of property worth more than \$500; conspiracy to commit theft; and exploitation of a vulnerable adult.

Almost four years later, on December 1, 2009, appellant pled guilty to violating his probation in both cases for, among other things, failure to report to his probation officer, failure to work or attend school, failure to attend AA meetings, and failure to make restitution. As a result, the court revoked appellant’s probation in both cases and sentenced him to five years and ten months of imprisonment (the combined remaining sentences on both, his theft case: two years and ten months; and his income tax case: a consecutive three years), suspended all of that sentence, and placed him on three years of supervised probation so that he could participate in the Montgomery County Adult Drug Court.

On October 31, 2013, appellant again pled guilty to violating his probation, this time for acquiring a new conviction for making a false statement about a destructive device.<sup>2</sup> The court revoked his probation and closed it as unsatisfactory, and then sentenced him to the remaining unsuspended portion of his sentence, a total of five years and ten months, less time served.

On September 7, 2016, the circuit court, on the recommendation of the Division of Parole and Probation (the “Division”), docketed an order directing the Division to refer for collection appellant’s unpaid restitution of \$132,580 to the Central Collection Unit (the “CCU”). On February 13, 2017, appellant filed a motion asking the court to vacate its order. The court denied the motion, and this appeal followed.

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<sup>2</sup> Appellant called in a bomb threat to an outpatient addiction program.

## DISCUSSION

Appellant argues that the restitution ordered in 2005 was uncollectible, and therefore, the circuit court erred when it issued the order referring for collection his unpaid restitution. Specifically, he argues that if the restitution was imposed as a condition of his probation in 2005, it was uncollectible because it did not survive as a condition of his probation after his probation was revoked in 2009 and 2013. He argues that if restitution was imposed as a part of his sentence in 2005, it was likewise uncollectible for two reasons. First, it was unfair to collect the restitution because too much time had passed – three years had elapsed between when his probation was closed unsatisfactorily and the order to collect restitution was entered, and ten years had elapsed between when restitution was originally ordered as part of his sentence and the order to collect restitution was entered. Second, the delay caused the order to become an illegal sentence, for the 2016 order directing the Division to refer to the CCU any unpaid restitution “increased” his sentence. The State disagrees with each of appellant’s arguments.

Appellant’s appeal from the circuit court’s order referring for collection the restitution judgment from his 2005 case is not appealable. Md. Code Ann., Criminal Procedure (“CP”), §11-616(a)(2) provides that “if probation or other supervision is terminated and restitution is still owed,” the Division “shall refer the overdue restitution account for collection to the Central Collection Unit.” Therefore, referral of unpaid restitution is required by operation of law once probation is terminated, and it is not dependent upon a court order. Accordingly, the circuit court’s order was an unnecessary act that does not resolve any issue and is not appealable. We also note that the wrong case

is before us: the circuit court’s denial of appellant’s motion to vacate the restitution order applies only to appellant’s 2006 income tax case, which did not involve restitution; and not the 2005 theft case, which did involve restitution. For the above reasons, we shall dismiss the appeal as not allowed. *See* Md. Rule 8-602(a)(1).

**APPEAL DISMISSED.**

**COSTS TO BE PAID BY  
APPELLANT.**