

Circuit Court for Prince George's County  
Case No. CT040668X

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 773

September Term, 2017

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PAUL RANDALL BROOKS

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Kehoe,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 14, 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.

Paul Brooks, Jr., appellant, appeals from the denial of his motion for a new trial pursuant to Maryland Rule 4-331(b)(1)(B). For the reasons that follow, we affirm.

In 2005, Brooks was convicted of first-degree murder and conspiracy to commit first-degree murder following a jury trial. This Court affirmed his convictions on direct appeal. *See Brooks v. State*, No. 396, Sept. Term 2005 (filed July 10, 2008). Since that time, Brooks has filed numerous post-judgment motions. Relevant to this appeal, on March 31, 2017, Brooks filed a motion for a new trial pursuant to Maryland Rule 4-331(b)(1)(B). His sole claim was that the failure of the trial court to instruct the jury on the lesser-included offense of second-degree murder constituted either a “fraud” or “irregularity” in the judgment. The circuit court denied appellant’s motion without a hearing, finding that the motion was untimely because it was not filed within ninety days after the judgment and that his “allegations [did] not constitute fraud or an irregularity within the meaning of Rule 4-331(b)(1)(B).” This appeal followed.

On appeal, Brooks contends that the trial court erred in finding that his motion was untimely because it was not filed within ninety days after the imposition of his sentence. We agree with Brooks on this point because, under Rule 4-331(b)(1)(B), the circuit court may exercise revisory control over its judgment at any time in the case of fraud, mistake, or irregularity.

This does not end our discussion, however, because, as the circuit court alternatively found, Brooks’s claim fails on the merits. First, Brooks’s motion was “fatally defective,” because it was filed approximately twelve years after his conviction and he “failed to allege or in any way demonstrate that he acted with ordinary diligence” in raising his claim. *See*

*Minger v. State*, 157 Md. App. 157, 175 (2004) (noting that a Rule 4-331(b) motion filed outside the ninety-day time limit requires a showing that the movant acted with “ordinary diligence” in raising his or her claim). Moreover, even if true, Brooks’s claim of instructional error does not establish the existence of any “fraud, mistake, or irregularity” in his case that would allow the court to exercise its revisory power under Rule 4-331(b)(1)(B). *See id.* at 163-64, 172 (holding that a claim of instructional error was not cognizable under Rule 4-331(b)(1)(B) and noting that the terms “fraud, mistake, or irregularity,” as they are used in that rule, are narrowly interpreted and, therefore, do not “encompass [unobjected to] prejudicial trial errors and the like” (internal quotation marks omitted)). Consequently, the circuit court did not err in denying Brooks’s Rule 4-331(b)(1)(B) motion.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**