

Circuit Court for Montgomery County
Case No.: 125462C

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 882

September Term, 2023

NDOKLEY PETER ENOW

v.

STATE OF MARYLAND

Arthur,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 19, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Ndokley Peter Enow appeals the decision of the Circuit Court for Montgomery County denying his petition for a writ of habeas corpus. For the reasons to be discussed, we shall grant the State’s motion to dismiss the appeal.

BACKGROUND

In 2014, Mr. Enow sought to hire someone to kill or seriously maim his ex-wife and the mother of his child. His solicitation was recorded by an undercover police officer posing as a hitman, whom he had given a deposit for the job. A grand jury returned an indictment charging him with solicitation to commit first-degree murder and solicitation to commit first-degree assault. In 2015, Mr. Enow appeared with counsel in court and, pursuant to a plea agreement with the State, entered a plea of guilty to solicitation to commit first-degree murder. The court sentenced him in accordance with the plea agreement to 40 years’ imprisonment, all but 20 years suspended, to be followed by a 5-year term of supervised probation. Mr. Enow’s attempts to overturn the conviction have been unsuccessful.

In May 2023, Mr. Enow, representing himself, filed a petition for habeas corpus relief with the Maryland Supreme Court in which he challenged the legality of his conviction. The Supreme Court referred the petition to the Circuit Court for Montgomery County, which, as noted, denied relief.

DISCUSSION

Our Supreme Court “has consistently held that . . . [a]n appeal may be taken from a final order in a habeas corpus case only where specifically authorized by statute.” *Gluckstern v. Sutton*, 319 Md. 634, 652 (1990). In *Simms v. Shearin*, this Court identified

the four statutes found in the Maryland Code which authorize an appeal from a decision in a habeas case:

- (1) CP [Criminal Procedure] §9-110, which authorizes appeals in extradition cases;
- (2) CJP [Courts & Judicial Proceedings] §3-707, which authorizes an application for leave to appeal in cases involving right to bail or allegedly excessive bail;
- (3) CJP §3-706, which provides for an appeal if a court issued a writ of habeas corpus based on the unconstitutionality of the law under which the petitioner was convicted;
- and (4) CP §7-107, a provision of the [Uniform Post Conviction Procedure Act], which permits an appeal if the writ was sought under CP §9-110 or for a purpose other than to challenge the legality of a conviction or sentence.

221 Md. App. 460, 469 (2015) (footnote omitted) (citing *Gluckstern*, 319 Md. at 652-53).

In short, “[a]lthough the right to seek a writ of habeas corpus is constitutionally protected, the right to an *appeal* from the disposition of the habeas corpus petition is not.”

Id.

Mr. Enow’s petition does not concern extradition or bail. The circuit court did not issue a writ of habeas corpus, much less issue one on the bases that the law under which Mr. Enow was convicted is unconstitutional.¹ Thus, Mr. Enow could appeal the circuit court’s judgment in this case only if it is authorized under Criminal Procedure §7-107(b), which provides:

- (1) In a case in which a person challenges the validity of confinement under a sentence of imprisonment by seeking the writ of habeas corpus or the writ of coram nobis or by invoking a common law

¹ Courts & Judicial Proceedings § 3-706(a) provides for an appeal only where “a person is *released or discharged* by a judge under the writ of habeas corpus on the ground that the law under which the person was convicted is unconstitutional,” and does not provide for an appeal from the *denial* of a petition for habeas corpus. (Emphasis added.)

or statutory remedy other than this title, a person may not appeal to the [Supreme Court] of the [Appellate Court].

- (2) This subtitle does not bar an appeal to the [Appellate Court]:
- (i) in a habeas corpus proceeding begun under §9-110 of this article;^[2] or
 - (ii) in any other proceeding in which a writ of habeas corpus is sought for a purpose *other than to challenge the legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime*, including confinement as a result of a proceeding under Title 4 of the Correctional Services Article.^[3]

(Emphasis added.)

In *Simms*, we held that Criminal Procedure §7-107 authorizes an appeal from the judgment in a habeas corpus case “only when the petitioner challenge[s] the legality of confinement based on collateral post-trial influences and not the legality of the underlying conviction or sentence, and where the UPPA [does] not otherwise provide a remedy.” 221 Md. App. at 473. In *Green v. Hutchinson*, 158 Md. App. 168, 174 (2004), we held that allegations of “ineffective assistance of counsel, errors in the admission of evidence, and improprieties concerning jury instructions and the submission of counts to the jury ... went directly to the legality of Green’s convictions,” and, therefore, the denial of his petition for a writ of habeas corpus was not appealable under Criminal Procedure §7-107.

In his petition, Mr. Enow challenged the legality of his conviction on constitutional grounds; claimed that the trial court lacked subject matter jurisdiction; and alleged that his

² Criminal Procedure §9-110 allows for habeas corpus petitions to challenge extradition proceedings, which, as noted, is not the bases for Mr. Enow’s petition.

³ Title 4 of the Correctional Services Article concerns the Patuxent Institution, which is relevant to Mr. Enow’s petition.

defense counsel rendered ineffective assistance. We hold that Mr. Enow has no right to appeal the circuit court’s denial of his request for habeas relief because no statute authorizes an appeal in this case.

**APPELLEE’S MOTION TO DISMISS
APPEAL GRANTED.**

APPEAL DISMISSED.

COSTS TO BE PAID BY APPELLANT.