

Circuit Court for Calvert County
Case No. 04-K-13-000385

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1152

September Term, 2023

LEONARD WARREN KRAISEL

v.

STATE OF MARYLAND

Zic,
Tang,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: September 23, 2024

*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 Rule 1-104(a)(2)(B).

Leonard Warren Kraisel, the appellant, appeals the denial of a petition for writ of habeas corpus by the Circuit Court for Calvert County. In the petition, the appellant sought to eliminate a requirement that he submit to periodic polygraph testing as a condition of his probation. For the reasons stated below, we shall remand the case for the circuit court to submit a memorandum stating its reasons for denying the petition in compliance with Maryland Rule 15-311.

BACKGROUND

In 2014, the appellant pleaded guilty to two counts of sexual abuse of a minor and one count of third-degree sexual offense. The plea agreement reflected the appellant's understanding that he would be placed on five years of supervised probation through the Sex Offender Management Division of Parole and Probation, which could include polygraph examinations. The court sentenced him to twenty-two years of incarceration, all but twenty years suspended, and five years of supervised probation upon release. The probation order directed "all conditions outlined in the plea agreement[.]"

In 2022, the court modified the appellant's aggregate sentence to twenty-two years of incarceration, suspending all but seven years, eleven months, and thirteen days, with five years of supervised probation. As a condition of probation, the court ordered supervision by the Collaborative Offender Management Enforcement Treatment program ("COMET") and required the appellant to comply with any other conditions outlined in the plea agreement. Supervision through COMET included the administration of polygraph tests to offenders.

First Habeas Petition

On June 26, 2023, the appellant filed an Emergency Petition for Writ of Habeas Corpus and/or Other Appropriate Motion for Relief. He requested an order precluding the State from subjecting him to polygraph tests as a condition of probation. He argued that his upcoming polygraph test scheduled for July 6 and any future polygraph tests should be “placed into a state of indefinite abeyance” because his medical conditions and medications would make it likely that the test would yield inaccurate results, possibly to his detriment.

The State opposed the petition. It argued that the petition was procedurally deficient, the request was premature given that the test had not been administered and the appellant’s liberty had not been impacted, the appellant’s refusal to undergo polygraph testing could breach the plea agreement, and the polygraph requirement was lawful.

The court summarily denied the petition. The appellant did not appeal from the denial of this habeas petition.

Second Habeas Petition

On July 25, 2023, the appellant filed a Renewed Emergency Petition for Writ of Habeas Corpus and/or Other Appropriate Motion for Relief, seeking to eliminate the condition of probation requiring him to submit to periodic polygraph testing.¹ The appellant again asserted that his medical conditions and medications increased the chance of inaccurate results, risking future deprivations of his liberty. He proffered that the technician

¹ In his appellate brief, the appellant confirms that his petition did not challenge the legality of the sentence imposed. Rather, it challenged the condition of probation requiring him to submit to polygraph testing.

refused to administer his last scheduled polygraph test because of his medical condition, medications, dizziness, and poor sleep. As a result, the test was rescheduled for August 1. The appellant asserted that because the same medical problems would recur, submission to future tests would be futile, and any test results would likely be inaccurate.

The State opposed the petition, arguing again that the petition was not ripe. It explained that it was speculative whether any test result would indicate deception and whether any positive result would result in the deprivation of his liberty. It argued that even if the allegations in the petition were assumed correct, the appellant failed to meet the preliminary requirement of being “confined” or “restrained” under § 3-702 of the Courts and Judicial Proceedings Article (“CJP”). The State again maintained that refusal to submit to polygraph testing would violate his plea agreement and that the appellant failed to show that the polygraph requirement was illegal.

The appellant responded that his petition satisfied the preliminary requirement and fell under the scope of CJP § 3-702 because his required submission to polygraph testing constituted a restraint on his liberty. He argued that the petition should not be denied as “insufficiently ripe[,]” and that the court could modify his probation without violating the plea agreement, citing Maryland Rule 4-346.

On July 27, 2023, the court denied the appellant’s second habeas petition without a hearing and without stating its reasons for doing so. The appellant timely noted an appeal of that order.

DISCUSSION

CJP § 3-702(a) explains who may petition for a writ of habeas corpus and the purpose for the writ:

A person committed, detained, confined, or *restrained* from his lawful liberty within the State for any alleged offense or under any color or pretense or any person in his behalf, may petition for the writ of habeas corpus to the end that the cause of the commitment, detainer, confinement, or *restraint* may be inquired into.

(emphasis added).

On appeal, the State does not argue that the appellant failed the jurisdictional requirement of being “committed, detained, confined, or *restrained* from his lawful liberty within the State.” *Id.* (emphasis added). It explains that in *Sabisch v. Moyer*, the Supreme Court of Maryland stated that “persons on probation with conditions that significantly restrain the person’s lawful liberty within the State are entitled to seek habeas corpus relief.” 466 Md. 327, 332 (2019). “[W]hether a condition of probation is a significant deprivation of liberty requires a case-by-case analysis[.]” *Peterson v. State*, 467 Md. 713, 738 (2020) (citing *Sabisch*, 466 Md. at 327). Though the State does not concede that the polygraph requirement alone makes the appellant eligible for habeas relief, it acknowledges that the “totality of [the appellant’s] probation likely satisfies the *Sabisch* standard.”²

² The State cites *Ex parte Renfro*, 999 S.W.2d 557, 559–60 (Tex. Ct. App. 1999) (finding that community supervision was a sufficient “restraint” on liberty where petitioner appealed requirement to submit to a polygraph examination).

Maryland Rule 15-302 requires that a petition for writ of habeas corpus be “supported by affidavit of the petitioner” and include:

- (1) a statement that the individual by or on behalf of whom the writ is sought is unlawfully confined or restrained;
- (2) the place where the individual is confined or restrained, if known;
- (3) the name and any official capacity of the person by whom the individual is confined or restrained or, if not known, a description sufficient to enable that person to be identified;
- (4) the circumstances and the cause of the confinement; and
- (5) if the confinement is pursuant to a judgment or order of a court, the name of the court, the date of the judgment or order, and the case number, if known.

Md. Rule 15-302(a).

In pertinent part, Maryland Rule 15-303(e)(1) provides that the judge receiving the petition makes a preliminary determination about whether the petition satisfies Rule 15-302. If the petition does not comply with the rule, the judge may deny it, permit amendment, or “grant the writ if there is a sufficient showing of probable illegal confinement or restraint.” Md. Rule 15-303(e)(2).

If the petition complies with Rule 15-302, the judge may deny it without a hearing if “the judge finds from the petition, any response, reply, document filed with the petition or with a response or reply, or public record that the individual confined or restrained is not entitled to any relief[.]” Md. Rule 15-303(e)(3)(A); *see Jones v. Filbert*, 155 Md. App. 568, 579 (2004) (holding that the circuit court’s decision to deny the petition without a further hearing, for reasons set forth in its opinion, was authorized by Rule 15-303(e)(3)(A)).

Rule 15-311 provides that, upon disposing of the petition, the judge is required to:

prepare and file or dictate into the record a memorandum setting forth the grounds of the petition, the questions involved, and the reasons for the action taken. A copy of the memorandum or a transcription of the dictation shall be sent to the petitioner and the person having custody of the individual confined or restrained.

(emphasis added).

The appellant contends that the circuit court erred in denying his second habeas petition without a hearing and without addressing the merits. The State responds that the court properly denied the second habeas petition without a hearing because the appellant's claim could not succeed on the merits. The State proposes, in the alternative, that if this Court believes that the circuit court's order does not permit meaningful appellate review, we should order a limited remand for the circuit court to explain its reasons for denying the petition in a memorandum that complies with Rule 15-311.

The record does not contain a statement by the circuit court "setting forth the grounds of the petition, the questions involved, and the reasons for the action taken." Md. Rule 15-311; *see Smith v. State*, 140 Md. App. 445, 449 & n.1 (2001) (noting that the court's denial of a habeas petition without stating its reasons was in error). It is unclear why the court denied the second habeas petition. We do not know if the court made a preliminary determination that the petition did not meet the requirements of Rule 15-302 or, if it did meet the requirements, why the court found "from the petition, any response, reply, document filed with the petition or with a response or reply, or public record that the

individual confined or restrained is not entitled to any relief[.]” Md. Rule 15-303(e)(2)–(3)(A).

Without the circuit court’s compliance with Rule 15-311, we cannot evaluate whether the court erred in denying the petition. Accordingly, we remand the case to the circuit court with instructions to submit a memorandum setting out the reasons for its decision in accordance with Rule 15-311. *See, e.g., Hunter v. Warden, Balt. City Jail*, 17 Md. App. 86, 90 (1973) (remanding case with direction to the court to submit a memorandum setting out its reasons for the action taken in habeas corpus bail proceeding).

CASE REMANDED TO THE CIRCUIT COURT FOR CALVERT COUNTY, WITHOUT AFFIRMANCE OR REVERSAL, FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO PAID EQUALLY BETWEEN APPELLANT AND CALVERT COUNTY.