

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1398

September Term, 2023

ROGER BYRON HARGRAVE

v.

STATE OF MARYLAND

Zic,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 3, 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.

In 2006, a jury in the Circuit Court for Prince George’s County convicted Roger Byron Hargrave, appellant, of attempted first-degree murder, attempted second-degree murder, and first-degree assault. In September 2013, appellant, through counsel, filed a motion to unseal certain documents related to his criminal case including “the presentence investigation report, the Department of Health and Mental Hygiene Evaluation, the victim impact letters” and to “provide a copy of each of these documents to defense counsel, and reseal the documents[.]” The court granted that motion in October 2013.

In 2022, appellant, now representing himself, filed another motion to unseal requesting the court “to order the clerk of the Court to unseal the PSI report, the DHMH evaluation, the victim impact statements, and letters from [my] family, and certificates of achievement, and provide each of said documents to [me] to review, in an effort to perfect [my] posttrial remedies[.]” In the motion, appellant noted that he had already filed a motion “to discharge the Office of the Public Defender” and to appoint new counsel because his prior counsel had never provided him with a copy of the previously unsealed documents. In June 2023, appellant filed a motion requesting the court to issue a ruling on his motion to unseal, and also to require the Office of the Court Reporter to waive the fees for the preparation of a transcript from an unrelated hearing that had occurred on July 29, 2022.

On August 4, 2023, the court entered an order granting appellant’s motion to unseal with respect to the “letters from Defendant’s family and certificates of achievement” but ordering that “the pre-sentence investigation report, the DHMH evaluation of the Defendant, and the victim’s impact statement shall remain sealed[.]” The court also denied

appellant’s request to waive the fees for preparation of the transcript for the July 29th hearing, noting that it did “not have the authority to waive said fees[.]”

Appellant mailed a notice of appeal to the circuit court on August 24, 2023. However, the clerk rejected the notice of appeal on August 31, 2023, and returned it to appellant because it did not contain a certificate of service. Appellant then filed a new notice of appeal which was docketed on September 12, 2023. The new notice of appeal contained a letter from appellant dated September 7, 2023 (the letter), which stated that he had received the rejected notice of appeal the previous day, but was back-dating the certificate of service to “when I originally filed this pleading.” On appeal, appellant claims that the circuit court erred in denying his motion to unseal and motion to waive the transcript fees. The State disagrees and has also filed a motion to dismiss the appeal as having been untimely filed.¹ For the reasons that follow, we shall grant the motion to dismiss the appeal.

Maryland Rule 8-202(a) provides that a party must file his or her notice of appeal “within 30 days after entry of the judgment or order from which the appeal is taken.” Although not jurisdictional, this requirement is a “binding rule on appellants” unless “waiver or forfeiture applies to a belated challenge to an untimely appeal.” *Rosales v. State*, 463 Md. 552, 568 (2019).

¹ The State also contends that the appeal should be dismissed as having been taken from a non-appealable interlocutory order. Because we hold that appellant’s notice of appeal was not timely filed, we need not address whether the August 4 order constituted a final judgment.

Here, the circuit court’s order denying appellant’s motion to unseal was entered on the docket on August 4, 2023. Therefore, appellant was required to file his notice of appeal no later than September 4, 2023. Appellant attempted to file a notice of appeal on August 24, 2023. However, that notice of appeal did not contain a certificate of service or an admission or waiver of service by the State². This Court has held that “a pleading or paper required to be served by Rule 1-321 that does not contain an admission or waiver of service or a signed certificate showing the date and manner of making service cannot become a part of any court proceeding[.]” *Lovero v. Da Silva*, 200 Md. App. 433, 446 (2011). Therefore, the receipt of that notice of appeal by the clerk did not constitute a “filing of the notice on that date under Rule 8-202(a).” *Id.* at 450.

Appellant’s second notice of appeal included a certificate of service, but was not filed until September 12, 2023, which was more than 30 days after the court entered the August 4th order. Therefore, it was untimely.³ Moreover, the State has not waived or forfeited its challenge to the timeliness of appellant’s appeal because Md. Rule 8-603(c) provides that a motion to dismiss pursuant to Md. Rule 8-602(b) “may be included in the appellee’s brief.” Consequently, we shall grant appellee’s motion to dismiss.

**MOTION TO DISMISS APPEAL
GRANTED. COSTS TO BE PAID BY
APPELLANT.**

² In his reply brief, appellant states that his notice of appeal was timely because the “certificate of filing speaks for itself[.]” However, the certificate of filing included with his Notice of Appeal did not indicate the date and manner of service, as required by Rule 1-321.

³ Even if we construe appellant’s appeal as having been filed on September 7, 2023, the date indicated on the letter, it was still untimely.