

Circuit Court for Baltimore County  
Case No. 03-K-07-002978

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1565

September Term, 2022

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STEPHEN NIVENS

v.

STATE OF MARYLAND

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Leahy,  
Albright,  
Woodward, Patrick L.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 2, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*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.

Stephen Nivens, appellant, appeals from the denial, by the Circuit Court for Baltimore County, of a petition for writ of habeas corpus. For the reasons that follow, we shall affirm the judgment of the circuit court.

In 2011, Mr. Nivens was convicted of second degree sexual offense and first degree burglary. The court subsequently sentenced Mr. Nivens to a total term of imprisonment of forty years. In June 2022, Mr. Nivens filed in the Supreme Court of Maryland (formerly known as the Court of Appeals of Maryland)<sup>1</sup> two Petitions for Writ of Habeas Corpus. In the first petition, to which the Court assigned case number COA-MISC-0046-2021 (“46-2021”), Mr. Nivens challenged “the legality of his arrest, detention, [and] commitment.” In the second petition, to which the Court assigned case number COA-MISC-0047-2021 (“47-2021”), Mr. Nivens challenged the failure of the Maryland Parole Commission to approve parole. With each petition, Mr. Nivens filed a “Motion to Recuse from Writ of Habeas Corpus,” in which he requested that numerous judges of the circuit court be disqualified from reviewing and resolving the petitions. The Court subsequently transferred the petitions to the circuit court and denied the motions to recuse.

On July 13, 2022, the circuit court received the petitions. On August 9, 2022, the Honorable Robert E. Cahill, Jr., issued an order in which he denied one of the petitions.

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<sup>1</sup>At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Rule 1-101.1(a) (“[f]rom and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland”).

The judge did not specify whether the petition being denied was the petition previously known as case number 46-2021 or the petition previously known as case number 47-2021. On August 17, 2022, the Honorable John J. Nagle, III, issued an order in which he denied Mr. Nivens’s other petition. Although the judge did not specify whether the petition being denied was the petition previously known as case number 46-2021 or the petition previously known as case number 47-2021, he noted that the petition before him was identical to a petition filed by Mr. Nivens in April 2022, and in which Mr. Nivens challenged “the legality of his arrest, detention, [and] commitment.”

Mr. Nivens subsequently filed a notice of appeal from Judge Cahill’s order. On November 30, 2022, the court issued an order in which it amended the Commitment Record in Mr. Nivens’s case “to eliminate and strike any reference to [his] being required to [r]egister as a Tier III Sex Offender.” The court explicitly ordered that “[i]n all other respects, the terms of the . . . Commitment Record shall remain in full force and effect.”

Mr. Nivens first contends that, for numerous reasons, the court’s November 30, 2022 amendment of the commitment record requires this Court to reverse the August 9, 2022 judgment, vacate his convictions, and reduce his sentence. But, at the time of the court’s August 9, 2022 judgment, the court’s amendment of the commitment record had not yet occurred. Also, Rule 8-131(a) states that an “appellate court will not [ordinarily] decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court.” Mr. Nivens’s contention that the amendment of the commitment record requires the award of additional relief has not been raised in or decided by the circuit court, and hence, we shall not reach the contention.

Mr. Nivens next contends that Judge Cahill “was prohibited from ruling upon” the petitions, because he has previously “ruled upon several of [Mr.] Nivens’[s] filings with his Post-Conviction Petition(s) and [a] Motion to Correct Illegal Sentence.” But, Mr. Nivens does not cite any authority that disqualifies a judge who disposes of a party’s post-conviction pleadings or motion to correct illegal sentence from subsequently disposing of a petition for writ of habeas corpus. Nevertheless, we conclude that Judge Cahill did not err in ruling upon one of Mr. Nivens’s petitions.

Mr. Nivens finally contends that the court erred in denying the petition previously known as case number 47-2021 because, for numerous reasons, the Maryland Parole Commission erred in failing to approve parole. But, the Supreme Court of Maryland has recognized that “[t]he parole statute does not provide for a right to judicial review,” *Farmer v. State*, 481 Md. 203, 214 n.7 (2022), and Mr. Nivens does not cite any authority that allows an inmate to challenge a decision of the Commission in a petition for writ of habeas corpus. Hence, the court did not err in denying the petition.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**