

Circuit Court for Frederick County  
Case No. 10-K-10-048532

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1777

September Term, 2022

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KENNETH ROBERT CUNNINGHAM

v.

STATE OF MARYLAND

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Reed,  
Ripken,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 29, 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.

Kenneth Robert Cunningham, appellant, appeals from the denial, by the Circuit Court for Frederick County, of numerous pleadings in which he challenged his prosecution, in 2010, for second degree assault. For the reasons that follow, we shall dismiss the appeal.

The record before us is limited, because in July 2022, the circuit court destroyed, pursuant to its retention schedule, pleadings, orders, and other documents filed through June 2013. The docket entries indicate that on September 27, 2010, Mr. Cunningham pleaded guilty to second degree assault. The court subsequently sentenced Mr. Cunningham to probation before judgment for a period of one year. In 2022, Mr. Cunningham filed a “Motion to dismiss based on absolute innocen[c]e,” a “Motion to dismiss based [on] State’s Fraud,” a “Writ for an evidentiary hearing,” and a “Writ for Post-Conviction relief.” In the pleadings, Mr. Cunningham challenged, on numerous grounds, the legality of his prosecution for the offense, and requested “a direct[ed] reversal.” The court denied all of the pleadings. Mr. Cunningham filed motions to reconsider the denials of the motions to dismiss, which the court also denied.

Mr. Cunningham now contends that, for numerous reasons, the court erred in denying the pleadings. The State moves to dismiss on the grounds that Mr. Cunningham “does not identify any order . . . that is subject to a lawful appeal,” and “does not provide authority for the proposition that any of [the orders] is . . . appealable.” Alternatively, the State requests that we affirm the court’s judgments.

We shall dismiss the appeal for two reasons. First, Md. Code (2001, 2018 Repl. Vol., 2022 Supp.), § 6-220 of the Criminal Procedure Article (“CP”), states that when a court “stay[s] the entering of judgment” and “place[s] the defendant on probation,” the

“[d]ischarge of [the] defendant” from probation “shall be without judgment of conviction.” Here, there is no evidence that Mr. Cunningham did not successfully complete his probation, and hence, there is no judgment of conviction. Second, CP § 6-220(e) states that “[b]y consenting to and receiving a stay of entering of . . . judgment . . . , [a] defendant waives the right to appeal at any time from the judgment of guilt.” Here, there is no evidence that Mr. Cunningham did not consent to the stay of entering of judgment. Mr. Cunningham has waived his right to appeal from the judgment of guilt, and accordingly, we grant the State’s motion and dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE PAID  
BY APPELLANT.**