

Circuit Court for Baltimore City
Case No. 24-H-20-001379

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 2097

September Term, 2021

ANDRE PEARSON

v.

STATE OF MARYLAND

Beachley,
Shaw,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 9, 2023

*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.

**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.

In 2003, appellant Andre Pearson was found guilty of felony murder, robbery with a deadly weapon, and related charges. He appeals from the denial of his 2020 petition for writ of habeas corpus, and presents three questions for our review:

1. Did the [c]ourt have subject matter jurisdiction?
2. Was there sufficient probable cause for the indictment in this case?
3. Did the [c]ircuit [c]ourt err in denying the [a]ppellant’s request for disclosure of grand jury transcripts?

Because appellant has no right to appeal, we shall grant the State’s motion to dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

On May 14, 2003, following a six-day trial in the Circuit Court for Baltimore City, a jury convicted appellant of felony murder, robbery with a deadly weapon, robbery, and wearing and carrying a handgun. According to appellant, the indictment had also included a charge related to vehicle theft, but the State did not pursue this charge at trial.¹ Appellant was sentenced to life imprisonment without the possibility of parole. This Court affirmed appellant’s conviction on direct appeal. *Pearson v. State*, No. 1393, Sept. Term 2003 (filed May 10, 2006).

In 2010, appellant filed a petition for postconviction relief, which was withdrawn without prejudice. He again filed a petition for postconviction relief in 2015, which was

¹ The record before this Court does not include the indictment with the vehicle theft charge.

dismissed with prejudice. Appellant filed a Motion to Reconsider in 2018, which the circuit court denied, and sought leave to appeal, which was also denied.

On August 28, 2020, appellant filed a petition for writ of habeas corpus, which he supplemented on July 14, 2021. In his petition and supplement, appellant alleged: 1) that the State's decision not to request jury instructions on the lesser-included charges of assault and theft was effectively a *nolle prosequi*, which removed the court's subject matter jurisdiction as to the robbery charges; and 2) that the indictment for vehicle theft, which the State did not pursue at trial, rendered "the whole Grand Jury proceeding . . . illegal and irreparable." On November 15, 2021, appellant filed a Motion for Disclosure of Grand Jury Transcripts, arguing that "Disclosure of grand jury transcripts is necessary to make a determination as to the basis of the indictment." The court held a hearing on the habeas corpus petition on December 3, 2021. Appellant has not provided a transcript of this hearing.

The circuit court issued a memorandum opinion and order on January 27, 2022, denying appellant's habeas corpus petition. In its opinion, the court only addressed the first issue raised in the habeas corpus petition; it therefore did not expressly decide the indictment issue or the request for disclosure of grand jury transcripts. Appellant filed a motion for reconsideration on February 15, 2022, and noted this appeal on February 24, 2022.

According to the State's brief, the court denied appellant's motion to reconsider on June 15, 2022, and at the same time denied the Motion for Disclosure of Grand Jury

Transcripts.² Appellant filed a second notice of appeal on June 29, 2022, which was docketed as a separate appeal. The circuit court issued multiple show cause orders related to that appeal, and ultimately ordered that “the Defendant’s Application for Leave to Appeal is stricken” due to failure to show cause. As a result of the circuit court’s striking of the appeal, we administratively closed the second appeal related to the denial of appellant’s motion for reconsideration.

DISCUSSION

I. Pearson’s Appeal from Denial of His Petition for Writ of Habeas Corpus Is Prohibited

Appellant argues that the circuit court erred in denying his petition for writ of habeas corpus. Appellant provided two arguments in his habeas petition, both of which he continues to assert on appeal. Appellant first argues that, because “the State nol prossed the underlying lesser included offenses of theft and assault,” the circuit court lost subject matter jurisdiction to present the robbery charges to the jury.³ To support this argument, appellant cites *Hook v. State*, 315 Md. 25, 37 (1989), for the proposition that “under the concept of fundamental fairness with respect to a trial in a criminal cause, the broad

² The record was transmitted to this Court on June 14, 2022. Because the court’s rulings on these matters were not part of the record before us, on May 11, 2023, we issued an order requiring appellant to file copies of the denial of the motion for reconsideration and a show cause order entered on June 16, 2022. It was only at oral argument on June 2, 2023, that appellant’s counsel presented to the Court and the State a copy of the court’s memorandum opinion and order denying reconsideration. Appellant has yet to file the June 16, 2022 show cause order.

³ Appellant acknowledges that he did not object at trial to the State’s entry of a *nolle prosequi* to these charges.

authority vested in a prosecutor to enter a *nolle prosequi* may be fettered in the proper circumstances.”⁴ Appellant’s second argument, first raised in the supplement to the petition for writ of habeas corpus, is that the State lacked probable cause for his indictments. Appellant reasons that, because “the investigation erroneously referenced an allegedly stolen car which ultimately was revealed not to have been stolen,” and the indictment originally included a charge related to vehicle theft, the indictment lacked probable cause. This second argument consists of a single four-sentence paragraph with no citations to legal authority or to the record.

The State moved to dismiss this appeal, arguing that no appeal is allowed from the denial of a petition for writ of habeas corpus where the petition challenges the legality of the conviction. Appellant has not filed any response to the State’s motion to dismiss. We shall grant the State’s motion and dismiss the appeal.

The Supreme Court of Maryland⁵ “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). This Court has identified the four statutes which provide such authorization:

- (1) [Md. Code (2001, 2018 Repl. Vol.) § 9-110 of the Criminal Procedure Article (“CP”)], which authorizes appeals in extradition cases;
- (2) [Md. Code

⁴ We note that *Hook* does not stand for the proposition that an improper *nolle prosequi* of a lesser included charge divests the trial court of subject matter jurisdiction as to the greater offense.

⁵ 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.

(1973, 2020 Repl. Vol.) § 3-707 of the Courts and Judicial Proceedings Article (“CJP”)], 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 in the UPPA,^[6] 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.

Simms v. Shearin, 221 Md. App. 460, 469 (2015) (footnote omitted) (citing *Gluckstern*, 319 Md. at 652–53).

None of the above statutes authorize an appeal of the court’s dismissal of appellant’s habeas petition. This case does not involve extradition as contemplated by CP § 9-110. Nor does it involve the right to bail or allegations of excessive bail under CJP § 3-707. Likewise, CJP § 3-706 is inapplicable because the court denied appellant’s petition for habeas corpus.⁷

This leaves CP § 7-107 as the only possible avenue for appellant’s habeas appeal. Subsection (b) of CP § 7-107 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 or statutory remedy other than this title, a person may not appeal to the [Supreme Court] or the [Appellate Court].

⁶ The Uniform Postconviction Procedure Act, CP §§ 7-101 through 7-301.

⁷ At oral argument, appellant alleged that his habeas corpus petition was supported in part by a constitutional argument, and its denial was appealable on that ground. However, CJP § 3-706 provides for an automatic 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 habeas corpus petition. CJP § 3-706(a) (emphasis added).

(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;^[8] 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.^[9]

(Emphasis added).

In *Simms*, we held that CP § 7-107 authorizes appeals in habeas corpus cases “only when the petitioner challenge[s] the legality of the 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), this Court 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 were not appealable under CP § 7-107.

We conclude that *Simms* and *Green* are controlling and therefore mandate dismissal of this appeal. In his petition for writ of habeas corpus, appellant alleges the trial court committed error by instructing the jury on the robbery charges without also including

⁸ CP § 9-110 allows for habeas corpus petitions to challenge extradition proceedings.

⁹ Title 4 of the Correctional Services Article concerns the Patuxent Institution.

assault and theft instructions,¹⁰ and by proceeding on an indictment that was not supported by probable cause.¹¹ These allegations challenge the legal validity of his conviction, which is expressly precluded by CP § 7-107(b)(2)(ii). Because no statute authorizes an appeal of the denial of appellant's habeas corpus petition in this case, we grant the State's motion to dismiss.¹²

II. Denial of Request for Disclosure of Grand Jury Transcripts Cannot Be Reviewed

Appellant argues that the circuit court erred in denying his motion for disclosure of grand jury transcripts. Appellant alleges that “[d]isclosure of grand jury transcripts is necessary to make a determination as to the basis of the indictment,” and would allow him to better support his second argument in support of his habeas corpus petition. The State articulates numerous reasons why we should decline to consider this issue.

Appellant seeks the grand jury transcripts in his effort to challenge the sufficiency

¹⁰ We reject any contention that the circuit court lacked subject matter jurisdiction based on an allegedly implicit *nolle prosequi* of the assault and theft charges. First, appellant cites no legal authority to support this proposition. Moreover, appellant makes no claim that the court lacked subject matter jurisdiction to adjudicate the remaining handgun charge.

¹¹ Similarly, appellant cites no legal authority in his brief to support his assertion that his “lack of probable cause” claim is cognizable in habeas corpus jurisprudence.

¹² The Supreme Court of Maryland, in *Gluckstern*, 319 Md. at 662, noted that Art. 27, § 645A(e), the predecessor to CP § 7-107, did not restrict appeals of habeas corpus cases “[i]n situations where the [UPPA] did not provide a remedy, and thus was not a substitute for habeas corpus.” In this case, appellant's habeas corpus petition challenging the legality of his conviction falls squarely within the types of challenges covered by the UPPA.

of the indictment. As discussed above, his challenge to the indictment cannot be reviewed in this habeas appeal. Thus, the court's denial of his request for grand jury transcripts is moot.¹³

In summary, because no appeal is available from the denial of appellant's petition for writ of habeas corpus, we shall dismiss the appeal.

**APPEAL DISMISSED. APPELLANT
TO PAY COSTS.**

¹³ The State notes that this Court held in *Causion v. State*, 209 Md. App. 391 (2013), that the denial of a request for grand jury materials is an appealable final order where the request was "not made in conjunction with other pending litigation." *Id.* at 402. In the present case, however, appellant's request for disclosure of grand jury transcripts was inextricably tied to his habeas corpus petition, the denial of which cannot be appealed. We do not reach the issue of whether the denial of a request for grand jury material would be appealable in a different procedural context.