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Garrison v. State

A POST- CONVICTION PETITIONER MAY RECEIVE A BELATED DE NOVO APPEAL WITHOUT PRESENTING EVIDENCE OF ITS LIKELY SUCCESS

By Bryson M. Filbert, III

The Court of Appeals of Maryland held that a post-conviction petitioner has the right to a belated de novo appeal to the circuit court without having to present evidence that the appeal will succeed on its merits. *Garrison v. State*, 350 Md. 128, 711 A.2d 170 (1998). In granting a de novo appeal, the court held that a post-conviction Petitioner has the right to a belated appeal in circuit court if his appeal was denied because of his attorney's incompetence and not from a lack of the Petitioner's due diligence. In so holding, the court recognized the powerful precedential value of the long standing automatic right one has to a first appeal.

William R. Garrison ("Garrison") was convicted in the District Court of Maryland for Baltimore City for assault and several related traffic offenses, and was sentenced to two years incarceration. Upon conviction, Garrison asked his attorney to file an appeal. The attorney agreed, but told Garrison that he could not file the appeal until after sentencing. Garrison, nevertheless, wrote to the Circuit Court for Baltimore City, requesting the appropriate forms needed to file an appeal. Subsequent to his sentencing, Garrison again expressed to his attorney his desire to file an appeal.

Despite Garrison's repeated requests, his attorney failed to

pursue an appeal. Garrison, meanwhile, wrote again to the circuit court requesting the appropriate forms. The court responded, advising Garrison that he needed to file with the district court. Garrison then wrote to the district court to request the proper forms needed to file his appeal, but before the district court could respond, Garrison was transferred to a different correction center. Garrison once more wrote to the district court for the necessary forms, and also requested assistance from the Office of the Public Defender's Post Sentence Assistance Unit. Neither the district court nor the Public Defender's office, however, responded to his requests until after the filing deadline for a timely appeal had passed.

Garrison filed a pro se petition with the circuit court requesting a belated appeal for a trial de novo, alleging that he had been wrongly

denied his right of first appeal. The hearing judge denied his request, holding that Garrison's argument lacked evidence supporting the appeal's likely success. Garrison appealed to the Court of Special Appeals of Maryland, but the Court of Appeals of Maryland granted certiorari *sua sponte*. The main issue before the court was whether a post-conviction petitioner seeking a belated de novo appeal, based on his lawyer's failure to file the requested appeal, needs to present evidence from the district court proceedings that would prove the appeal's likely success.

The court of appeals began its analysis by stating that the circuit court erred when it required the appellant to present evidence from the district court proceedings showing that his appeal was likely to succeed on the merits. *Garrison*, 350 Md. at 135, 711 A.2d at 173. The court, using the support of several Maryland cases and selected Maryland Rules pertaining to requests for de novo appeals, concluded that a post-conviction petitioner is guaranteed an automatic right to appeal a conviction in district court, regardless of the strength of the appeal's merits. *Id.* at 138, 711 A.2d at 174.

The Annotated Code of Maryland dictates that the appeal of a final judgment in the district court "shall be tried de novo." *Id.* at 135, 711 A.2d at 173 (quoting

MD. CODE ANN., CTS. & JUD. PROC. § 12-401(f) (1973 & Supp.1997)). A trial de novo is to be treated as an original circuit court proceeding, allowing evidence to be produced anew for a second time. *Id.* at 136, 711 A.2d at 173-74 (citing *Hardy v. State*, 279 Md. 489, at 494-95, 369 A.2d 1043 (1977); *Huff v. State*, 325 Md. 55, 66, 599 A.2d 428, 433 (1991)). Because of the characteristics of a de novo appeal, the court reasoned, the meritorious aspect of its standing is not relevant. *Id.* at 138, 711 A.2d at 174. The court also noted that “the historical reason most frequently assigned for perpetuating de novo appeals, following the creation of the District Court of Maryland, is to enable persons who could not afford a transcript of the record the opportunity to have adverse judgments rendered by the District Court subject to a second look.” *Id.* at 138, 711 A.2d at 175 (quoting *Huff v. State*, 325 Md. 55, 72, 599 A.2d 428, 436 (1991)).

The court next focused on the right to a belated appeal in circuit court. *Id.* at 138, 711 A.2d at 175. The court determined that although the allowance of belated appeals is generally disfavored, there nevertheless exists no rule which prevents the courts from providing belated appeals as a remedy under the Post Conviction Procedure Act. *Id.* at 139, 711 A.2d at 175 (citing *Wilson v. State*, 284 Md. 664, 672, 399 A.2d 256, 260 (1979); *Waters v. State*, 76 Md. App. 548, 553, 547 A.2d 665, 668

(1988)).

The court reasoned that the instant case presented such a situation where the belated appeal remedy would be appropriate. *Id.* at 139, 711 A.2d at 175. As a matter of Maryland case law, the court pointed out, if a criminal defendant is initially denied an appeal through no fault of his own, he should nevertheless be granted a belated appeal. *Id.* at 139, 711 A.2d at 175. The court recognized that if it can be shown to the court that a defendant has labored diligently and properly to enforce his entitlement to an appeal, exceptions should be made to enforce that defendant's rights under the law. *Id.* The select instances in which belated appeals in criminal cases have been allowed include those in which a defendant's attempt to file a timely direct appeal was frustrated by the actions, or lack thereof, of State officials. *Id.* at 139, 711 A.2d at 175.

The court concluded that Maryland case law supported the petitioner's position in the instant case. The case law establishes the rule that if the applicant did all he could to note an appeal in a timely manner, but was nonetheless prevented from making the appeal effective, he is entitled to a delayed appeal. *Id.* at 141, 711 A.2d at 176 (citing *Coates v. State*, 180 Md. 502, 504 25 A.2d 676 (1942); *Bernard v. Warden*, 187 Md. 273, 182, 49 A.2d 737 (1946)). The court reasoned that because Garrison could show his right to appeal was undoubtedly

hampered by outside forces through no fault of his own, a belated de novo appeal in his favor was warranted. *Id.* at 142-43, 711 A.2d at 177. The court of appeals found that Garrison should not have been denied his automatic right to a first appeal because he used due diligence, and had made all reasonable attempts to file a timely appeal of his conviction. *Id.* at 143, 711 A.2d at 177. In further support thereof, the State offered no evidence to challenge Garrison's claim. *Id.* at 143-44, 711 A.2d at 177.

The court's ruling in *Garrison v. State* represents a victory for those advocating the legal rights of convicted persons. As such, this case will hopefully push Maryland lawyers representing persons in criminal matters to take more seriously and follow through with the appeal requests of their clients. The court's opinion illustrates its appreciation of the consequences resulting from defense attorneys who “blow off” the post-conviction requests of their clients. As a result of this decision, the court has offered some protection from those consequences through its willingness to allow a post-conviction petitioner to receive a belated de novo appeal, under limited circumstances, regardless of its merit or timeliness. As is implicit in the court's opinion, this right is invaluable to defendants because it represents a second chance at freedom. As Judge Cathell stated, “in de novo appeals to the circuit court, the accused normally gets a brand new bite at

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the apple.” *Id.* at 138, 711 A.2d at 175. As this case proves, Maryland courts show no sign of reconsidering the validity of this legal cornerstone.