UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1476

September Term, 2010

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CHARLES ABOKE

v.

STATE OF MARYLAND

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Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

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Opinion by Krauser, C.J.

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Filed: September 9, 2015

After the Circuit Court for Montgomery County denied his petition for a writ of error coram nobis, Charles Aboke, appellant, filed this appeal. Finding no merit to his coram nobis claim that his guilty plea was involuntary, we affirm.

**Background**

An indictment filed on January 4, 2007, charged Aboke with distribution of crack cocaine, a felony offense for which a maximum sentence of twenty years' imprisonment and a $25,000 fine could be imposed. *See* §§ 5-602 & 5-608 of the Criminal Law Article of the Maryland Code (2002 Repl. Vol.). Aboke subsequently entered into a plea agreement with the State in which he agreed to plead guilty to the lesser charge of conspiracy to distribute cocaine, a misdemeanor offense, and, in exchange, the State agreed to recommend a suspended sentence of thirty days' imprisonment and a $500 fine, to be followed by a one-year period of unsupervised probation. The court agreed to impose the recommended sentence.

At the time he entered his aforementioned guilty plea, Aboke was 24 years old and had completed two years of college. Prior to accepting that plea, the court confirmed that he understood the terms of the plea agreement and the rights he would be waiving by pleading guilty. The State then proffered the following facts in support of the plea:

> It was November 28th of 2006. Members of the Montgomery County Police were doing surveillance in the Gaithersburg area. They observed a Cadillac in the Flower Hill area that was driven by Mr. Aboke. They noticed that he pulled over in the area of Mooney Drive and Beachcraft Drive. They noted that he got out of the vehicle and met with four or five individuals off

> the street. Then he got back into his car. They began to follow him. They noticed that his car began to be followed by a red truck. Eventually they pulled over to the side of the road. Mr. Aboke got out, approached the driver's side of the truck, made contact with the driver of the red Ford truck. Both individuals then parted ways. The police believed that a CDS transaction had occurred based on their training and experience. They followed the truck. Talked to the driver of the truck. He indicated that, in fact, he purchased $20 of crack cocaine from the driver of the Cadillac, Mr. Aboke. Mr. Aboke was eventually stopped and searched and was found to be in possession of $135, along with two cell phones. He did have a $20 bill on him, which is consistent with what the buyer said. All events occurred in Montgomery County. That would have been our case had we gone forward to trial.

Immediately following the proffer of facts, defense counsel stated: "Your Honor, we accept a prima facie case." The court then found that there was "a factual basis to accept" the plea and entered a guilty verdict on the reduced charge of conspiracy to distribute cocaine. Then, when Aboke was asked if he would like to address the court before sentence was imposed, he replied: "No, I just want to say thank you. I just want to say thank you." Following that exchange, the court sentenced him, in accordance with the plea agreement, to thirty days' imprisonment (all of which was suspended), a $500 fine, and one year of unsupervised probation. Aboke did not subsequently seek leave to appeal the judgment.

Three years later Aboke appeared in the United States District Court for the District of Maryland and pleaded guilty to possession with intent to distribute cocaine base in violation of U.S.C. § 841. Before sentencing occurred in that case, Aboke filed a petition for writ of error coram nobis in the Montgomery County circuit court, in which he

challenged the validity of his 2007 guilty plea to conspiracy to distribute cocaine and claimed that that conviction would "greatly enhance" his sentence in the federal case.[1]

On August 5, 2010, the circuit court held a hearing on Aboke's petition. He asserted that his guilty plea to conspiracy to distribute cocaine was invalid because he was not advised, on the record of the plea hearing, of the "nature of the charge." Aboke, who had waived his presence at the hearing, supported his claim with the transcript from his plea hearing which purportedly showed that he had not been informed, on the record, of the elements of conspiracy to distribute a controlled dangerous substance.

The State called Aboke's trial counsel, Phillip Armstrong, to rebut that claim. Armstrong, a lawyer with over thirty years experience in the practice of law, testified that he had only a "limited independent recollection" of his representation of Aboke. His testified, in part, as follows:

> [STATE]: [D]o you recall the circumstances leading up to the plea agreement in this case?
>
> * * *
>
> ARMSTRONG: I have no independent recollection of how this plea was negotiated or whose idea it was or who approached whom or whatever.

[1] Because of two prior distribution convictions (including the conviction at issue here), Aboke claimed he was deemed a "career offender" and was facing an enhanced sentence in the federal case. Based on his career offender status, the federal sentencing guidelines at the time were 210 to 262 months of imprisonment. He was sentenced, on September 17, 2010, to prison for a term of 210 months. On December 19, 2012, in accordance with the Fair Sentencing Act of 2010, Aboke was resentenced to a term of imprisonment of 151 months. Absent the 2007 conviction at issue here, he claims his sentencing guidelines would have been 57 to 71 months of imprisonment.

[STATE]: Do you recall discussing the plea offer with Mr. Aboke?

ARMSTRONG: I'm sure I did, but I don't have any independent recollection of it.

* * *

I'm sure I told him what charge he was going to be entering a plea to. I'm sure I told him what the maximum penalty was. This case, and again, I'm telling Your Honor this because I looked at the file.

* * *

This case was a case that was heard on April 12 of 2007, before Judge Weinstein. And my notes show that Damon Bell was the prosecutor. As I'm sure Your Honor knows, that's the disposition docket. And we had previously appeared in court February 9th in front of Judge Harrington and had set trial and motions dates for dates subsequent to April 12th. So I know that either on or before April 12th Mr. Bell and I worked it out for a plea to conspiracy to distribute cocaine.

* * *

If you are asking me whether I, whether I have a specific recollection that I advised him of what the specific elements of the charge were, I don't.

[STATE]: Okay. Is it your practice to discuss the nature of the charges and/or the elements of the crime with clients who are entering guilty pleas?

* * *

ARMSTRONG: It is now, because a case came down where the Court of Appeals said that pleas were deficient if the defendant did not know the specific elements of the offense to which he was pleading guilty. But I can't tell you whether that predated or postdated the date that the plea was entered in this case[.]

* * *

[STATE]: Prior to that decision, did you, was it your practice to advise your client of the nature of the charges to which they were pleading guilty, perhaps not the elements per se, but did you discuss the charges with your clients?

* * *

ARMSTRONG: Of course, I would have to say, yes. I mean, I would never want to walk into court and have one of my people entering a plea with no concept of what they were pleading to.

* * *

So I'm sure, you know, that I told him they're breaking it down to misdemeanor conspiracy, that it's a misdemeanor, that it's not a felony anymore, what the max, I'm sure I told him what the maximum penalty was. But I can't – whether I explained to him what the elements of – a plea to conspiracy were, because I just don't remember.

* * *

[STATE]: Do you recall, was it your practice at the time to discuss the nature of the charges with your client?

* * *

ARMSTRONG: Yes. **I have to tell you that it would be my habit and practice to discuss the nature of what he was pleading guilty with, with him.**

* * *

[STATE]: [A]s a practicing attorney you would have at least attempted to make sure that he understood what he was pleading guilty to?

ARMSTRONG: I have to tell you that, you know, it would shock me if he didn't know that he was entering a plea to what he pled guilty to. Whether he understood it, in terms of what's a conspiracy and the elements were, I can't help you with.

[STATE]: **So you can't say that as a matter of practice you would have discussed with him what a conspiracy to distribute cocaine was?**

ARMSTRONG: **As a matter of habit and practice, I probably would have**. Whether I did so in this case, I honestly can't share with you[.]

(Emphasis added.)

The court found that Aboke's plea "was not involuntary" and, therefore, denied his request for coram nobis relief. In so ruling, the court noted that there was no testimony from

Aboke "that he didn't know what he was doing, didn't know what he was pleading guilty to, and he would not have done it[.]" It further observed that Aboke's trial counsel testified that it was his "habit and practice to discuss the nature of the charge" with a client. A week later Aboke filed this appeal.

**Motion To Dismiss**

In its brief, the State moves to dismiss Aboke's appeal claiming that the appeal was filed prematurely because, although it was filed *after* the court announced on the record its denial of the petition, it was filed *before* the court filed and docketed its written order as required by Rule 15-1207.[2] The State asserts that, given that the Rule requires the court to file an order and a statement of reasons for its decision, the circuit court in this case "could not have intended for its oral ruling from the bench to have been final." Hence, because Aboke did not file a notice of appeal from the written order docketed on September 8th, the

[2] Rule 15-1207 provides:

> (a) *Statement*. The judge shall prepare and file or dictate into the record a statement setting forth separately each ground on which the [coram nobis] petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the ruling.
> (b) *Order of court*. The statement shall include or be accompanied by an order granting or denying the relief. If the order is in favor of the petitioner, the court may provide for rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.
> (c) *Copy to the parties*. A copy of the order shall be filed promptly with the clerk and sent to the petitioner, petitioner's counsel, and the State's Attorney.
> (d) *Finality*. The order constitutes a final judgment when entered by the clerk.

State maintains that this Court has no jurisdiction to consider the matter. But, as explained below, we conclude that the court's oral announcement of its decision was intended to be its final judgment, and that the written order subsequently filed was merely a confirmation of that judgment and, therefore, we deny the State's motion to dismiss the appeal as prematurely filed.[3]

Our review of this issue begins with Rule 8-602(d), which provides:

> A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after entry on the docket.

We have said that this Rule "covers the situation in which a circuit court has made a decision or signed an order that upon being entered on the docket will be a final judgment; but the notice of appeal was prematurely filed, before the entry on the docket." *Doe v. Sovereign Grace Ministries,* 217 Md. 650, 663, *cert. denied,* 440 Md. 116 (2014). In other words, Rule 8-206(d) "saves" an appeal that might otherwise have been filed too soon when it is clear that the court has rendered a final decision and a subsequently filed written order embodying the decision "'is intended to be collateral to the judgment.'" *Bussell v. Bussell*, 194 Md. App. 137, 148-149 (2010) (quoting *Jenkins v. Jenkins,* 112 Md. App. 390, 403

[3] The State also moves to dismiss the appeal on the grounds that, in citing to Maryland cases in his brief, the appellant sometimes cites to the "unofficial reporter" instead of the "official reporter." We decline to dismiss the appeal for that error.

(1996) (further quotation omitted.)). To put it more succinctly, "the judge's intent regarding finality controls." *Id.*

At the conclusion of the August 5, 2010, hearing on Aboke's petition, the court announced its findings and stated that it was "deny[ing] the petition for writ of error coram nobis." It further stated that the reasons for its decision would be "transcribed and placed as part of the record pursuant to Rule 15-1207 as the grounds that support the ruling that is being made here today." Then, on August 12, 2010, Aboke filed a notice of appeal. A month later, on September 8, 2010, the court issued its written order denying the petition "for the reasons stated on the record at the hearing" and directed that the "transcript of the Court's oral ruling of August 5, 2010" be attached to the order and "adopted as the Court's statement of reasons required by Maryland Rule 15-1207(a)."

The circuit court's docket entry for August 5, 2010, in relevant part, states: "Final Disposition (All Issues Resolved). Court (Rupp, J.) Denies Defendant's Petition for Writ of Error Coram Nobis. Order to be Submitted." Thus, the docket entry reflects that the denial of Aboke's request for coram nobis relief was deemed "final" on August 5th. *Sovereign Grace Ministries, supra,* 217 Md. App. at 660 ("A 'final judgment' is a judgment that 'disposes of all claims against all parties and concludes the case.'") (quoting *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 214 (2010)). The written order that followed was merely a confirmation of the court's oral ruling, as evidenced by the fact that the written ruling was identical to the ruling announced in court. In fact, the court's

"statement of reasons" for denying the petition consisted of the transcript of the court's "oral ruling of August 5, 2010." Thus, we are convinced that the court's oral ruling announced at the conclusion of the August 5th coram nobis hearing was intended by the court to be its final judgment. *Bussell, supra,* 194 Md. App. at 150 ("a subsequent order, as contemplated by [Rule 8-602(d)] is one that is confirmatory in nature, following an announcement or decision that was intended at the time of its announcement by the court as the final judgment.") (citations omitted)). Aboke's appeal, therefore, was timely filed.

**Discussion**

Aboke asserts that, because he was not advised, on the record of the plea hearing, of the nature or elements of the crime of conspiracy to distribute a controlled dangerous substance, and because the trial court failed to ascertain that he, in fact, understood the nature of that charge, his guilty plea was not entered knowingly and voluntarily and hence, the *coram nobis* court erred in denying his request for relief. We disagree.

"A petition for writ of error coram nobis is 'an equitable action originating in common law,' and not a belated direct appeal[.]" *Coleman v. State*, 219 Md. App. 339, 354 (2014) (quoting *Moguel v. State*, 184 Md. App. 465, 471 (2009)), *cert. denied,* 441 Md. 667 (2015). It is "*extraordinary relief* designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation where no other remedy exists." *State v. Smith,* ___ Md. ___, No. 47, September 2014, (Watts' slip op. at 37 (filed

July 13, 2015) (emphasis added).[4] As such, a petition for coram nobis should be granted "only under circumstances compelling such action to achieve justice." *United States v. Morgan,* 346 U.S. 502, 511 (1954). Hence, we have observed that "relief that may have been granted upon direct appeal will not necessarily be obtained through a writ of error coram nobis." *Coleman,* 219 Md. App. at 354.

Ordinarily, determination of whether a guilty plea was entered knowingly and voluntarily is based upon the "totality of the circumstances" gleaned solely from the record of the plea proceeding. *State v. Daughtry,* 419 Md. 35, 80 (2011). But when a plea is challenged, frequently years later, in a petition for coram nobis relief, the review is more expansive. *See* Md. Rule 15-1206(a) (a court may hold a hearing on a petition for writ of coram nobis and it "may permit evidence to be presented by affidavit, deposition, oral testimony, or any other manner that the court finds convenient and just."). The "distinction" between a review of a guilty plea on an appeal following conviction and a review of a guilty

[4] The Court of Appeals in *State v. Smith*, ____ Md. ____, No. 47, September Term, 2014 (filed July 13, 2015) addressed two issues. A majority of the Court, in "Part I" of an opinion authored by Chief Judge Barbera, held that the coram nobis petitioner did not waive her coram nobis claims by failing to file an application for leave to appeal her conviction because Section 8-401 of the Criminal Procedure Article of the Md. Code applied retrospectively. Another majority of the Court, in "Part II" of an opinion authored by Judge Watts (and joined by Judges Harrell, Battaglia, and McDonald), held that the coram nobis petitioner's guilty plea was knowingly and voluntarily entered and that her trial counsel's testimony that he had informed her, prior to her entry of the plea, of the nature of the offense to which she was pleading guilty was admissible in a subsequent coram nobis hearing. It is the majority's decision in Part II of the opinion authored by Judge Watts that we cite to and rely upon here.

plea in a coram nobis proceeding "is vital," according to the Court of Appeals, because in a coram nobis case "the **only** issue is whether the defendant understood the nature of the charges – **regardless** of whether the trial court could determine as much." *Smith, supra,* Watts' slip op. at 35 (emphasis in the original). Accordingly, the Court in *Smith* held that the coram nobis court could properly consider trial counsel's testimony that he had advised the petitioner about the nature of the charges against her before she entered the plea. *Id.* at 36. The Court explained:

> [A] lawyer's testimony at a coram nobis hearing concerning having advised a defendant prior to the guilty plea of the nature of the charges against him or her is admissible. Such testimony may be considered in a coram nobis proceeding in determining whether a defendant pled "voluntarily, with understanding of the nature of the charge" within the meaning of Maryland Rule 4-242(c). Coram nobis is extraordinary relief designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation. As such, coram nobis is an equitable remedy that arises when an individual faces circumstances that did not exist at the guilty plea hearing, such as removal or sentencing under the Armed Career Criminal Act see 18 U.S.C. § 924(e), or the Federal Sentencing Guidelines. Matters beyond the scope of the record of the plea hearing are already, by nature of the proceeding, relevant to the trial court at a coram nobis proceeding. And, most importantly, **a coram nobis proceeding's purpose is not to determine based on the record whether the trial court erred at the time of a guilty plea, but instead to determine whether a petitioner indeed knowingly and voluntarily pled guilty.**

*Id.* at 37 (emphasis added).

In the case at bar, Aboke relied solely on the transcript of the plea hearing to support his allegation that he had not been advised of the nature or elements of the offense of conspiracy to distribute a controlled dangerous substance. Notably, he did not testify at the

coram nobis hearing, nor submit an affidavit, that he had, in fact, entered his guilty plea without an understanding of the nature of the charge to which he was pleading guilty. Although his trial counsel could not recall whether he had advised Aboke of the nature of the offense prior to the submission of the plea, counsel did state that "as a matter of habit and practice" he "probably would have."

Nothing in the record indicates that Aboke, who was 24 years old and had completed two years of college, was mentally incapacitated at the time of the plea proceeding, that he lacked a grasp of the English language, or that he was coerced into pleading guilty. In fact, the transcript reflects that he was very grateful for the opportunity to plead to the lesser offense and to receive such a lenient sentence. In short, there is nothing in the record that suggests that Aboke did not understand the nature of the offense to which he pleaded guilty and, therefore, the circuit court was correct in denying him coram nobis relief.

**APPELLEE'S MOTION TO DISMISS DENIED. JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**