

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2087

September Term, 2015

RUSSELL KELSCOE HARDEN

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Nazarian,

JJ.

PER CURIAM

Filed: December 13, 2016

*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.

Russell Kelscoe Harden, appellant, was convicted by a jury, in the Circuit Court for Anne Arundel County, of two counts of first degree murder, two counts of attempted first degree murder, conspiracy to commit first degree murder, and various handgun offenses. In 2013, Harden filed a petition for writ of actual innocence and, in support thereof, provided an affidavit signed by James Watkins, one of Harden’s co-defendants who testified for the State, pursuant to a plea agreement, at Harden’s trial. In that affidavit, Watkins averred that Harden was “an innocent man,” that his trial testimony implicating Harden was “false,” and that he only testified to avoid the death penalty or life in prison.

At the hearing on Harden’s petition, Watkins invoked the Fifth Amendment and refused to testify. The circuit court subsequently denied Harden’s petition, finding that Watkins’ recantation was not credible and that, even if Watkins had not testified at Harden’s trial, there was not a substantial possibility that the verdict would have been different. On appeal, appellant contends that the circuit court erred in denying his petition. For the reasons that follow, we affirm.

Appellant's petition rested entirely on the credibility of Watkins’ affidavit. Assessing that credibility, however, was in “the unfettered domain” of the trial judge and we accept the trial judge’s fact-finding “as historic reality unless it was clearly erroneous.” *Yonga v. State*, 221 Md. App. 45, 95 (2015). Here, the circuit court’s decision to disbelieve Watkins’ affidavit was not clearly erroneous in light of Watkins’ refusal to testify at the hearing on Harden’s petition, its observations of Watkins’ demeanor at that hearing, and the fact that Watkins’ original testimony was corroborated by other evidence that was introduced at Harden’s trial. *Id.* at 96 (noting that a when a trial court is not persuaded by

a witness's testimony, it is "virtually, albeit perhaps not totally, impossible to find reversible error in that regard" (citation omitted)). Consequently, we hold that the circuit court did not abuse its discretion in denying appellant's petition for writ of actual innocence.

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