Circuit Court for Washington County
Case No. 21-K-04-34142

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 213

September Term, 2022

AZANIAH BLANKUMSEE

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 18, 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.

Azaniah Blankumsee, appellant, contends that the Circuit Court for Washington County abused its discretion in denying his petition for writ of actual innocence. For the reasons that follow, we shall affirm the judgment of the circuit court.

We recount some of the pertinent facts from our previous opinions in Mr. Blankumsee's case:

> Mark Snyder, age nineteen, and his thirteen-year-old brother, Andrew Snyder, attended a party at their sister's apartment on the evening of March 13, 2004. Numerous other persons were in attendance at the party, including [Mr. Blankumsee].
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> Terry McKendrick went to sleep at the party; when he awoke, he saw that [Mr. Blankumsee] was pointing a .380 caliber handgun at his face. After fifteen or twenty seconds elapsed, McKendrick, who was scared, sat up and asked [Mr. Blankumsee], "Are you guys cool?" He then asked to see the handgun. Surprisingly, [Mr. Blankumsee] showed it to him.
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> Fifteen to twenty minutes later, more trouble erupted when [Mr. Blankumsee] hit McKendrick in the face with his fists and then struck two of McKendrick's friends. Shortly thereafter, [Mr. Blankumsee], accompanied by some of his cohorts, left the apartment. The police were then called.
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> The police arrived at the party, took pictures, and left. Thereafter, Mark Snyder, accompanied by two friends and his younger brother, Andrew, went to a nearby convenience store to buy food. At the store, Mark Snyder encountered [Mr. Blankumsee] and one Tione Blake . . . . Blake confronted Mark Snyder and angrily said, repeatedly, "Bitch, that's dirty that you called the cops on me."
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> Mark and Andrew Snyder then returned to their sister's apartment. While in the apartment, Israel Martinez and Victor Anderson knocked on the door. When it was opened, they apologized for what [Mr. Blankumsee] had done. They also said that they wanted to talk to Andrew. Andrew left the apartment with Anderson and Martinez and went downstairs with them. Sometime later Andrew was confronted by a group of people, none of whom said anything, except Blake.

> With [Mr. Blankumsee] standing next to Blake, the latter put a gun to Andrew's side and said, "Are you holding?" Andrew put his hands up and said, "I ain't holding nothing." Money (about $8) was then taken out of Andrew Snyder's pocket by Blake . . . . . .
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> Immediately after the robbery, Andrew Snyder returned to his sister's apartment and, while crying, said that he had been robbed by Blake and [Mr. Blankumsee].
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> * * *
>
> Three or four minutes after Andrew Snyder's robbery report, the Snyder brothers and a group of other people who were in the apartment went outside with the goal of getting Andrew's money back from the robbers. Shortly after they emerged from the apartment, the group was confronted by [Mr. Blankumsee], Blake, Anderson, and Martinez. [Mr. Blankumsee] pulled a gun. According to later trial testimony of Andrew Biesecker, who was at the party and was among the group who, post robbery, left the apartment with the Snyder brothers, [Mr. Blankumsee] pointed the pistol at Jonathan Dennis . . . . Biesecker saw a flash from a gun and saw Jonathan Dennis grab his chest and fall. . . . . Other witnesses who testified at trial confirmed that they saw [Mr. Blankumsee] shooting his pistol at the group in which the Snyder brothers and Jonathan Dennis were a part.
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> Jonathan Dennis died as a result of being struck in the chest by a .22 caliber bullet.
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> Police investigators found five .380 cartridge casings at the crime scene and one live unfired .22 caliber round.
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> Four days after Jonathan Dennis was shot, the murder weapon was found in a place where one Tyshawn Jones had hidden it.

Blankumsee v. State, No. 2841, September Term, 2004 (filed August 8, 2006), slip op. at 2-4.

> At trial, the parties stipulated to the testimony of Joseph Kopera of the Maryland State Police Forensic Sciences Division. They stipulated to his credentials and that he was an expert in firearms and toolmark comparison, "a recognized scientific field in which bullets and shell casings can be tested to determine if they have been fired in a specific firearm." They further stipulated to Mr. Kopera's expert opinion that the gun recovered was a

> "functioning firearm that fired the casings recovered and fired the bullets recovered from the apartments."

Blankumsee v. State, No. 672, September Term, 2009 (filed December 7, 2010), slip op. at 1-2.

Following trial, Mr. Blankumsee was convicted by a jury of felony murder, multiple counts of attempted second degree murder, use of a handgun in the commission of a crime of violence, and related offenses. *Id.* at 2. On appeal, this Court reversed the conviction for felony murder, but otherwise affirmed the judgments of the circuit court. *Id.*

"In early 2007, . . . attorneys in the public defender's office discovered that [Mr.] Kopera, . . . who had testified in 'thousands' of criminal cases, including the instant case, had lied in his *curriculum vitae* about having bachelor of science degrees from both the Rochester Institute of Technology and the University of Maryland." *Blankumsee v. State*, No. 1841, September Term, 2012 (filed November 17, 2014), slip op. at 4-5.

> [I]n March 2009, [Mr.] Blankumsee[] filed, pro se, in the Washington County circuit court, a motion for new trial on the basis of newly discovered evidence, pursuant to Maryland Rule 4-331(c). That motion alleged as "newly discovered evidence[]" that [Mr.] Kopera[] had lied about his credentials. After his motion was denied, [Mr.] Blankumsee noted a second appeal to this Court.
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> In our second unreported opinion in the matter, we vacated the circuit court's judgment and remanded the matter, with an instruction to the circuit court to treat [Mr.] Blankumsee's motion for new trial as a petition for writ of actual innocence . . . .
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> * * *
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> In 2012, in response to this Court's order . . . , the circuit court, treating the motion as a petition for writ of actual innocence, held a hearing on the petition and denied it.

Blankumsee, No. 1841, September Term, 2012, at 1-3 (citation omitted). We subsequently affirmed the court's judgment on the ground that Mr. "Blankumsee presumably knew, or should have known, about [Mr.] Kopera's false credentials within the period of time in which he could have filed a [Rule] 4-331(c) motion," and his "failure to prove that he could not have discovered the Kopera evidence within the time proscribed for Rule 4-331(c) motions for new trial[] foreclosed actual innocence relief on that ground alone." *Blankumsee*, No. 1841, September Term, 2012, at 8-9.

On March 12, 2020, Mr. Blankumsee filed another petition for writ of actual innocence, in which he stated, in pertinent part:

> On 3/2/2020, channel five (5) news announced that over 4 thousand cases were being investigated due to recent discovery of Kopera forging his co-workers['] signature[s] on reports, to include: chain of custody and bal[l]istic conclusions[] and vice versa[.]
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> * * *
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> This newly discovered evidence can of course mean that Kopera's reports, conclusions[,] and evidence used to convict [Mr. Blankumsee were] all tainted, inaccurate, and inadmiss[i]ble[.]
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> However, just the allegation of such an injustice requires a new trial, [and] dismissal of any and all evidence handled by Mr. Kopera and his office of employment, at the least[.]
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> * * *
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> Prosecutors during [Mr. Blankumsee's] 3 day trial failed to produce Kopera for cross-examination, so it must be assumed that [he] also forged his name on reports he never examined[,] violating [Mr. Blankumsee's] right to a fair trial.

(Paragraph numbering omitted.) Mr. Blankumsee additionally requested that counsel be appointed for him, and that the court hold a hearing on the petition. Mr. Blankumsee

subsequently filed a supplement to the petition and two additional requests for appointment of counsel.

On March 28, 2022, Mr. Blankumsee appeared before the court, which stated:

> . . . Mr. Blankumsee, I'm going to do this. I brought you in. I could have denied your Petition for Actual Innocence without bringing you in for a hearing. I am going to deny it as a matter of law, but I wanted you to hear it from me because the issues you've raised, this is the third time you've raised them. They've been litigated in this court, they've been filed and denied a second time in this court, they've been reviewed by the [Appellate Court of Maryland], and all times, the [c]ourt has said the same thing that there is . . . not a sufficient showing by you to show by clear and convincing evidence that . . . you should have your case reopened. So because of that, I'm denying the . . . Petition for Writ of Actual Innocence. Adjunct to that, I'm denying your petition to have this [c]ourt appoint an attorney under Rule 4-332, which specifically says that . . . the [c]ourt . . . does not have to appoint an attorney . . . if the [c]ourt denies the petition as a matter of law, which I have already done.
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> * * *
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> So for all those reasons, I'm denying all your motions. Quite frankly[,] I know I can't stop you from filing . . . frivolous motions, but I would certainly hope that they will stop because you've not raised anything new in over a decade, and quite frankly, it's become tiresome.

Mr. Blankumsee contends that, for the following reasons, the court abused its discretion in denying the petition and request for counsel:

- The petition was not "frivolous," because the "newly discovered evidence was brought to [Mr. Blankumsee's] attention on" March 2, 2020, "making it impossible for [him] to have raised and argued that . . . evidence over a decade ago."

- The court failed to "assess[] or allow[]" Mr. Blankumsee "the burden of proving whether he could establish a substantial or significant possibility that had it been known at the time of [his] trial that [Mr.] Kopera was forging signatures on lab reports, the result of . . . trial may have been different."

- "Weighing the effect of newly discovered evidence in an actual innocence proceeding involves substantially the same inquiry as determining prejudice in the

context of an ineffective assistance claim, or assessing whether *Brady* evidence is material."

- "[T]he public defender[']s office never declined to represent" Mr. Blankumsee.

We disagree. Although the issue of whether Mr. Kopera forged his co-workers' signatures on reports is different from the issue raised by Mr. Blankumsee in his first petition for writ of actual innocence, Mr. Blankumsee did not attach to his most recent petition, or to the supplement to the petition, any evidence that Mr. Kopera forged a signature on any reports pertaining to Mr. Blankumsee's case, or that the reports and conclusions submitted by Mr. Kopera in Mr. Blankumsee's case were "tainted" or "inaccurate." Mr. Blankumsee also does not cite any authority that required the court to "assume" that Mr. Kopera forged a signature on a report pertaining to Mr. Blankumsee's case, or award Mr. Blankumsee a new trial on "just the allegation of such an injustice." Also, Rule 4-332(i)(2) states that in an actual innocence proceeding, "the court may appoint counsel" for "a petitioner who has requested the appointment of counsel . . . *unless* . . . the court denies the petition as a matter of law" (emphasis added). Here, the court explicitly denied Mr. Blankumsee's petition as a matter of law. The court was not required to appoint counsel for Mr. Blankumsee and did not abuse its discretion in denying the petition.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.