Circuit Court for Baltimore City
Case Nos: 196338030 & 100350026

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 379 & 490

September Term, 2020

KENNETH ROBINSON

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 1, 2021

Kenneth Robinson appeals from the denial of his petition for writ of error coram nobis, and from his motion for reconsideration of that denial, by the Circuit Court for Baltimore City. For the reasons to be discussed, we shall affirm the judgments.

BACKGROUND

On April 18, 2003, Mr. Robinson appeared in circuit court with counsel[1] and pleaded guilty to possession of cocaine with intent to distribute in case no. 100350026 and admitted to violating conditions of his probation in case no. 196338030.[2] The guilty plea and the violation of probation ("VOP") admission were apparently entered pursuant to a global plea agreement, which included transferring the VOP case from the original sentencing judge to the judge presiding over the CDS charges. The court sentenced Mr. Robinson to seven years' imprisonment for the CDS offense and ordered him to serve, concurrently, seven years of his back-up time for the probation violation. It does not appear that Mr. Robinson sought leave to appeal from either the guilty plea or the violation of probation.

Petition for Coram Nobis Relief

In 2018, Mr. Robinson, representing himself, filed identical petitions for writ of error coram nobis in both cases (the "petition"). In his petition, Mr. Robinson cited

[1] Mr. Robinson was represented by private counsel, Roland Walker.

[2] In case no. 196338030, Mr. Robinson was convicted of conspiracy to commit murder and was sentenced on April 12, 1999 to 15 years' imprisonment, with 12 years, six months, and six days suspended, to be followed by a three-year term of supervised probation. The CDS charges in case no. 100350026 appears to have triggered the violation of probation in the earlier case.

excerpts from a transcript from the April 18, 2003 hearing, but did not attach a copy of the transcript to the petition.

Mr. Robinson asserted that, at the 2003 hearing, "the parties attempted to negotiate a global disposition for the drug offense and the VOP offense," which involved "transferring the VOP matter from Judge Themelis to Judge Heller." That effort, he claimed, was "complicated" by the fact the record connected to the VOP case was stored in the basement of the courthouse and attempts to retrieve it were unsuccessful. As a result, he asserted that the parties relied on certain "assumptions" about the "1996 conviction"[3] underlying the VOP case that he claimed were erroneous. For instance, he maintained that the parties erroneously assumed that the 1999 conviction was for "attempted murder" and given his relatively light sentence, *see* footnote 2, the statement was made (by a speaker he did not identify): "It couldn't have been too bad or I don't think Judge Themelis would have given him the sentence he did." He further claimed that the parties had assumed that the sentence was lenient because he had testified against his codefendants, which he had not. Mr. Robinson alleged that he "was not aware of these misunderstandings of material fact and did not become aware of them until he obtained the transcript of this matter in 2014."

Based on the "misconceptions" about the 1999 conviction and sentence, Mr. Robinson alleged that his attorney had rendered ineffective assistance of counsel in 2003

[3] Mr. Robinson referred to the VOP case as stemming from his "1996 conviction." In fact, the docket entries in case no. 196338030 indicate that he was convicted and sentenced for conspiracy to commit murder in 1999. Hence, we shall refer to the case as the "1999 conviction."

because he had advised him to "plead guilty without verifying the record" from the 1999 conviction. He also maintained that counsel "convincing" him to accept "the global disposition for both the 2003 charge and the pending VOP" under these circumstances was "unreasonable." In short, his grounds for relief centered on his allegation that he "suffered constitutionally ineffective assistance of counsel."

Mr. Robinson also asserted that, because he had served the sentences in these two cases, he had no other remedy to pursue. And he claimed that he could not have sought relief earlier because it wasn't until 2014, when he received the transcript from the 2003 hearing, that he "finally learn[ed] how badly he had been represented by his attorney" because "the misstatements and ineffectiveness occurred during side-bar conferences outside of [his] presence."

Circuit Court Decision

By order entered on March 18, 2020, the circuit court denied Mr. Robinson's request for a writ of error coram nobis, without a hearing.[4] In an accompanying Memorandum Opinion, the court explained its decision. First, the court noted that Mr. Robinson had failed to attach "any portion of any transcript on which he relies, as required by Rule 15-1202." Second, the court concluded that Mr. Robinson had failed to establish that his attorney in the 2003 proceedings had rendered ineffective assistance of counsel as alleged in the petition. The court explained:

[4] Mr. Robinson had filed his petition on September 6, 2018 and the State filed its response on March 5, 2020. The court struck the State's response for "gross untimeliness without permission, justification, or explanation, and on the court's finding of corresponding prejudice to Petitioner."

> Considering the potential outcomes Petitioner faced, the court is not persuaded that trial counsel's performance was deficient for advising Petitioner to plead guilty to the CDS charge without access to the 1999 case file (or verifying details of the 1999 plea through some other means). Had counsel advised Petitioner to plead guilty in the 2003 case outside of a global disposition of both the 2003 charge and the VOP, Petitioner would have risked exposure on the entire unexecuted portion of the sentence in the 1999 matter (about eleven and a half years) plus whatever sentence might have resulted from a guilty plea to the 2003 CDS charge. Had Petitioner elected to go to trial in 2003 and been found guilty, he faced a sentence of up to twenty years (the maximum sentence for possession with intent to distribute a controlled dangerous substance) plus the remaining unexecuted portion of his 1999 sentence upon a finding that he violated his probation. Trial counsel's advice that Petitioner plead guilty to the CDS charge under a global disposition both in theory and materially reduced the risk of an unknown outcome.

The court also found that, even if "the complained-of 'assumptions'" were made by Mr. Robinson's counsel in the 2003 proceeding, "and supposing even further that the outcome of the 2003 plea was affected by these assumptions, such assumptions surely inured to Petitioner's benefit (if at all)." The court observed that, "[b]elief by the 2003 court that in 1999 Petitioner cooperated with the State and that his role in the underlying crime 'couldn't have been too bad' favor Petitioner." In sum, the court concluded that Mr. Robinson had "fail[ed] to demonstrate fundamental error in his conviction."

Moreover, the court noted that Mr. Robinson was not entitled to coram nobis relief because he had failed to allege that he was suffering from any significant collateral consequence as a result of the 2003 conviction and/or the VOP. Mr. Robinson noted an appeal from that ruling and, as discussed below, also moved for reconsideration of the circuit court's decision.

Motion for Reconsideration

On April 6, 2020, Mr. Robinson filed a motion for reconsideration of the court's denial of his petition. First, he noted that he is currently an inmate in a federal prison. With respect to the transcript from the 2003 proceeding, he claimed that he "believed he had actually included a copy of that transcript with his original filing." He then claimed that, when he had "first drafted and filed" the petition for writ of error coram nobis, he was in possession of the transcript, but he then mailed "all of his legal work" home because prison officials were seeking to "'reduce fire hazards' due to excess paperwork retained by inmates" and thereafter, the transcript "and all of his belongings" were lost when his family's home was foreclosed upon. But he attached to his motion five pages from the transcript in support of his petition. (He did not explain why he could not have ordered another copy of the transcript from the court reporter.)

Mr. Robinson also attached "the official docket entries of the 1996 murder charge," which he claimed "raises serious questions not only about that underlying proceeding, but also about what the State's Attorney knew on 4/18/03 when this criminal matter was being resolved." For instance, he asserted that the docket entries reflected a circuit court case number of "196338026," not case no. 196338030. (He had filed one of the petitions for writ of error coram nobis in circuit court case no. 196338030.) And he noted that "a close

examination of that docket entry seems to indicate the matter was dismissed without imposition of any sentences." [5]

Mr. Robinson also asserted that the court's analysis of his coram nobis request was "simply wrong." He claimed that he had "steadfastly maintained his innocence" in the 2003 CDS case and that he had told his attorney that "he wanted to take the case to trial." He alleged, however, that his attorney "was not interested in fulfilling his duty to investigate" and had recruited his mother to "have her tearfully beg her son to plead guilty." And, for the first time, he asserted that "the court and counsel failed to ensure he was properly made aware of all the elements and nature of the offense." He did admit, however, that the court had asked him if counsel had explained the charges to him, to which he had answered in the affirmative.

As for the failure to allege any significant collateral consequences, Mr. Robinson stated—for the first time—that he was serving a federal sentence for "possession to distribute cocaine base" and alleged, in essence, that he had received an enhanced sentence due to the 2003 conviction.

The circuit court summarily denied the motion for reconsideration. Mr. Robinson appeals that decision. The two appeals were consolidated for this Court's review.

[5] As best as we can discern, it appears that case no. 196338026 involved a charge of first-degree murder. Case No. 196338030 included a conviction for conspiracy to commit first-degree murder. Because Mr. Robinson filed his petition in case no. 196338030, the docket entries in 196338026 have no relevance to this case. Moreover, based on the record before us, the 2003 violation of probation occurred in case no. 196338030.

STANDARD OF REVIEW

"Because of the extraordinary nature of a coram nobis remedy, we review a court's decision to grant or deny such a petition for abuse of discretion." *Byrd v. State*, 471 Md. 359, 370 (2020) (quotation marks and citations omitted). "In determining abuse of discretion, however, an appellate court should not disturb the *coram nobis* court's factual findings unless they are clearly erroneous, while legal determinations shall be reviewed *de novo*." *Id*. (quotation marks and citation omitted).

DISCUSSION

On appeal, Mr. Robinson first maintains that the circuit court erred in failing to consider his "reply brief." It appears that he is referring to his motion for reconsideration. The court denied his motion and there is nothing before us to indicate that the court failed to consider it or abused its discretion in denying it.

Next, he asserts that the court's analysis of his claim was "wrong." We disagree. Without the *full* transcript from the 2003 proceeding, Mr. Robinson was unable to substantiate his claim that his counsel had rendered ineffective assistance of counsel. For instance, on appeal he asserts that he, as a defendant, had "the sole right to choose between a trial and a plea deal" and that he "desire[d] to take the matter to trial." Yet, he failed to produce the transcript which would have reflected an examination of him prior to the court's acceptance of the plea and would have indicated the court's finding as to whether his plea was entered knowingly and voluntarily. In other words, he failed to rebut the presumption of regularity that the court accepted the plea only after examining Mr. Robinson and determining that his plea was knowing and voluntary.

Mr. Robinson also asserts that the court failed to recognize that he is suffering a significant collateral consequence as a result of the 2003 conviction, namely, an enhanced sentence in a federal case. He failed, however, to make that allegation in his petition, and raised it for the first time in his motion for reconsideration. Given that the court rejected his claim of ineffectiveness of counsel, the fact that the court denied the motion for reconsideration despite its later knowledge of the collateral consequence allegation is of no moment. In *Jones v. State*, 445 Md. 324, 338 (2015), the Court of Appeals reiterated that a coram nobis petitioner "is entitled to relief . . . if and only if" the petitioner challenges a conviction based on constitutional, jurisdictional, or fundamental grounds; the petitioner rebuts the presumption of regularity that attaches to criminal cases; the petitioner is facing a significant collateral consequence as a result of the challenged conviction; the alleged issue has not been waived or finally litigated; *and* another statutory or common law remedy is not available. In other words, a petitioner must satisfy all five criteria.

Mr. Robinson maintains that "there were fundamental irregularities" associated with his 2003 CDS conviction. For instance, he claims that the charges were originally "dismissed for lack of evidence" but reinstated after "suspect . . . new evidence" became available. And he claims his counsel failed to reasonably investigate the matter. There is nothing in the record before us, however, to indicate that the charges were ever dismissed. And there is nothing in the record before us to substantiate Mr. Robinson's vague and bald allegations that his counsel's representation was constitutionally deficient.

Mr. Robinson also asserts that relief is warranted based on "recent developments" in Baltimore City related to "the sordid history of corrupt police officers and the systemic

racism that pervades law enforcement in America." He admits that "this issue was not originally brought in his 2018" petition, yet he urges this Court to consider it. We decline to do so.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.