

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 447

September Term, 2020

DERRICK MEDLEY

v.

STATE OF MARYLAND

Berger,
Friedman,
Wells

JJ.

Opinion by Friedman, J.

Filed: March 19, 2021

*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.

Appellant Derrick Medley petitioned the Circuit Court for Prince George’s County for a writ of error coram nobis. The circuit court declined to hold a hearing and denied Medley’s application for the writ. Medley noted a timely appeal. We affirm the judgment.

BACKGROUND

In February of 2013, Medley applied for a handgun license.¹ In that application, Medley swore that he had no disqualifying convictions. The background check conducted by the Maryland State Police, however, revealed a 2010 conviction in the District of Columbia that was disqualifying. Medley was charged with one count of False Information/Misstatement on a Firearms Application, one count of perjury, and one count of Carrying a handgun on his person. Medley ultimately pleaded guilty to the crime of providing false information or misstatement in a firearms application pursuant to Section 5-139 of the Public Safety (“PS”) article of the Maryland Code.² He was sentenced to three years of incarceration, all suspended in favor of two years of probation. Medley successfully completed his probation. Six years later, Medley petitioned for a writ of error coram nobis, which was denied without a hearing. Medley appeals, alleging that the circuit court erred in denying his petition.

¹ Both the State and Medley cite February 2013 as the date that Medley filled out the handgun application. In the transcript of the plea hearing, however, the date is stated as October 2003. We cite to February 2013 because that date makes sense with the rest of the timeline and October 2003 does not.

² “A person may not knowingly give false information or make a material misstatement in a firearm application or in an application for a dealer's license.” MD. CODE, PUBLIC SAFETY ART. § 5-139(a).

ANALYSIS

The writ of error coram nobis is an extraordinary remedy and an exception from the general rule of finality of judgments for “convicted person[s], who [are] not incarcerated and not on parole or probation, who [are] suddenly faced with ... significant collateral consequence[s] of [their] conviction[s], and who can legitimately challenge the[ir] conviction[s] on constitutional or fundamental grounds.” *Skok v. State*, 361 Md. 52, 78 (2000). There are five threshold elements that a petitioner must demonstrate:

1. the petitioner challenges a conviction based on constitutional, jurisdictional, or fundamental grounds, whether factual or legal;
2. the petitioner rebuts the presumption of regularity that attaches to the criminal case;
3. the petitioner faces significant collateral consequences from the conviction;
4. the issue as to the alleged error has not been waived or finally litigated in a prior proceeding, absent intervening changes in the applicable law; and
5. the petitioner is not entitled to another statutory or common law remedy (for example, the petitioner cannot be incarcerated in a State prison or on parole or probation, as the petitioner likely could then petition for postconviction relief).

Bodeau v. State, 248 Md. App. 115, 134-35 (2000) (quoting *Jones v. State*, 445 Md. 324, 338 (2015)). Even when a petitioner satisfies each of these five mandatory, threshold requirements, issuance of the writ is not assured, as the court must still determine that issuance of the writ is necessary to achieve justice. *See, e.g., Graves v. State*, 215 Md. App.

339, 348 (2013). Although the trial court rejected Medley’s petition on several grounds,³ we find it necessary to address only the first two: we hold that Medley failed to rebut the presumption that his guilty plea was knowing and voluntary.

After some initial confusion, Medley has settled into a two-prong attack on his guilty plea: that he was not properly advised as to the elements of the crime, and that he received constitutionally ineffective assistance of counsel. We address both claims in turn.

First, Medley alleges that he was not advised of the elements of the crime. It is mandatory that for a guilty plea to be knowing and voluntary, the person pleading guilty must be advised of the elements of the crime. *State v. Daughtry*, 419 Md. 35, 61-62 (2011); *Abrams v. State*, 167 Md. App. 600, 622-23 (2007). This can be accomplished in any of three ways: (1) the defendant can tell the court that the defendant understands or was informed by the attorney of the nature of the charges; (2) the attorney can tell the court that the attorney informed the defendant; or (3) the court can inform the defendant of the charges. *Id.* at 74-75. In an affidavit that accompanied the petition, Medley testified that he met with his attorney, Nikolaos Kourtesis, before entering his guilty plea and that “[d]uring this conversation before the plea, Mr. Kourtesis did not go over the elements of the charge and did not explain anything.” That directly contradicts the transcript of the plea hearing in which the trial court asked Mr. Kourtesis if he had “explain[ed] to the [defendant] what

³ In support of his petition, Medley relies on an unreported decision of this Court that he claims supports his petition. This citation is prohibited by Rule 1-104(a), which states that “[a]n unreported opinion of the ... Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.” Unless and until this Rule is modified, it is improper to cite an unreported opinion for all but the most limited purposes.

the elements of the crime was[,] or in other words, what the State would have to prove?”. And Mr. Kourtesis answered, “Yes, I explained.” In this procedural posture, we are not convinced that the coram nobis judge abused her discretion in finding that Medley’s affidavit was insufficient to overcome the presumption of regularity that attaches to ordinary court proceedings like Medley’s guilty plea.⁴

Second, Medley asserts that Mr. Kourtesis provided him constitutionally ineffective assistance of counsel. It is indisputable that Mr. Kourtesis was at the time of Medley’s guilty plea, suffering from a mental illness that rendered him incapacitated and resulted in his being placed on inactive status by the Court of Appeals. *Attorney Grievance Comm’n v. Kourtesis*, 437 Md. 436 (2014). That finding, however critical of Mr. Kourtesis continuing to represent clients, does not demonstrate that, in Medley’s case, he rendered ineffective assistance of counsel. Rather, Medley must still demonstrate that Mr. Kourtesis’ performance was deficient in this and that he was prejudiced by that deficient performance. *See, e.g., Franklin v. State*, 470 Md. 154, 175-76 (2020). That is, but for the allegedly deficient performance, he would not have pleaded guilty. *See Hill v. Lockhart*, 474 U.S.

⁴ We are reassured in this conclusion, as the coram nobis court was, by this Court’s observation that in considering whether the guilty plea was knowing and voluntary we can and should consider the relative complexity or simplicity of the charge. *Gross v. State*, 186 Md. App. 320, 342 (2009). Although there was some complexity in the determination of whether Medley’s 2009 District of Columbia conviction was disqualifying or not, there is no complexity in the elements of the crime to which Medley was pleading guilty and the elements of which he was to have been advised, PS § 5-139(a), the elements are (1) giving false information or making a material misstatement in (2) a firearm application or application for a dealer’s license. *See also Coleman v. State*, 219 Md. App. 339, 357 (2014) (holding that crime of possession with intent to distribute cocaine is not complicated).

52, 58-59 (1985). Medley asserts three possibilities of deficiency: (1) that Mr. Kourtesis failed to investigate Medley’s 2009 conviction from the District of Columbia; (2) that Mr. Kourtesis failed to advise Medley of the elements of the crime to which he was pleading guilty; and (3) by promising Medley that he would receive a probation before judgment.

None of these is accurate:

- The failure to investigate allegation is unavailing. Mr. Kourtesis represented Medley in the 2009 D.C. conviction, so it is hard to understand what might have been revealed by further investigation. Moreover, further investigation would only have revealed that Medley was guilty of the 2009 conviction and that it was disqualifying under *McCloud v. Dep’t of State Police*, 426 Md. 473 (2012). Further investigation would not have prevented Medley from pleading guilty of the false information charge.
- The failure to advise allegation is equally unavailing. As discussed above, it is not clear that Mr. Kourtesis failed to advise Medley, *supra* at 3, or that failing to advise about a relatively straightforward charge, *supra* at 3-4 n.4, constituted deficient performance. Even if Mr. Kourtesis’ performance was deficient, we fail to see how it prejudiced Medley or would have changed his decision to plead guilty.
- Medley’s final assertion of deficient performance is his claim that Mr. Kourtesis promised Medley that he would receive a probation before judgment and expungement. Other than Medley’s affidavit, however, we find no support in the record for this assertion.⁵ And, even if such a promise was made, there is no allegation that failure to obtain a

⁵ The State’s brief does an excellent job of explaining why the promise of a probation before judgment was extraordinarily unlikely in this case. As the State notes, as a repeat offender, Medley was an unlikely candidate for a probation before judgment. Moreover, as the State also explains, Medley failed to object and, in fact, acquiesced to on-the-record discussions of his plea agreement that omitted discussion of a probation before judgment.

probation before judgment would have prevented Medley from accepting the guilty plea. In fact, all evidence is to the contrary.

We concede, as we must, that Mr. Kourtesis was disabled at the time and should not have been representing clients. That said, there is nothing in this record that suggests that Mr. Kourtesis rendered deficient performance to Medley or that Medley was harmed by Mr. Kourtesis' deficient performance. As such, we hold that the trial judge did not abuse her discretion in finding that Medley failed to rebut the presumption of regularity that attached to his guilty plea.

Having failed to surmount the first two threshold steps for eligibility for a writ of error coram nobis, we see no need to evaluate the other steps.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**