

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0593

September Term, 2014

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CRAIG S. RICHBURG

v.

STATE OF MARYLAND

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Wright,  
Leahy,  
Rodowsky, Lawrence F.  
(Retired, Specially Assigned),

JJ.

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Opinion by: Leahy, J.

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Filed: June 12, 2015

\*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.

In 2009, a jury found Appellant Craig Stephens Richburg guilty of theft for using fraudulently prepared documents to purchase a Land Rover automobile. He served his sentence of one year of incarceration and two years of probation without incident. Appellant now seeks our review of a decision by the Circuit Court for Montgomery County denying his petition for a writ of coram nobis relating to his conviction. In his timely appeal, Appellant asks us to consider whether the circuit court erred in finding that he failed to establish significant consequences resulted from his conviction warranting coram nobis relief.<sup>1</sup> At issue is whether routine consequences of a criminal conviction—such as strained business relationships, potential restrictions from joining professional organizations, and marginal increases in future criminal sentences—constitute significant collateral consequences that warrant coram nobis relief.

We hold that Appellant failed to show that he suffered significant collateral consequences and affirm the judgment of the circuit court.

### **BACKGROUND**

On August 19, 2009, the Circuit Court for Montgomery County sentenced Appellant to five years of incarceration with all but one year suspended, to be followed by two years of probation. In his direct appeal to this Court, Appellant challenged the sufficiency of the

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<sup>1</sup> Appellant presented two questions in his brief:

1. “Whether the Appellant provided sufficient evidence to establish collateral consequences arising from ineffective assistance of counsel claims for purposes of a writ of coram nobis[.]”
2. “Whether the circuit court erred [sic] in granting the State’s motion denying the Appellant[’s] request for a writ of coram nobis[.]”

evidence. He also alleged the circuit court erred by instructing the jury that his witness was a surprise witness, and, he contended the court failed to give an instruction regarding the voluntariness of his statement to the police. We found no merit in Appellant’s allegations of error and issued an unreported decision affirming the judgment and sentence. *Richburg v. State*, No. 1372, Sept. Term 2009 (Md. Ct. Spec. App. 2010). To provide context for the current issue on appeal, we reproduce the facts as described in our prior unreported opinion:

In May 2007, appellant visited Manhattan Imported Cars (“Manhattan”), an automobile dealership located in Montgomery County, Maryland, to purchase a 2007 Range Rover Sport for his travel company, Melat Enterprises, LLC. (“Melat”). Appellant submitted a business credit application to Manhattan on behalf of Melat. The credit application was denied.

Appellant then submitted a business credit application on behalf of Neural Technologies, Inc. (“NTI”). Appellant had previously owned NTI and, at the time of the application, he held the positions of Chairman and Chief Executive Officer of NTI. Appellant was informed that his credit application on behalf of NTI would be granted if he provided an independently audited financial statement for NTI and an NTI bank statement.

Several days later, appellant presented Manhattan with what [was] purported to be an independently audited financial statement and a bank statement for NTI. . . .

After receipt of these documents, Manhattan informed appellant that NTI’s credit application was approved with the additional condition that NTI make a \$10,000 down payment on the vehicle. In order to accomplish this, appellant offered to trade in a [BMW] convertible owned by NTI . . . Pursuant to the trade-in agreement between the appellant and Manhattan, \$10,000 of the equity of the BMW was to be used as the down payment and Manhattan was to pay the remaining \$31,000 to appellant on behalf of NTI.

On May 31, 2007, appellant delivered the BMW to Manhattan and left with the Range Rover. However, at that time, Manhattan did not pay him the \$31,000. For reasons that are not clear from the record, Manhattan subsequently realized that NTI did not have clear title to the BMW. As a result, a representative of Manhattan contacted the Montgomery County Police Department. Shortly thereafter, Manhattan contacted appellant and

arranged for him to return to Manhattan with the Range Rover under the pretense that Manhattan needed to install several upgrades on the vehicle and to deliver appellant the check for the remaining balance of \$31,000.

When appellant arrived at the dealership, he gave the keys to the Range Rover to an undercover Montgomery County police officer posing as a Manhattan employee. Appellant was then approached by Sergeant Sugrue, a detective with the Montgomery County Police Department, who requested that appellant join him in an office to talk about the BMW. Appellant followed Sergeant Sugrue to an office in the dealership located away from other customers. Two other detectives were already in the office.

The detectives identified themselves as police officers. Sergeant Sugrue explained that there appeared to be a problem with the title to the BMW. Appellant asserted that he had clear title to the vehicle. Sergeant Sugrue maintained that there was a problem with the title. At this point, appellant asked if he needed a lawyer. According to Sergeant Sugrue's testimony, he replied "you are free to leave at any point, any time during this conversation. At that point, what he did is he said well, he had a small laptop and he says, well, I can pull up some files to show you and I said, you know, please do." Appellant remained in the room with the officers, answering questions and unsuccessfully attempting to produce files from his laptop.

*Id.*, slip op. at 1-4 (footnotes omitted). The detectives questioned Appellant about the authenticity of the financial statement and audit:

In response to Sergeant[] Sugrue's questions as to whether a financial manager or other person could have given appellant the fraudulent or erroneous documents, appellant responded that NTI is a small company and he knows everything that goes on in his company; appellant held the positions of Chairman and Chief Executive Officer of NTI at the time of the application. . . .

*Id.*, slip op. at 16-17. However, at trial, one of Appellant's defenses was

[T]hat the financial documents pertaining to NTI that were submitted by him to Manhattan, were given to him by NTI's owner, Solomon Gizaw. Appellant asserted that Gizaw was responsible for the false documents. During his case in chief, appellant attempted to call Henry Maeser IV, a business associate who, as a prospective investor, was familiar with NTI and Gizaw. Appellant had not disclosed Maeser as a possible witness in pretrial discovery and the State objected to his testimony. After a hearing outside of the presence of the

jury, the trial court decided to permit Maeser to testify but to instruct the jury that Maeser was a surprise witness.

*Id.*, slip op. at 5.

On July 11, 2012, while still on probation, Appellant filed a petition for post-conviction relief, alleging that he received ineffective assistance of counsel and requesting a new trial. During the pendency of the post-conviction proceedings, Appellant completed his probation. He sought, on August 29, 2012, and was granted on September 5, 2012 (entered September 6, 2012), leave to withdraw his post-conviction appeal and file a petition for a writ of coram nobis.<sup>2</sup> In his coram nobis petition filed on August 30, 2012, Appellant alleged that he received ineffective assistance of counsel at his trial because his trial counsel did not move pretrial to suppress his statements to police, and because when the State objected to inclusion of Maryland Criminal Pattern Jury Instruction 3:18 (instructions for considering the voluntariness of a defendant's statement to police), Appellant's counsel failed to articulate the evidence in the record showing the involuntariness of his statements. Significantly, however, Appellant did not articulate specific collateral consequences to his conviction in his coram nobis petition. The State responded to the petition with filings on December 20, 2012 and August 7, 2013, and argued that the circuit court should deny relief without a hearing because Appellant failed to show significant collateral consequences warranting relief. The circuit court held a hearing on December 4, 2013. At the hearing, Appellant alleged several collateral

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<sup>2</sup> Post-conviction relief is only available to a defendant who is still incarcerated or is on parole or probation. Md. Code (2001, 2008 Repl. Vol.), Criminal Procedure Art. § 7-101.

consequences to his conviction. Because he had not articulated any collateral consequences in his petition, the court adjourned to allow Appellant time to amend his petition and to give the State an opportunity respond.

Appellant submitted a two-page supplement to his petition on December 17, 2013, alleging that “devastating [] reputation[al], professional and social consequences” resulted from his conviction for theft. He asserted that he could no longer pursue professional licensure; that he was subjected to an enhanced penalty in a subsequent 2010 criminal conviction for theft (different from the underlying case here); that he would not be allowed to receive probation before judgment in a prior 2004 criminal assault case; and, that “[t]echnology and internet makes the impact of an error in a conviction more prejudicial.” The State rejoined that Appellant must prove the actual consequences he alleged with regard to his increased sentence, and that the reputational and business consequences he alleged are not the type of consequences that should be considered in Maryland in granting coram nobis relief.

A second hearing was held on February 24, 2014. During the hearing, Appellant was pressed on the collateral consequences he faced as a result of his conviction. He proffered that he lost a substantial business contract after a client discovered his conviction for theft—a claim he had not alleged in his petition. His proffers of other consequences tracked his brief statements in his supplement to the petition, generally alleging: enhanced penalties in a subsequent criminal case; failure to receive probation before judgment in a prior criminal case; and reputational harm from the presence of the conviction on the Internet. Though they expressed skepticism, the State and the court accepted Appellant’s

proffer that these consequences, in fact, existed. The State, however, argued that the consequences, even if proven, did not present the rare circumstances that warranted coram nobis relief.<sup>3</sup>

The court agreed with the State. In denying Appellant’s petition, the court found that the consequences he alleged were routine, not extraordinary; that is, Appellant did not prove that he suffered *significant* collateral consequences flowing from his conviction:

[T]he consequences that [Mr. Richburg] described are those consequences that flow naturally and inevitably from a conviction, particularly a conviction of this nature. They’re not extraordinary consequences within the meaning of coram nobis, which was intended to be an extraordinary remedy, in the Court’s view, to be used in those exceptional cases where there was some very significant consequence that flowed from a conviction that was perhaps unanticipated and unforeseen. And this is clearly not that case.

On February 26, 2014, the circuit court issued an order and statement of reasons in which the court formally denied Appellant’s petition “for failure to show significant collateral consequences warranting the grant of coram nobis relief.”

Appellant filed a motion for reconsideration on March 6, 2014, within 10 days of the entry of the court’s order. After considering the State’s response in opposition, the motion was denied by the court on April 17, 2014 (entered April 22, 2014). Appellant thereafter noted this appeal on May 9, 2014 (entered May 12, 2014).

### **DISCUSSION**

Appellant argues that his criminal proceedings were blighted by constitutional error resulting from the ineffective assistance of his trial counsel and that he suffered significant

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<sup>3</sup> The State did not concede that Appellant suffered ineffective assistance of counsel.

collateral consequences due to his conviction for theft. The State counters that Appellant failed to prove significant collateral consequences, as required for coram nobis relief.<sup>4</sup>

Appellant maintains that he proved four significant collateral consequences to his conviction: (1) potential denial of admission to a state bar, should he decide to pursue admission; (2) the loss of an opportunity to modify a 2004 suspended sentence of one year of incarceration with five years of probation, to a sentence of probation before judgment; (3) the loss of a business contract after a client discovered his conviction; and (4) an enhanced penalty of one day of incarceration in a separate 2010 conviction for theft. As we discuss in detail below, Appellant’s interpretation of “significant collateral consequences” does not conform with the law of coram nobis as enunciated by the Court of Appeals and this Court.

“A petition for writ of error coram nobis is an independent, civil action that a convicted individual, who is neither serving a sentence nor on probation or parole, may bring to collaterally challenge a criminal conviction.” *Smith v. State*, 219 Md. App. 289, 292 (2014) (citing *Skok*, 361 Md. at 65, 80). The writ of coram nobis is available to a person “who is suddenly faced with a significant collateral consequence of his or her

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<sup>4</sup> Presumably because the circuit court decided the case solely on the issue of collateral consequences, the State does not address the issue of ineffective assistance of counsel. Ordinarily, a petitioner must prove an error in the proceeding underlying the conviction that is constitutional, jurisdictional, or fundamental in nature. *Skok v. State*, 361 Md. 52, 78 (2000). Here, neither the State nor the circuit court addressed Appellant’s allegation of ineffective assistance of counsel. Instead, the circuit court dismissed Appellant’s petition because Appellant failed to satisfy the second coram nobis requirement—a showing of significant collateral consequences.

conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds.” *Skok*, 361 Md. at 78.

As a collateral challenge to a criminal conviction, coram nobis is “an ‘extraordinary remedy’ that is justified ‘only under circumstances compelling such action to achieve justice.’” *Graves v. State*, 215 Md. App. 339, 348 (2013) (quoting *Skok*, 361 Md. at 72) (internal citations omitted), *cert. granted*, 437 Md. 637 & *appeal dismissed*, 441 Md. 61 (2014). Circumstances that warrant relief must be compelling enough to rebut “the ‘presumption of regularity’ that ordinarily ‘attaches to the criminal case.’” *Smith*, 219 Md. App. at 292 (quoting *Skok*, 361 Md. at 72). “The burden of demonstrating such circumstances is on the coram nobis petitioner.” *Id.*

To state a cause of action for coram nobis relief, a petitioner must allege:

(1) grounds that are of a “constitutional, jurisdictional or fundamental character,” (2) that he is “suffering or facing significant collateral consequences from the conviction,” (3) that the grounds for challenging the criminal conviction were not waived or finally litigated in a prior proceeding, and (4) that he is not, as a result of the underlying conviction, incarcerated or subject to parole or probation such that he would possess another statutory or common law remedy.

*Id.* (internal citations omitted).

The failure to prove significant collateral consequences is fatal to a petition for a writ of coram nobis. *Smith*, 219 Md. App. at 292 (citing Maryland Rule 15-1202(b)(F); *Skok*, 361 Md. at 79). Significant collateral consequences frequently come in the form of enhanced civil or criminal penalties in future legal proceedings. In the case resuscitating the writ of coram nobis in Maryland, *Skok v. State*, the Court of Appeals referred to consequences warranting relief as “serious,” “significant,” or “substantial.” 361 Md. at 77-

79, 82. In no part of the *Skok* opinion does the Court of Appeals refer to collateral consequences, without qualifying them with words that indicate significance. The collateral consequences suffered must justify the granting of the writ.

Thus, it is no surprise that deportation is considered a significant collateral consequence, nor does it astonish that a 28-month increased sentence is considered a significant collateral consequence. In discussing collateral consequences, the Court of Appeals acknowledged the “proliferation of recidivist statutes throughout the country” and the “recent changes in federal immigration laws, regulations, and administration” that have spurred “a plethora of deportation proceedings against non-citizens based on relatively minor criminal convictions.” *Skok*, 361 Md. at 77. In *Parker v. State*, we held that, in alleging a potential increase of 28 months of incarceration based on federal sentencing guidelines, a petition described significant collateral consequence of his state conviction that warranted consideration of coram nobis relief. 160 Md. App. 672, 687-88 (2005) (noting, however, that on remand, petitioner would have to prove to the circuit court that he actually suffered an increased sentence as a result of his Maryland conviction).

Further, “collateral consequences must be actual, not merely theoretical.” *Graves*, 215 Md. App. at 353 (citing *Parker*, 160 Md. App. at 687-89). A petitioner must do more than allege that he or she *could* face significant collateral consequences; the petitioner must allege that he is *actually* facing those consequences. *Smith*, 219 Md. App. at 292-93 (petitioner failed to state a claim for coram nobis relief where he alleged only “that the conviction be vacated in order to prevent the [p]etitioner from adverse immigration

consequences, . . . [and] did not allege that [he] was actually facing significant collateral consequences”).

In taking the Court of Appeals’s description of the writ at face value, we hold that the consequences must indeed be *actual* and *significant*. Thus, we find no error in the court’s conclusion that the consequences Appellant faced were not significant enough to warrant coram nobis relief. We address each of Appellant’s collateral consequences in turn.

Appellant asserts that he may be denied admission to the bar as a result of his theft conviction if he decided to pursue admission. However, “collateral consequences must be actual, not merely theoretical.” *Graves*, 215 Md. App. at 353. Appellant has the burden of satisfying the requirements of the coram nobis petition, yet he proffered no evidence that he was in the process of applying to any state bar.

Similarly, Appellant asserts a theoretical harm stemming from the instant theft conviction and its relationship with his sentence in a 2004 conviction for assault. According to Appellant, the Circuit Court for Howard County indicated that it would modify his sentence to probation before judgment if Appellant was not involved with the criminal justice system again during his probation. Appellant asserts that this conviction “has prevented [him] from seeking a review and pursuit of the ability to modify the initial ruling to a probation for judgment.” He continues, “[s]hould the Appellant seek the relief as planned, the State will most certainly run a criminal check and see the arrest and

conviction during the 5 year period of post sentencing probation.”<sup>5</sup> Again, Appellant is required to show more than a theoretical harm. By not attempting to modify his sentence to a probation before judgment, he did not allege a concrete harm. Further, coram nobis is applicable when a convicted person “is suddenly faced with a significant collateral consequence of his or her conviction[.]” *Skok*, 361 Md. at 78. Appellant, at the time he was convicted for theft, was well aware of his prior 2004 conviction and the prior court’s requirement that he demonstrate good behavior. Thus, it is doubtful that we would consider Appellant to be “suddenly faced with” this consequence. For the above reasons, he has not suffered a collateral consequence that warrants relief.

Appellant next asserts that he was denied a business contract after a client discovered his conviction. He also asserted, before the circuit court, that he faces serious collateral consequences from this conviction in the form of a tarnished reputation that is exacerbated because the Internet allows negative information to spread quickly and easily. In regard to these arguments, we find the Seventh Circuit’s commentary in *United States v. Bush*, 888 F.2d 1145 (1989), to be instructive. There, the court held that an increased

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<sup>5</sup> Appellant made conflicting statements as to the timing of his options for probation before judgment—i.e., whether he was already denied probation before judgment on the 2004 assault conviction, as he averred to the circuit court, or whether he would in the future be denied it if he chose to seek probation before judgment, as written in his appellate brief. Appellant’s counsel indicated to the circuit court that he was not clear on the specifics of the probation before judgment because he had been preparing the lost contract issue. We will assume that Appellant’s statement in his brief on appeal—that he has not yet requested probation before judgment—is the more accurate statement, given that he has now had time to review the facts.

difficulty in finding employment as a result of a conviction was not a civil disability that could result in a cognizable claim for coram nobis relief. *Id.* at 1149. The court stated:

Bush is under no legal disability of which a court may relieve him. Any obstacle in the path of his preferred career is of private origin. Although the conviction injures his reputation, which in turn reduces his prospects for high-profile employment, the *facts* would remain no matter what a court did. Bush concealed his ownership; Mayor Daley fired him; he was convicted under the law in force at the time (and in force again today). A writ of error *coram nobis* does not rewrite history, could not alter circumstances suggesting to prospective employers that Bush is untrustworthy (or can be embarrassed by his past). Although a court could vacate the judgment of conviction, which might affect the probability that some employers would engage him, it could not absolve Bush of the charge of crime. To say that the jury did not necessarily conclude that in 1973 Bush committed the crime of mail fraud (as the Supreme Court understood that crime in 1987) is not to say that Bush did not commit mail fraud or some other crime in 1973 by concealing his ownership. *Coram nobis* cannot vindicate a defendant; it can only correct the record books.

*Id.*

In accord with this passage are cases cited by the Court of Appeals in announcing the requirement that a petitioner must be facing significant collateral consequences. *Skok*, 361 Md. at 78. These cases refer to significant collateral consequences as adverse *legal* consequences of a conviction. *See, e.g., United States v. National Plastikwear Fashions, Inc.*, 368 F.2d 845, 846 (2d. Cir. 1966) (per curiam), *cert. denied*, 386 U.S. 976 (1967) (petitioner’s “allegations failed to show any outstanding adverse legal consequences from his conviction and one-month sentence . . . , imposed and served nearly twelve years ago, which were necessary . . . to vacate the judgment of conviction even under the liberal scope of *coram nobis* ”); *Petition of Brockmueller*, 374 N.W.2d 135, 137 (S.D. 1985) (“Generally, this extraordinary writ is only available to attack convictions involving

collateral legal disadvantages which survive the satisfaction of a sentence.”) (citation omitted).

In describing the loss of his business contract, Appellant does not allege adverse legal consequences. Even if we grant the writ, he will not be able to escape the numerous public and private records of his conviction that are kept in databases throughout the country, nor would granting the relief change the facts of his conviction as we described them in our unreported opinion issued in 2010 (which is available at the State Law Library in Annapolis).<sup>6</sup> This Court cannot destroy documents that contain facts implying that Appellant committed theft by forgery. Thus, as reasoned by the Seventh Circuit in *Bush*, the loss of employment opportunities, or in this case, business contracts, is not a significant collateral consequence flowing from conviction. 888 F.2d at 1149-50. Instead, it is a consequence of his actions that led to the theft charge and conviction, about which private parties now know. From that, relief we cannot grant.

Finally, Appellant asserts that he received an enhanced sentence in a criminal conviction for theft (separate from the conviction at issue here) for passing a check with insufficient funds. He asserts that he could have received probation before judgment as a

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<sup>6</sup> Additionally, we note that Appellant has two other convictions—an assault conviction and a theft by check conviction. Although he proffered that it was the instant conviction that troubled his business client, the State and the circuit court expressed skepticism that Appellant’s other convictions were not a factor in the client’s decision to terminate its contract. We are similarly doubtful that Appellant’s potential clients would have qualms with only one out of several convictions. However, Appellant’s proffer was accepted, even though the State qualified its acceptance of the proffer “[f]or what it’s worth.” For that reason, we do not discount Appellant’s allegation of this collateral consequence solely because he has a record of other convictions.

first time offender if he had not been convicted in this case. He contends that the judge in the second theft case sentenced him to one day of incarceration after considering his conviction in the instant case.

As discussed *supra*, Maryland requires a showing of *significant* collateral consequences. *See, e.g., Parker*, 160 Md. App. at 687-88 (potential increase of 28 months of incarceration was a significant collateral consequence). Here, Appellant received one day of incarceration. We are aware that any defendant would prefer a probation before judgment to a conviction; nevertheless, Appellant’s single day of incarceration is not a consequence that justifies the use of the extraordinary remedy of *coram nobis*. That is, it is not a significant collateral consequence.

Chief Judge Krauser wrote in *Coleman v. State*,

[W]e are not aware of any Maryland decision mandating that relief be granted in the absence of “circumstances compelling such action to achieve justice.” As the Supreme Court stated in *United States v. Denedo*, 556 U.S. 904, 916 (2009), “judgment finality is not to be lightly cast aside; and courts must be cautious so that the extraordinary remedy of *coram nobis* issues only in extreme cases.”

219 Md. App. 339, 353-54 (2014) *cert. denied*, 441 Md. 667 (2015). This case does not present circumstances that compel the granting of the writ.

**JUDGMENT AFFIRMED.**

**APPELLANT TO PAY COSTS.**