

Circuit Court for Montgomery County
Case No.: 125462C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 826

September Term, 2021

NDOKLEY ENOW

v.

STATE OF MARYLAND

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 25, 2022

*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.

Ndokely Peter Enow, representing himself, filed a petition for writ of actual innocence in the Circuit Court for Montgomery County, which the court denied for failure to state a claim for which relief could be granted. Mr. Enow appeals that ruling. We shall affirm the judgment.

In 2015, Mr. Enow appeared with counsel in the Circuit Court for Montgomery County and, pursuant to a plea agreement with the State, pleaded guilty to solicitation to commit first-degree murder. In accordance with that agreement, the court sentenced Mr. Enow to 40 years' imprisonment, all but 20 years suspended, and to a five-year term of supervised probation upon release.

In 2019, Mr. Enow, representing himself, filed a petition for writ of actual innocence. By order dated February 7, 2020, the circuit court denied relief, without a hearing. This Court affirmed the judgment, noting that Mr. Enow had made a variety of claims attacking his conviction, but none were based on “newly discovered evidence” that was in any way exculpatory. *See Enow v. State*, No. 2649, September Term, 2019 (filed April 2, 2021).

In June 2021, Mr. Enow filed another petition for writ of actual innocence, which the court denied without a hearing by order July 29, 2021. In this appeal, like his previous appeal, Mr. Enow raises a host of questions for our review, most of which are not pertinent to a writ of actual innocence. Rather, Mr. Enow continues to attempt to challenge the validity of his guilty plea and the investigation which led to his arrest. The only issue properly before us in this appeal, however, is whether the court erred in denying relief, and in doing so without a hearing.

“[T]o prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial.” *Smith v. State*, 233 Md. App. 372, 410 (2017). Moreover, “[t]o qualify as ‘newly discovered,’ evidence must not have been discovered, or been discoverable by the exercise of due diligence,” in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnote omitted); *see also* Rule 4-332(d)(6).

“Evidence” in the context of an actual innocence petition means “testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial.” *Hawes v. State*, 216 Md. App. 105, 134 (2014). The requirement that newly discovered evidence “speaks to” the petitioner’s actual innocence “ensures that relief under [the statute] is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, ‘meaning he or she did not commit the crime.’” *Faulkner v. State*, 468 Md. 418, 459-60 (2020) (quoting *Smallwood v. State*, 451 Md. 290, 323 (2017)).

A court may dismiss a petition for actual innocence without a hearing “if the court concludes that the allegations, if proven, could not entitle a petitioner to relief.” *State v. Hunt*, 443 Md. 238, 252 (2015) (quotation marks and citation omitted). *See also* Crim. Proc. § 8-301(e)(2). “[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*.” *Smallwood*, 451 Md. at 308.

Here, Mr. Enow’s petition was not based on any “evidence” that could be deemed “newly discovered” or that even hinted at the possibility he could be innocent. As we

discussed in our prior opinion in his previous appeal, the State’s evidence included a recording of Mr. Enow soliciting an undercover officer, whom he believed was a “hitman,” to kill or seriously maim the mother of his child. Upon his arrest, Mr. Enow admitted to the conversation and that he had given the “hitman” a deposit for the job. Nothing he relied on in his petition for writ of actual innocence in any manner points to his actual innocence. Accordingly, the circuit court did not err in denying relief and in doing so without holding a hearing.

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