Circuit Court for Baltimore City
Case No.: 191155005

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0842

September Term, 2024

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AHMED R. RUCKER

v.

STATE OF MARYLAND

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Berger,
Arthur,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kenney, J.

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Filed: December 5, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On November 14, 1991, a jury in the Circuit Court for Baltimore City found Ahmed R. Rucker, appellant, guilty of first-degree murder, and related offenses for his role in the shooting death of Keith Barlow. On January 24, 1992, the court sentenced him to life imprisonment plus twenty-four years to be served consecutively. On a direct appeal, this Court affirmed his convictions in an unreported *per curiam* opinion. *Rucker & Dorsey v. State*, No. 218, Sept. Term, 1992 (filed November 19, 1992) (*Rucker I*).

During the ensuing decades, appellant's numerous attacks on his convictions and sentences have included two petitions for post-conviction relief, three motions to reopen a closed post-conviction proceeding, and four petitions for a writ of actual innocence. All of his petitions for a writ of actual innocence relate, in one way or another, to the trial testimony of the firearms examiner, Joseph Kopera.[1]

On June 14, 2024, the circuit court, without holding a hearing, dismissed, with prejudice, appellant's fourth petition for a writ of actual innocence. In his timely appeal, appellant, who is self-represented, presents three questions that we have consolidated into one: Did the circuit court err or abuse its discretion in dismissing appellant's fourth petition for a writ of actual innocence without holding a hearing?[2]

[1] A March 9, 2007 newspaper article revealed that Mr. Kopera, who had worked as a firearms examiner for many years and had testified in hundreds of criminal trials in Maryland as a firearm expert for the State, had testified falsely in those trials regarding his academic credentials. Shortly thereafter, Mr. Kopera took his own life.

[2] Appellant presented his questions to us as follows:

1. Whether the lower court improperly dismissed Appellant's Petition For Writ of Actual Innocence, with prejudice, and without a hearing?

(continued…)

For the reasons below, we affirm.

## BACKGROUND

### *Facts of the Offense*

We adopt the following factual background from our prior unreported opinion affirming the circuit court's denial of appellant's second petition for a writ of actual innocence:

> Keith Barlow was found dead on March 13, 1991. He had been shot multiple times with a .22 caliber handgun. Four spent projectiles were recovered from his body.
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> Shortly after the murder, Dorsey and Rucker picked up Dorsey's girlfriend in Barlow's vehicle. They then drove to where Rucker's vehicle was parked, whereupon Rucker and Dorsey took things from the trunk of Barlow's car and placed them in Rucker's car. (At trial, Dorsey admitted that he had been in possession of Barlow's car after the murder, as testified to by several witnesses.)
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> "Some days after the murder," Rucker visited Dorsey and, in the presence of Dorsey's girlfriend, Rucker informed Dorsey that a newspaper article had reported that Barlow's body had been found. *Rucker and Dorsey v. State*, No. 218, September Term, *supra*, slip op. at 5. "Dorsey then blamed Rucker for not having been more adept in covering their tracks." *Id*. On direct appeal, this Court concluded "that Rucker's nonresponse to the blame being heaped upon him qualifie[d] as a tacit admission of his involvement with Dorsey in the murder." *Id*.
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> After the murder, the police wanted to question Rucker, but he could not be located. On May 3, 1991, however, Rucker came to the attention of the police after he himself was shot. In an application for a warrant, the police

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2. Whether the Supreme Court of Maryland's ruling that the Association of Firearms and Toolmark Examiners Theory of ballistics identification is unreliable is properly raised on a Petition For Writ of Actual Innocence?

3. Whether evidence outside of the record and not considered by the jury is improperly considered on a Petition For Writ of Actual Innocence under Md. Code Ann., Crim. Proc. §8-301?

> related that Rucker was shot multiple times in an alley on May 3rd, yet managed to make it to his vehicle and drive himself to a house on Lanvale Street. Upon arriving there, Rucker gave the occupant a .22 caliber handgun and narcotics and told the occupant to hide the items in the basement and then call an ambulance. When the police recovered the gun, a ballistics examination showed that Rucker's handgun had fired the projectiles recovered from Barlow's body.

*Rucker v. State*, No. 1623, Sept. Term, 2016, slip op. at 1-2 (*per curiam*) (filed October 2, 2018) (*Rucker II*).

*Petition for a Writ of Actual Innocence Generally*

Appellant was entitled to file a petition for writ of actual innocence "based on newly discovered evidence." *See* Md. Rule 4-332; Md. Code, Criminal Procedure Article (Crim. Proc.), § 8-301. "Actual innocence" means "the defendant did not commit the crime or offense for which he or she was convicted." *Smallwood v. State*, 451 Md. 290, 313 (2017).

Pertinent to this appeal, the statute provides that the convicted person may file a petition for writ of actual innocence if that person claims that there is newly discovered evidence that "could not have been discovered in time to move for a new trial under Maryland Rule 4-331" and that the evidence "creates a substantial or significant possibility that the result may have been different[.]" Crim. Proc. § 8-301(a)(1)-(2). The statute makes it clear that a "petitioner … has the burden of proof." Crim. Proc. § 8-301(g). Subsection (b) requires that the petition:

> (1) be in writing; (2) state in detail the grounds on which the petition is based; (3) describe the newly discovered evidence; (4) contain or be accompanied by a request for hearing if a hearing is sought; and (5) distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions.

The circuit court is required to hold a hearing on the petition, unless it determines

that the pleading requirements of subsection (b) have not been satisfied, Crim. Proc. § 8-301(e)(1), or that "the petition fails to assert grounds on which relief may be granted." Crim. Proc. § 8-301(e)(2).

To 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). In addition, to qualify as newly discovered evidence, it must not be evidence that was "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* Md. Rule 4-332(d)(6). And it must be evidence that "creates a substantial or significant possibility" that the result "may have been different" at trial had the evidence been available. *Carver v. State*, 482 Md. 469, 490 (2022) (cleaned up). "Evidence" in the context of an actual innocence petition is "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).

*Appellant's Fourth Petition for a Writ of Actual Innocence*

On December 19, 2023, appellant filed his fourth petition for a writ of actual innocence. In it, he claimed having obtained newly discovered evidence that would, according to him, cast doubt on the validity of his convictions. In the petition, he stated that the "newly discovered evidence in this case is the Supreme Court of Maryland's recent

ruling in *Abruquah v. State*," 483 Md. 637 (2023).[3] The *Abruquah* Court, applying the *Daubert-Rochkind* standard, considered the admissibility of firearms identification testimony by an expert witness. Under the holding in *Abruquah*, a firearms expert could, among other things, testify about firearms identification generally, examination of bullets and bullet fragments found at a crime scene, a comparison of that evidence to bullets known to have been fired by a specific firearm, and whether the patterns and markings on the crime scene bullets are consistent or inconsistent with the patterns and markings on the known bullets. *Abruquah*, 483 Md. at 698. But, the expert could not, without qualification, testify that certain bullets were fired from a specific firearm. *Id*.

As noted above, evidence was adduced during appellant's trial that appellant had given a pistol to the occupant of a house on Lanvale Street, and Mr. Kopera, the State's firearms expert, testified that, in his expert opinion, that pistol fired the projectiles recovered from the victim's body.[4] Such testimony, while admissible at appellant's trial in 1991, would not, without qualification, be admissible after *Abruquah*.

[3] In *Rochkind v. Stevenson*, 471 Md. 1 (2020), the Supreme Court of Maryland replaced the *Frye-Reed* standard that Maryland courts had applied to the admissibility of expert testimony, with the standard articulated by the Supreme Court of the United States in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 582 (1993). The *Frye-Reed* standard was derived from two cases, *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), where the standard was first articulated, and *Reed v. State*, 283 Md. 374 (1978), where the Supreme Court of Maryland adopted the *Frye* standard.

[4] Because the transcripts of appellant's 1991 trial are not part of the available appellate record, we have relied on various other documents that are part of the record.

*The Circuit Court's Denial of Appellant's Petition*

The circuit court denied appellant's petition for a writ of actual innocence for two reasons. First, it determined that *Abruquah* represented new law, but not new evidence and that *Abruquah* was not intended to apply "retroactively." Second, the circuit court determined that, *Abruquah* aside, appellant's assertion that the newly discovered evidence would have created a significant or substantial possibility of a different result at trial is barred by *res judicata* because the circuit court had, when ruling on appellant's previous petitions for a writ of actual innocence, twice determined that "excluding Mr. Kopera's testimony altogether would not have created a substantial or significant possibility of a different trial outcome."

**DISCUSSION**

*Standard of Review*

We review the legal sufficiency of a petition for a writ of actual innocence that was denied without a hearing de novo. *State v. Ebb*, 452 Md. 634, 643 (2017) (citing *State v. Hunt*, 443 Md. 238, 247 (2015)). As stated above, a petition for actual innocence may be dismissed without a hearing "if the court concludes that the allegations, if proven, could not entitle a petitioner to relief." *Hunt*, 443 Md. at 252 (quotation marks and citation omitted); *see also* Crim. Proc. § 8-301(e)(2).

*Analysis*

Appellant's argument rests on *Abruquah* qualifying as "newly discovered evidence" under section 8-301 of the Criminal Procedure Article and Md. Rule 4-332(d)(7) as outlined above. We are not persuaded that it does. A legal principle arising out of a judicial

opinion is not "evidence," newly discovered or otherwise. It is not "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*, 216 Md. App. at 134. Without newly discovered evidence, the petition fails.

## CONCLUSION

We hold that appellant's petition for a writ of actual innocence did not describe newly discovered evidence as required by Crim. Proc. § 8-301(b)(3) and Md. Rule 4-332(d)(7). We, therefore, affirm the circuit court's denial of the petition without a hearing pursuant to Crim. Proc. § 8-301(e)(2) and do not need to address the *res judicata* determination.[5]

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.**

[5] But had we done so, we would have found neither error nor an abuse of discretion by the circuit court's *res judicata* determination that appellant could not establish a significant or substantial possibility of a different result of his trial even if *Abruquah* were to qualify as evidence at the time of appellant's 1991 trial.