

Circuit Court for Baltimore County
Case No: 03-K-94-002000

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1006

September Term, 2020

RONALD EDWARD KEIHL

v.

STATE OF MARYLAND

Fader, C.J.,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 31, 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.

In 1994, a jury in the Circuit Court for Baltimore County found Ronald Edward Keihl, appellant, guilty of first-degree murder, robbery with a deadly weapon, and burglary. The court sentenced him to life, plus 30 years' imprisonment. On direct appeal, this Court affirmed the judgments. *Keihl v. State*, No. 955, September Term, 1995 (filed March 6, 1996). In 2020, Mr. Keihl, representing himself, filed a petition for writ of actual innocence in which he alleged that the prosecutor in the case had knowingly presented a witness who committed perjury. The circuit court found that Mr. Keihl “offers no new evidence to support his assertion nor does he specify any new evidence related to the veracity of the witness that was not known prior to trial.” The court also found that Mr. Keihl had raised the same allegation in a petition for post-conviction relief, which was denied. Accordingly, the court dismissed the petition for writ of actual innocence without a hearing. Mr. Keihl appeals that ruling. Because we find no error in the court's decision, we shall affirm the judgment.

Certain convicted persons may file a petition for a writ of actual innocence “based on newly discovered evidence.” *See* Md. Code Ann., Criminal Procedure § 8-301; Md. Rule 4-332. “Actual innocence” means that “the defendant did not commit the crime or offense for which he or she was convicted.” *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

- (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:

(1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]

(2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

(g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

“Thus, 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). 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).

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.

“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*, 451 Md. at 323).

Here, Mr. Keihl’s petition centered on his allegation that the testimony of a cellmate that he (Keihl) had admitted to him that he had committed the crimes and described details related thereto was perjurious and that the prosecutor in the case was aware that the witness’s testimony was untruthful. Mr. Keihl’s bald allegations, however, were not supported by any “evidence,” much less by any information unknown to him at the time of trial or in time to move for a new trial. Accordingly, we hold the circuit court did not err in denying the petition without a hearing.

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