UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1173

September Term, 2013

THOMAS ANTHONY HUBBARD

v.

STATE OF MARYLAND

Krauser, C.J.,
Wright,
Hotten,

JJ.

Opinion by Krauser, C.J.

Filed: October 14, 2015

Thomas Anthony Hubbard appeals from the denial of his petition for a writ of error coram nobis by the Circuit Court for Prince George's County, contending that his 1996 guilty pleas to robbery with a deadly weapon and use of a handgun in the commission of a crime of violence were not entered knowingly and voluntarily and should therefore be vacated. We disagree and, for the reasons that follow, affirm the denial of his coram nobis petition.

BACKGROUND

In 1996, Hubbard pleaded guilty, in the Prince George's County circuit court, to robbery with a deadly weapon and use of a handgun in the commission of a crime of violence. He was thereafter convicted of those offenses and sentenced to a term of twenty years' imprisonment for robbery with a deadly weapon and to a term of five years' imprisonment on the handgun charge. The latter term of imprisonment was to be served concurrently with the former but without the possibility of parole.

Although no application for leave to appeal was subsequently filed by Hubbard challenging the foregoing judgments of conviction, he did file pro se, in 1998, a petition, under the Maryland Uniform Post-conviction Procedure Act, claiming, among other things, that the guilty pleas he had entered, in 1996, were involuntary because the trial court had not explained the charges to him, nor had trial counsel, whereupon the circuit court ordered that a hearing be held to address his claims. Although by then represented by counsel, Hubbard subsequently filed pro se an amended petition, asserting new grounds for his claim that his 1996 guilty pleas were involuntary, namely, that the trial court had failed to inform him that,

if he elected a jury trial, its verdict would have to be unanimous.[1] The circuit court ultimately denied that petition, concluding that, under "the totality of the circumstances," Hubbard's guilty pleas had been entered both "knowingly and voluntarily."

Hubbard thereafter filed an application for leave to appeal from that decision. When that application was denied by this Court, Hubbard proceeded to file pro se three separate motions to re-open his post-conviction proceeding; none of which were granted.

Then, in 2010, Hubbard was indicted, in the United States District Court for the District of Maryland, for interference with commerce by robbery (18 U.S.C. § 1951), for possessing and brandishing a firearm in furtherance of a crime of violence (18 U.S.C. § 924(c)), and for possession of a firearm by a convicted felon (18 U.S.C. § 922(g)(1)). He ultimately pleaded guilty, in 2012, to the first two of those three offenses and was given, as a "Career Offender," an enhanced sentence of 295 months' imprisonment.

In November of that same year, Hubbard filed, in the Prince George's County circuit court, a petition for writ of error coram nobis, alleging that his 1996 guilty pleas had not been entered knowingly and voluntarily, because the trial court, purportedly, failed to adequately inform him of either the jury trial rights he was waiving or the nature of the charges to which he was admitting guilt. As to the "significant collateral consequence" Hubbard must show to qualify for coram nobis relief, he maintained that, as a result of the convictions entered upon those 1996 guilty pleas, he received an enhanced federal sentence. After a hearing, the

[1]Hubbard made additional claims in that amended petition that are not relevant here.

circuit court denied that petition, finding that, "looking at the record as a whole," Hubbard's 1996 guilty pleas were "freely, voluntarily, and intelligently made." This appeal followed.

DISCUSSION

I.

During the pendency of this appeal, the Court of Appeals granted certiorari in *Graves v. State*, 215 Md. App. 339 (2013), which presented the question of whether Criminal Procedure Article ("CP"), § 8-401, that provides—"The failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error coram nobis."—applies retroactively to a coram nobis petition, which was pending on appeal on the effective date of the statute. 437 Md. 637 (2014) (table). Because a decision by the Court of Appeals, in *Graves*, might affect our review of the issues presented by this appeal, we stayed it, pending a resolution of the question raised in *Graves*.

Although the Court of Appeals ultimately dismissed the appeal in *Graves*, it did grant, in the meantime, a writ of certiorari filed in *State v. Smith*, which raised essentially the same issue that was to be addressed in *Graves*, namely, whether CP § 8-401 may be applied retroactively. 439 Md. 327 (2014) (table). We therefore left our stay in place, pending the outcome of *Smith*. And, now that the Court of Appeals has rendered its decision in *State v. Smith*, 443 Md. 572 (2015), we turn to the instant appeal.

II.

Hubbard contends that his 1996 guilty pleas were involuntary, because the trial court failed to adequately apprise him of the rights he was waiving by entering those guilty pleas; and because it failed both to apprise him of the nature of the charges to which he was pleading guilty and to ascertain whether he understood the nature of those offenses. The State responds that Hubbard's claims are barred because they were "finally litigated," having been raised in and decided by a post-conviction court in a prior proceeding, or, in the alternative, because they were waived by Hubbard's prior failure to raise them at his plea hearing or in an application for leave to appeal from the judgments of conviction entered at that hearing. The State further asserts that "the record reflects that Hubbard knowingly and voluntarily waived his right to a trial by jury" at the 1996 plea hearing, given his failure, at the coram nobis hearing, to show that he had been, at the time he pleaded guilty, unaware of the nature of the charges to which he was admitting guilt.

Although we find that Hubbard's coram nobis claims are not barred, at least not for any of the reasons asserted by the State,[2] we conclude nonetheless that Hubbard entered his pleas of guilty knowingly and voluntarily and, consequently, affirm.

[2]The State also asserts, on appeal, that: (1) Hubbard failed to prove his eligibility for coram nobis relief because there was insufficient evidence of his exposure to a "significant collateral consequence" as a result of his 1996 convictions; and (2) Hubbard's coram nobis claims are barred by laches. As Hubbard points out in his reply brief, neither of these arguments was raised in the circuit court, and we shall therefore not address them.

III.

To be eligible for coram nobis relief, a petitioner must be:

> (1) "a convicted person who is not incarcerated and not on parole or probation" as a "result of the challenged conviction";
>
> (2) "who is suddenly faced with a significant collateral consequence of his or her conviction"; and
>
> (3) "who can legitimately challenge the conviction on constitutional or fundamental grounds."

Skok v. State, 361 Md. 52, 78, 80 (2000).

Moreover, the burden of proof in a coram nobis proceeding is on the petitioner. *Id.* at 79. And, not only are "[b]asic principles of waiver . . . applicable to issues raised in coram nobis proceedings," but "where an issue has been finally litigated in a prior proceeding, and there are no intervening changes in the applicable law or controlling case law, the issue may not be relitigated in a coram nobis action." *Skok*, 361 Md. at 79. Indeed, "the same body of law concerning waiver and final litigation of an issue, which is applicable under" the Maryland Uniform Post-conviction Procedure Act, is "applicable to a coram nobis proceeding challenging a criminal conviction." *Id.*

IV.

We are not persuaded by the State's first argument that Hubbard's coram nobis claims are barred because they were "finally litigated" in a prior post-conviction proceeding. The pertinent statutory provision, of the Maryland Uniform Post-conviction Procedure Act, states:

> (a) For the purposes of this title, an allegation of error is finally litigated when:
>
> > (1) **an appellate court of the State decides on the merits of the allegation**:
> >
> > > (i) on direct appeal; or
> >
> > > (ii) on any consideration of an application for leave to appeal filed under § 7-109 of this subtitle; or
> >
> > (2) a court of original jurisdiction, after a full and fair hearing, decides on the merits of the allegation in a petition for a writ of habeas corpus or a writ of error coram nobis, unless the decision on the merits of the petition is clearly erroneous.

Md. Code (2001, 2008 Repl. Vol.), Criminal Procedure Article, § 7-106(a) ("CP") (emphasis added).[3]

In *State v. Hernandez*, 344 Md. 721 (1997), the Court of Appeals, interpreting the statutory predecessor to CP § 7-106(a)(1),[4] which was similar, for our purposes, in all material respects to CP § 7-106(a)(1), held that a summary denial of an application for leave to appeal is insufficient to render a post-conviction claim "finally litigated." *Id.* at 728-29. Hernandez, like Hubbard, pleaded guilty and thereafter sought to challenge the validity of

[3]At the time Hubbard was sentenced, the statutory provisions governing waiver and final litigation of an issue were codified at Art. 27, § 645A(b) through (d). Those provisions are substantially similar to the current ones.

[4]At the time *Hernandez* was decided, a substantially similar provision was codified at Art. 27, § 645A(b).

his guilty plea. Hernandez raised his challenge immediately after the imposition of sentence, by filing an application for leave to appeal, an application that this Court "summarily" denied. *Id.* at 722-23. Thereafter, Hernandez raised the same claim in a post-conviction petition, which was also denied because, in the view of the post-conviction court, that claim had been "finally litigated" within the meaning of the Maryland Uniform Post-conviction Procedure Act. *Id.* at 723.

This Court then granted Hernandez's application for leave to appeal from that ruling, vacated the post-conviction court's order denying relief, and remanded for further proceedings, holding that Hernandez's claim had not been "finally litigated," as no appellate court of this State had ever considered it "on the merits," as required under what was then Article 27, § 645A(b), but what is now CP §7-106(a)(1)(i).[5] *Hernandez v. State*, 108 Md. App. 354 (1996), *aff'd*, 344 Md. 721 (1997). Upon grant of the State's ensuing petition for a writ of certiorari, the Court of Appeals affirmed, holding that, when an application for leave to appeal from a guilty plea is "denied summarily," without addressing the issues raised in that application "with particularity," there has been no decision on the merits of any claim raised in such an application and that, therefore, a claim that has been disposed of in that manner is not "finally litigated." 344 Md. at 725, 728-29.

[5]In 2001, the Maryland Uniform Post-conviction Procedure Act was transferred to the newly created Criminal Procedure Article, but no substantive change to the act was made or contemplated. 2001 Md. Laws, ch. 10.

Although Hubbard's original post-conviction petition was considered on its merits and denied by the post-conviction court, his subsequent application for leave to appeal from that decision was summarily denied. *Hubbard v. State*, No. 823, September Term, 2000 (per curiam) (filed May 1, 2001). Thereafter, Hubbard filed a motion to reopen his closed post-conviction proceeding. When that too was denied, Hubbard filed an application for leave to appeal from that decision. Because the application was untimely, it was dismissed. *Hubbard v. State*, No. 1264, September Term, 2004 (order) (filed Sept. 13, 2004). Finally, Hubbard filed two more motions to reopen, both of which were denied, but he apparently did not file an application for leave to appeal from either of those decisions.

Although the precise procedural path taken here differs from that in *Hernandez*, the two cases share an essential and, we believe, dispositive attribute—in neither case did an appellate court of this State render a decision on the merits of any of the post-conviction claims. Since the statute provides that, for an allegation to be "finally litigated," under the Maryland Uniform Post-conviction Procedure Act, an appellate decision "on the merits of the allegation" is required, regardless of whether that allegation is raised on direct appeal, as in *Hernandez*, under CP §7-106(a)(1)(i), or in an application for leave to appeal from the ruling of a post-conviction court, as here, under CP §7-106(a)(1)(ii), *Hernandez* compels us to conclude that none of Hubbard's post-conviction claims were "finally litigated."

V.

The State next contends that, "to the extent that Hubbard sought to challenge the propriety" of his 1996 convictions "by his coram nobis action," he "waived his claim relating to his criminal proceeding by failing to raise any such claim . . . at his plea hearing or by application for leave to appeal from that proceeding." We disagree.[6]

We shall first address the State's assertion that Hubbard's failure to file an application for leave to appeal from the judgments of conviction entered upon his 1996 guilty pleas should be deemed a waiver, as the Court of Appeals has, during the pendency of this appeal, directly addressed that issue.

With respect to that assertion, we note that the Court of Appeals, in *Skok v. State*, *supra*, 361 Md. at 79, declared that "the same body of law concerning waiver . . . of an issue, which is applicable under" the Maryland Uniform Post-conviction Procedure Act, is "applicable to a coram nobis proceeding challenging a criminal conviction." As for waiver, that act provides:

> (b)(1)(i) Except as provided in subparagraph (ii) of this paragraph, an allegation of error is waived when a petitioner could have made but intelligently and knowingly failed to make the allegation:
>
> 1. before trial;
>
> 2. at trial;

[6]At the time briefs in this case were filed, the parties did not have the guidance of *State v. Smith*, 443 Md. 572 (2015), which was decided during the pendency of this appeal.

> 3. on direct appeal, whether or not the petitioner took an appeal;
>
> 4. in an application for leave to appeal a conviction based on a guilty plea;
>
> 5. in a habeas corpus or coram nobis proceeding began by the petitioner;
>
> 6. in a prior petition under this subtitle; or
>
> 7. in any other proceeding that the petitioner began.
>
> (ii) 1. Failure to make an allegation of error shall be excused if special circumstances exist.
>
> 2. The petitioner has the burden of proving that special circumstances exist.
>
> (2) When a petitioner could have made an allegation of error at a proceeding set forth in paragraph (1)(i) of this subsection but did not make an allegation of error, there is a rebuttable presumption that the petitioner intelligently and knowingly failed to make the allegation.

CP § 7-106(b).

Interpreting that statutory language, the Court of Appeals stated, in *Holmes v. State*, 401 Md. 429 (2007), that if a person pleads guilty and is properly advised that he has the right to apply for leave to appeal within thirty days of sentencing, but thereafter fails to do so, "a rebuttable presumption arises that he has waived the right to challenge his conviction in a subsequent coram nobis proceeding." *Id.* at 446.

In 2012, however, "[i]n an apparent reaction to *Holmes*," *Graves*, *supra*, 215 Md. App. at 348, the Maryland General Assembly enacted a statute,[7] codified at CP § 8-401, which provides: "The failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error coram nobis." That led the Court of Appeals, during the pendency of this appeal, to declare, in *State v. Smith*, *supra*, 443 Md. 572, that this statutory enactment applies retroactively to "all" coram nobis cases pending in a circuit court on October 1, 2012, the date that CP § 8-401 became effective. *Id.* at 595. It therefore went on to hold that, because Smith's coram nobis petition was still pending before the circuit court on that date, her claim was not waived despite her prior failure to file an application for leave to appeal from the judgment entered after her guilty plea. *Id.*

Hubbard is in an even better position than Smith to claim the benefits of this statute, as he filed his coram nobis petition in November 2012, after the effective date of CP § 8-401. Given the Court's holding in *Smith*, it is clear that Hubbard's failure to file an application for leave to appeal from the judgments entered upon his guilty pleas does not, under CP § 8-401, constitute a waiver of his right to seek coram nobis relief.

As for the State's claim that Hubbard's failure "to challenge the propriety" of the convictions entered, at his 1996 guilty plea hearing, should be construed as a waiver, admittedly such a failure, under CP § 7-106(b), does create "a rebuttable presumption" that Hubbard "intelligently and knowingly failed to make the allegation." Nonetheless, given the

[7]2012 Md. Laws, ch. 437.

Court of Appeals' broad interpretation of CP § 8-401 in *Smith*, we decline the State's invitation to apply CP § 7-106(b) to this situation.

In *Smith*, the Court of Appeals declared that it "would eviscerate the beneficent purpose" of CP § 8-401 if it were

> to hold that a person, suddenly faced with the serious collateral consequence of removal from this country, and with "sound reasons for the failure to seek relief earlier [,]" *Skok*, 361 Md. at 73, 760 A.2d 647 (citation omitted), is foreclosed even from *seeking* the extraordinary relief afforded by the common law remedy of coram nobis simply by having failed to pursue an earlier-available avenue of relief, the opportunity for which closed before the reason for seeking such relief became manifest.

Smith, 443 Md. at 609. Putting aside, for the moment, the distinction between the collateral consequence, in the instant case, and that which occurred in *Smith*,[8] a distinction that is not at issue in this appeal, we interpret the above-quoted passage as foreclosing the State's argument. Were it otherwise, then, in all coram nobis cases challenging whether a guilty plea has been entered knowingly and voluntarily, relief would be unavailable except in the rare case where an objection was noted, during the plea colloquy itself. To enforce a presumption of a knowing and voluntary waiver, based upon the mere failure to object during the very

[8]The significant collateral consequence, at issue, was triggered entirely by Hubbard's own subsequent wrongdoing, unlike that suffered by Smith (or, for that matter, Skok). This Court, nonetheless, has held that eligibility for an enhanced sentence for a future crime, if proven to result in an enhanced sentence for that crime, is a significant collateral consequence qualifying a petitioner for coram nobis relief. *Parker v. State*, 160 Md. App. 672, 687-88 (2005).

proceeding at issue, would, as a practical matter, render CP § 8-401 nugatory. We therefore reject the State's assertion that Hubbard waived his coram nobis claims by failing "to challenge the propriety" of the convictions entered at his 1996 guilty plea proceeding.

VI.

Yet, when we turn to the merits of Hubbard's claims, we find that he has failed to carry his burden of proof that his 1996 guilty pleas were not rendered knowingly and voluntarily.

To begin with, Hubbard claims that he did not knowingly and voluntarily[9] enter guilty pleas to the crimes charged because first, the trial court failed to inform him that, had he chosen not to plead guilty and gone to trial, he would have been presumed innocent, and the State would have had to prove his guilt of each of the offenses charged beyond a reasonable doubt. And, second, the trial court failed to inform him, he maintains, of the nature of the charges to which he was pleading guilty.

[9]To be more precise, Hubbard claims that his guilty pleas were involuntary, but it appears that the reasons he asserts relate more to whether he had sufficient knowledge when he rendered his pleas. In an abundance of caution, we shall construe his claims as encompassing both voluntariness and knowledge, as both are constitutionally required in a valid guilty plea. Indeed, the Supreme Court itself appears to have conflated these elements in ascertaining whether a guilty plea comports with due process. *See, e.g.*, *Henderson v. Morgan*, 426 U.S. 637, 645 (1976) (stating that "the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process") (citation and quotation omitted).

A coram nobis proceeding is "an equitable action" and "not a belated direct appeal." *Coleman v. State*, 219 Md. App. 339, 354 (2014) (citation and quotation omitted), *cert. denied*, 441 Md. 667 (2015). Moreover, it is an "extraordinary remedy" that may be granted "only in extreme cases," *United States v. Denedo*, 556 U.S. 904, 916 (2009), and thus "relief that may have been granted upon direct appeal will not necessarily be obtained through a writ of error coram nobis." *Coleman*, 219 Md. App. at 354.

Indeed, a plea colloquy, which does not strictly comply with Maryland Rule 4-242 and might entitle a defendant to relief on direct appeal, is not necessarily sufficient to trigger coram nobis relief. *See, e.g.*, *United States v. Dominguez Benitez*, 542 U.S. 74, 81 & n.6 (2004) (observing that mere violation of Federal Rule of Criminal Procedure 11, the federal counterpart of Rule 4-242, is not "structural" error and that "Rule 11 error without more is not cognizable on collateral review") (citation and quotation omitted); *Smith*, *supra*, 443 Md. at 652-53 (explaining that, in direct appellate review of guilty plea, both correctness of trial court's actions as well as defendant's actual understanding of nature of charges are at issue, whereas in a coram nobis proceeding, only defendant's understanding is at issue). Moreover, unlike review on direct appeal, a court, reviewing a coram nobis petition, may consider extrinsic evidence in determining whether a guilty plea was entered knowingly and voluntarily. *Smith*, *supra*, 443 Md. at 649-54.

In any event, as to whether a guilty plea satisfies the more stringent requirements of Rule 4-242, the Court of Appeals has instructed that

> the required determination can only be made on a case-by-case basis, taking into account the relevant circumstances in their totality as disclosed by the record, including, among other factors, the complexity of the charge, the personal characteristics of the accused, and the factual basis proffered to support the court's acceptance of the plea.

State v. Priet, 289 Md. 267, 288 (1981).

A.

Having specified the appellate lens through which we view Hubbard's claims of a constitutionally infirm plea colloquy, we shall now address the alleged deficiencies, beginning with his claim that he was not adequately apprised of the jury trial rights he was waiving by entering his guilty pleas.

Preceding the acceptance of his 1996 guilty pleas, the trial court ascertained, among other things, that Hubbard could "read, write, and understand the English language"; and that he was not under the influence of "any medication, alcohol or drugs" at that time. It then elicited from Hubbard that he was aware that, because he was already on probation as a consequence of five[10] previous convictions, he faced the possibility of additional incarceration in those cases; and that, in the instant case, he faced the possibility of two twenty-year prison sentences. The following colloquy then took place:

[10]Hubbard's Federal Presentence Report, part of the record in this appeal, indicates that, on July 30, 1991, he pleaded guilty to seven separate armed robberies; the guilty pleas in those cases are not at issue here. Six weeks after Hubbard's 1996 guilty plea, he was found to have violated the terms of his probation in six of those 1991 cases and was sentenced to concurrent terms of ten years' incarceration in each case.

THE COURT: Do you understand that no one can force you to plead guilty?

[HUBBARD]: Yes.

THE COURT: That you have an absolute right to plead not guilty and have a trial?

[HUBBARD]: Yes.

THE COURT: That your right to have a trial means that you have the right to have either a bench trial or a jury trial. Do you understand that?

[HUBBARD]: Yes.

THE COURT: Do you understand that by pleading guilty to robbery with a deadly weapon and use of a handgun in the commission of a crime of violence you're, in effect, giving up your right to have a trial, either a court trial or a jury trial?

[HUBBARD]: Yes, I understand.

THE COURT: Do you give up those rights?

[HUBBARD]: Yes, sir.

THE COURT: In addition to those rights, by pleading guilty you're giving up your right to confront your accusers and to cross examine them by appropriate questions by [defense counsel]. You're giving up your right to call witnesses to testify for you. You're giving up your right to testify in your own defense and you're giving up your right to remain silent. In a trial, if you choose to remain silent, your silence may not be used as evidence of guilt. When you plead guilty, you give up those rights, as well. Do you understand those rights?

[HUBBARD]: Yes, sir.

THE COURT: Do you give those rights up?

> [HUBBARD]: Yes, sir.
>
> THE COURT: In addition to those rights, when you plead guilty, you're giving up your right to challenge the legal sufficiency of the Indictment, giving up your right to challenge the manner in which the State has gathered evidence and you're giving up your automatic right of appeal. Do you understand those rights?
>
> [HUBBARD]: Yes, sir.
>
> THE COURT: Do you give those rights up?
>
> [HUBBARD]: Yes, sir.

The State then made a factual proffer, which the court subsequently found (and Hubbard does not contend otherwise) was sufficient to establish Hubbard's guilt.

The trial court also examined Hubbard as to the voluntariness of his plea:

> THE COURT: Other than the plea agreement, which is a sentence of up to 20 years on Count I, and a sentence of up to 5 years concurrent on Count V, has anyone promised you anything in return for your plea of guilty?
>
> [HUBBARD]: No.
>
> THE COURT: Have you been threatened by anyone to cause[] you to plead guilty?
>
> [HUBBARD]: No.
>
> THE COURT: Are you pleading guilty to robbery with a deadly weapon, Count I, because you are, in fact, guilty of robbery with a deadly weapon and for no other reason?
>
> [HUBBARD]: Yes.

> THE COURT: Are you pleading guilty to use of a handgun in the commission of a crime of violence, Count V, because you are guilty and for no other reason?
>
> [HUBBARD]: Yes.

The trial court then determined that Hubbard's pleas were made "freely, voluntarily and understandably" and accepted those pleas.

In ascertaining whether a defendant has knowingly and voluntarily waived his right to a jury trial (one of the rights waived through a guilty plea and the right specifically implicated by this coram nobis claim), "[t]here is no fixed dialogue that must take place with a defendant" to ensure "a valid outcome," *Boulden v. State*, 414 Md. 284, 295 (2010), and a trial court, prior to accepting such a waiver, need only "satisfy itself that the waiver is not a product of duress or coercion and further that the defendant has some knowledge of the jury trial right." *State v. Hall*, 321 Md. 178, 182-83 (1990). Although, to be sure, it would have been preferable if the trial court had expressly informed Hubbard that, had he elected to stand trial, he would have enjoyed a presumption of innocence, and the State would have been required to prove his guilt of the charged offenses beyond a reasonable doubt, we do not think that those omissions rendered Hubbard's guilty pleas violative of due process.

Indeed, in *Boykin v. Alabama*, 395 U.S. 238 (1969), which Hubbard cites in support of his contention that the trial court's advisements, here, fell short of constitutional requirements, the Court merely stated that, for a guilty plea to pass constitutional muster, it was necessary that the record establish that the defendant knowingly and voluntarily waived

three fundamental rights: (1) "the privilege against compulsory self-incrimination"; (2) "the right to trial by jury"; and (3) "the right to confront one's accusers." *Id.* at 243. Because, in that case, the record was "silent," the Court held that Boykin's guilty plea was "void." *Id.* at 243 & n.5.

But the *Boykin* Court did not specify what the record would have to show to establish that a guilty plea was knowing and voluntary. And, indeed, our own Court of Appeals, observing that *Boykin* "was rendered in the context of a trial record" which was "totally silent" as to "whether the guilty plea was voluntary and intelligent," concluded that that decision "does not stand for the proposition that the due process clause requires state trial courts to specifically enumerate certain rights, or go through any particular litany, before accepting a defendant's guilty plea." *Davis v. State*, 278 Md. 103, 114 (1976). *See also Gross v. State*, 186 Md. App. 320, 351-53 (2009) (rejecting defendant's claim that trial court's failure to advise him of his privilege against compulsory self-incrimination rendered his guilty plea neither knowing nor voluntary).

In the case at bar, the record is far from "silent" as to the trial rights of which Hubbard was advised prior to his waiver of those rights. Simply because the trial court did not engage in a "specific litany" (which itself is not required either constitutionally or by rule, *Priet*, *supra*, 289 Md. at 282), expressly outlining, in detail, particular aspects of the right to a jury trial that he was waiving, does not mean that Hubbard's guilty pleas were not knowing and voluntary. In fact, the trial court explained, at some length, that, by pleading guilty, Hubbard

was waiving "the right to have either a bench trial or a jury trial"; the right to confront his accusers and to cross-examine them through "appropriate questions" by defense counsel; the "right to call witnesses to testify" in his favor; the right to testify in his own defense and the concomitant right to remain silent.

Furthermore, as this case arises, not on direct appeal, but from the denial of a petition for writ of error coram nobis, we may consider evidence extrinsic to the four corners of the guilty plea colloquy in determining whether the pleas at issue were knowing and voluntary, *Smith*, *supra*, 443 Md. at 652-53; *Coleman*, *supra*, 219 Md. App. at 355-56, such as his criminal history. *State v. Daughtry*, 419 Md. 35, 72 (2011) (noting that "the personal characteristics of the accused" are relevant in assessing whether a guilty plea is made knowingly and voluntarily) (quoting *Priet*, 289 Md. at 288). *See also Parren v. State*, 309 Md. 260, 274-75, 282 (1987) (observing that, where defendants' "background, experience and conduct indicated that they were not novices to the criminal justice system," their waivers of counsel may have satisfied requirements of due process, but holding that, on direct appeal, violation of Rule 4-215 rendered those waivers "ineffective"). And that history discloses that, at the time Hubbard entered the guilty pleas at issue, he was already a seven-time recidivist, having pleaded guilty, just five years earlier, to seven counts of the same crime to which he was pleading guilty in 1996, to wit, robbery with a deadly weapon. That factor certainly weighs in favor of a finding that Hubbard's guilty pleas, in 1996, were knowing and voluntary.

Furthermore, and pertinent to the appellate claim that the record does not indicate Hubbard's understanding of the jury trial rights he was waiving by pleading guilty, extrinsic evidence further shows that, on the morning of trial, Hubbard and his trial counsel appeared in court for the express purpose of a jury trial. Upon deciding that the case would be recalled at 1:30 that afternoon for the impanelment of a jury, the court declared a recess. Then, upon reconvening, Hubbard's counsel informed the court that plea negotiations had been successful, that Hubbard would "withdraw his request for jury trial," and that he wished to plead guilty.

These circumstances certainly suggest that Hubbard understood the nature of a jury trial. Indeed, it strains credulity to believe that Hubbard and his counsel would have insisted on a jury trial and been prepared for a jury trial on the very day that he indicated he was going to plead guilty, without Hubbard's counsel having, at some point, discussed with Hubbard his right to a jury trial and the pros and cons of that course of action. And, indeed, the very fact that Hubbard was represented by counsel is, itself, a factor supporting a finding that he had "some knowledge" of his jury trial rights. *Walker v. State*, 406 Md. 369, 382-83 (2008).

Consequently, in light of the "totality of the circumstances" surrounding Hubbard's pleas, *Daughtry*, 419 Md. at 71, we reject his claim that his 1996 guilty pleas were not knowing and voluntary because of the trial court's failure to recite a "specific litany" in advising him of the jury trial rights he was waiving.

B.

We shall now address Hubbard's claim that his guilty pleas were not rendered knowingly and voluntarily because the trial court failed to inform him, during the plea colloquy, of the nature of the charges to which he was pleading guilty.

Immediately after the trial court ascertained that Hubbard could "read, write and understand the English language" during the plea colloquy, the following exchange took place:

> THE COURT: Did you get a copy of the Indictment in this case?
>
> [HUBBARD]: Yes, sir.
>
> THE COURT: Did you go over it with your attorney, . . . ?
>
> (Pause.)
>
> [HUBBARD]: (unintelligible).
>
> THE COURT: All right. You understand what you're charged with?
>
> [HUBBARD]: Yes, sir.

Hubbard, relying upon *Daughtry*, claims that, in the case at bar, "the only hook upon which the State hangs its hat in arguing that" he entered his pleas of guilty knowingly and voluntarily is that he was "represented by counsel" and "discussed the plea with his . . . attorney." *Id.* at 76. In *Daughtry*, the mere fact of being represented by counsel and having "discussed the plea" with counsel was deemed insufficient to satisfy the dictates of

Rule 4-242(c) as well as the relevant constitutional requirements. *Id.* Thus, according to Hubbard, he is entitled to the same relief that Daughtry obtained—vacation of his guilty pleas.

Hubbard's reliance upon *Daughtry* is misplaced. In that case, the trial court merely asked Daughtry, "Have you talked over your plea with your lawyer?," a query to which he responded, "Yes." *Id.* at 44. Because Daughtry's response could be interpreted to mean that he "understood merely the terms of the plea, but not the nature of the charges," the Court held that this "otherwise naked record" was insufficient to support the conclusion that Daughtry's pleas had been entered knowingly and voluntarily. *Id.* at 75.

Analogizing the exchange between court and defendant in *Daughtry* with the above-quoted colloquy here, Hubbard insists that his acknowledgment that he had received a copy of the indictment and that he "understood the named offenses" in it did not "constitute an acknowledgment that he understood the nature of the *charges* to which he was pleading guilty." But here, in contrast with *Daughtry*, the trial court asked Hubbard whether he had "go[ne] over" the indictment with his trial counsel. Although Hubbard's response was unintelligible, the fact that the trial court continued its examination without probing further into Hubbard's unintelligible response strongly suggests that his response was in the affirmative. *See Skok*, *supra*, 361 Md. at 78 (noting that "a presumption of regularity attaches to the criminal case"). And, in fact, the trial court's next question, "You understand what you're charged with?," elicited Hubbard's admission that he did. Hubbard's colloquy

was, to be sure, more detailed than the "naked record" deemed inadequate in *Daughtry*, *id.* at 75, and, more importantly, it did not suffer from the ambiguity that infected the *Daughtry* colloquy, since, here, unlike in *Daughtry*, the colloquy established that Hubbard had discussed, with counsel, the charges and not "merely the terms of the plea." *Id.*

Indeed, the instant case is more like *Gross v. State*, *supra*, 186 Md. App. 320, than *Daughtry*. In *Gross*, the defendant, "in response to questioning by the court," stated on the record that he had "gone over" the charges with his attorney and had discussed with his attorney "the elements of the crime" to which he was pleading guilty. *Id.* at 325. We held that "that representation" was "sufficient to show that the plea was knowingly entered." *Id.* at 351. Here, too, in response to questioning by the trial court, Hubbard acknowledged that he had "go[ne] over" the indictment with his trial counsel and that he understood "what [he was] charged with." Although that question did not expressly contain the word "elements," as did the question asked in *Gross*, we do not think that distinction meaningful, since the Court of Appeals has stated that "no specific litany is required" in ascertaining whether the defendant understands the nature of the charges. *Daughtry*, 419 Md. at 72 n.19.

Moreover, as *Daughtry* and *Priet* instruct, we may, in determining whether a defendant has pleaded guilty with sufficient understanding of the nature of the charges, take into account "the complexity of the charge." *Priet*, 289 Md. at 288; *accord Daughtry*, 419 Md. at 72 (observing that the "nature of some crimes is readily understandable from the crime itself") (quoting *Priet*, 289 Md. at 288). Indeed, the *Priet* Court expressly stated that

the armed robbery charge at issue in that case (one of the same charges at issue here) "was a simple one." *Id.* at 291. As for use of a handgun in the commission of a crime of violence, the *Daughtry* Court suggested that that charge, too, "appears readily understandable from the charge itself." *Daughtry,* 419 Md. at 73 n.20.

Under the "totality of the circumstances," *id.* at 71, we hold that this inquiry, and Hubbard's responses, satisfied not only constitutional requirements but also the additional prophylactic requirements of Maryland Rule 4-242(c), because the record establishes that Hubbard "inform[ed] the trial court that either he underst[ood] personally or was made aware by, or discussed with, his attorney the nature of the changes against him." *Id.* at 74.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.