Circuit Court for Baltimore County
Case No.: C-03-CR-19-003914

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1194

September Term, 2023

TERRENCE EDWARD HAMMOCK

v.

STATE OF MARYLAND

Zic,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 29, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

A jury in the Circuit Court for Baltimore County convicted Terrence Edward Hammock of multiple crimes, including home invasion, robbery with a dangerous weapon, four counts of first-degree assault, use of a firearm in the commission of a felony, and the unlawful taking of a motor vehicle. The court sentenced him to 20 years' imprisonment for home invasion, a concurrent 20 years for use of a firearm in the commission of a felony, four consecutive 20-year sentences for each of the first-degree assaults, and a five-year concurrent term for the motor vehicle offense for a total term of 100 years' imprisonment. The remaining convictions were merged for sentencing purposes. On direct appeal, Mr. Hammock challenged his convictions. This Court affirmed the judgment. *Hammock v. State*, No. 1594, September Term, 2022 (filed April 11, 2024).

In June 2023, Mr. Hammock, representing himself, filed a petition for writ of actual innocence and, separately, a motion to correct an illegal sentence. The circuit court denied both. Mr. Hammock appealed those rulings and challenges them together in this single appeal. For the reasons to be discussed, we shall affirm the judgments.

Writ of Actual Innocence

Certain convicted persons may file a petition for a writ of actual innocence based on "newly discovered evidence." *See* Md. Code Ann., Crim. Proc. § 8-301; Md. Rule 4-332(d)(6). 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]
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> ***
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> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
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> ***
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> (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).

"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.

As grounds for his petition for a writ of actual innocence, Mr. Hammock asserted three things: (1) he had learned, from studying his trial transcripts, that the police investigating the crime had "never demanded or requested" that the stolen vehicle be examined for "DNA or fingerprints"; (2) that at trial, a detective testified that, three days earlier he had received fingerprints of three individuals (two of whom resided at the home where the home invasion took place) but not his prints; and (3) at trial an "eyewitness of the home invasion said she could not identify any of the 3 suspects because her whole house was dark."

The circuit court denied the petition after concluding that Mr. Hammock had "fail[ed] to identify newly discovered evidence." We agree with the circuit court. The "evidence" relied upon by Mr. Hammock does not meet the definition of "newly discovered evidence" because, as he himself acknowledged, it was known to him at the time of trial. Moreover, it does not speak to his actual innocence.

Correction of an Illegal Sentence

Rule 4-345(a) provides that a court "may correct an illegal sentence at any time[,]" but the Rule is very narrow in scope and is "limited to those situations in which the

illegality inheres in the sentence itself[.]" *Chaney v. State*, 397 Md. 460, 466 (2007). An inherently illegal sentence is one in which there "has been no conviction warranting any sentence for the particular offense[,]" *id.*; where "the sentence is not a permitted one for the conviction upon which it was imposed[,]" *id.*; where the sentence exceeded the sentencing terms of a binding plea agreement, *Matthews v. State*, 424 Md. 503, 519 (2012); or where the court "lacked the power or authority" to impose the sentence. *Johnson v. State*, 427 Md. 356, 370 (2012). Notably, however, a "'motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.'" *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)). In other words, "only claims sounding in substantive law, not procedural law, may be raised through a Rule 4-345(a) motion." *Id*. at 728. Appellate court review of the circuit court's ruling on a motion to correct an illegal sentence is *de novo*. *Bratt v. State*, 468 Md. 481, 494 (2020).

In his motion to correct an illegal sentence Mr. Hammock asserted that his sentence is illegal because the sentencing judge did "not exercise discretion"; the judge "did not consider the sentencing guidelines" and "did not write down in any documents the reasons why she went beyond the guideline range"; the judge did not suspend any portion of the sentence and she "did not understand" that she had the "discretion to suspend"; the State did not seek any "sentence enhancements" and yet the "judge still imposed a term of incarceration that significantly exceeded the guidelines"; the judge ignored the fact that the State had calculated the guidelines as 12-90 years and recommended a 50-year

sentence; he did not have the opportunity to "confront and cross examine the State's key witness Andrea Bratcher at a preliminary hearing or during trial"; the court erred in admitting certain evidence; additional charges were added after he was originally charged; the verdict sheet was not signed by any of the jurors; and the *Hicks* date had expired before he was tried. The circuit court summarily denied the motion.

On appeal, Mr. Hammock reiterates many of the arguments he made in the circuit court in support of his motion. We are not persuaded, however, that any of his claims render his sentence inherently illegal. Accordingly, the circuit court did not err in denying his motion.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY DENYING PETITION FOR WRIT OF ACTUAL INNOCENCE AND DENYING MOTION TO CORRECT AN ILLEGAL SENTENCE AFFIRMED. COSTS TO BE PAID BY APPELLANT.