

Circuit Court for Prince George's County  
Case No. CT021208X

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1373

September Term, 2022

---

ANTHONY JEROME MILLS

v.

STATE OF MARYLAND

---

Wells, C.J.,  
Shaw,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: February 27, 2023

\*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

Following a 2007 jury trial in the Circuit Court for Prince George’s County, Anthony Jerome Mills, appellant, was convicted of robbery, second-degree assault, first-degree burglary, third-degree burglary, fourth-degree burglary, and theft of property under \$500.00. In 2022, he filed an amended petition for writ of actual innocence, which the circuit court denied. He now appeals that decision raising two issues, which reduce to one: whether the court erred in denying his petition for writ of actual innocence without a hearing. For the reasons that follow, we shall affirm the judgment.

At trial, the victim testified that the crimes had occurred at her apartment located at 152 Ames Road in Silver Spring. Defense counsel then objected, asserting that the court lacked jurisdiction to hear testimony about what happened in Montgomery County because the case was being tried in Prince George’s County. The court overruled that objection. Officer Michael Rubin subsequently testified that 152 Ames Road was located in Prince George’s County. At the close of the State’s evidence, appellant made a motion for judgment of acquittal based on improper venue, which the trial court denied. On direct appeal, appellant asserted that venue in Prince George’s County had been improper. We held, however, that appellant had waived his venue claim by not raising it prior to trial and that “even if it were permissible to bring up lack of venue during trial, [appellant] would fare no better because, at trial, Officer Rubin’s testimony was uncontradicted that 152 Ames Road is an address located in Prince George’s County.” *Mills v. State*, No. 2585, Sept. Term 2007 (filed Dec. 15, 2008).

Appellant subsequently filed a post-conviction petition wherein he claimed, among other things, that his trial counsel had been ineffective in failing to move to dismiss for

lack of venue prior to trial. Ultimately, the post-conviction court determined that the crimes had occurred in Montgomery County. However, the court nevertheless determined that appellant was not prejudiced because Prince George’s County still had jurisdiction to hear the case, and it was completely speculative whether appellant would have “fared better in Montgomery County” had the case been tried there. Appellant filed an application for leave to appeal which was denied by this Court.

In 2022, appellant filed a petition for writ of actual innocence, wherein he claimed to have recently discovered a June 2007 report written by a “Sergeant Young” to the prosecutor three months before trial (the report). That report indicated that Sergeant Young had twice gone to the 152 Ames Road address to serve the victim with a subpoena before trial. Appellant asserted that this established that both Sergeant Young and the prosecutor “both knew that the . . . burglary crime had occurred in Montgomery County, Maryland” and therefore, that Officer Rubin had lied at trial about the crime having been committed in Prince George’s County. The court denied the petition without a hearing, finding that the report did not contain newly discovered evidence and did not establish that appellant was factually innocent of the charged crimes. This appeal followed.

Certain convicted persons may file a petition for writ of actual innocence “based on newly discovered evidence.” *See* Md. Code Ann., Crim. Proc. § 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). “[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). The burden of proof on a writ for actual innocence is on the petitioner. Crim. Proc. § 8-301(g); Md. Rule 4-332(k). A court “may dismiss a petition [for writ of actual innocence] without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted.” Crim. Proc. § 8-301(e)(2). *See also* Rule 4-332(i)(1). “The standard of review is *de novo* when appellate courts consider the legal sufficiency of a petition for writ of actual innocence that was denied without a hearing.” *State v. Ebb*, 452 Md. 634, 643 (2017).

Here, even if we assume that the report was newly discovered, it does not contain any exculpatory evidence which even hints at the possibility that appellant could be actually innocent of the crimes. *See Faulkner v. State*, 468 Md. 418, 459-60 (2020) (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.’” (quoting *Smallwood*, 451 Md. at 323)). As an initial matter, the report does not demonstrate, as appellant claims, that Sergeant Young, or anyone else on the prosecution team, knew that the victim’s address was actually located in Montgomery County. At most, it shows that Sergeant Young had been to that address prior to trial. More importantly, the fact that the offenses occurred in Montgomery County, rather than in Prince George’s County where appellant was tried, does not speak to appellant’s factual innocence. Rather, improper venue is a procedural claim that is subject to waiver if not raised in a timely pre-trial motion. *Smith v. State*, 116 Md. App. 43, 53 (1997). And to grant a petition for writ of actual innocence it is not “enough that the newly discovered evidence expose procedural

flaws in the trial[.]” *Yonga v. State*, 221 Md. App. 45, 57 (2015). Consequently, the court did not err in dismissing appellant’s petition for writ of actual innocence without a hearing.

**JUDGMENT OF THE CIRCUIT  
COURT FOR PRINCE GEORGE’S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**