UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1727

September Term, 2011

TYRONE ANTHONY JOHNSON

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: October 21, 2015

After the Circuit Court for Prince George's County denied his petition for a writ of error coram nobis, Tyrone Johnson, appellant, filed this appeal. For the reasons that follow, we affirm.[1]

Background

Plea Hearing

In 1998, Johnson was charged in a twelve-count indictment with multiple counts of robbery, conspiracy to commit robbery, first and second-degree assault, reckless endangerment, malicious destruction of property, and theft of property having a value less than $300. Pursuant to a subsequent plea agreement with the State, Johnson appeared in court on August 17, 1998, and pleaded guilty to one count of robbery. Before that plea was entered, the plea terms were discussed with the court, including the State's agreement to recommend a five-year term of imprisonment, with all but two years suspended. The court then inquired about the "probable cause" for the offense and the following exchange between court and council occurred:

> [THE STATE]: Well, Your Honor, if this matter had gone to trial, the State would prove beyond a reasonable doubt that on February 27th, 1998, the victim in this case was delivering an order of food and the Defendant in this case, along with two co-defendants, approached him, reached into his car and tried to snatch his food. When the victim resisted - - I'm sorry, Your Honor - -

[1] This appeal had been stayed pending the Court of Appeals' decision in *Kerryann Smith v. State*, No. 47, September Term, 2014. The Court of Appeals filed its decision in the *Smith* case, reported at 443 Md. 572, on July 13, 2015.

THE COURT: What's this, like a pizza delivery?

[THE STATE]: Yeah.

[DEFENSE COUNSEL]: That is correct, Your Honor.

[THE STATE]: Yeah, they call it the pizza delivery guy. And the Defendant began punching the victim. They took his pizza. He received minor bruises, Your Honor, and they turned themselves in on February 27th 1998, and we could have proven all these matters beyond a reasonable doubt.

The court discussed with the parties the State's sentencing recommendation, during which the prosecutor noted that Johnson was also facing a violation of probation, and the possible imposition of five years "back up" time, in an unrelated case where Johnson had been convicted of robbery with a deadly weapon. The court then agreed to bind itself to the State's sentencing recommendation in this case, with the understanding that the sentence to be imposed would run consecutive to any outstanding sentence. After defense counsel conferred with Johnson, the court was advised that Johnson still wished to proceed with the plea.

Johnson, who was twenty-years old at the time, had completed the 11th grade (and had obtained his GED), indicated that he understood the rights he would be waiving by pleading guilty. He responded in the affirmative when asked if he had "a full understanding of these proceedings and what's going on here today" and further stated that he did not have any unanswered questions.

When asked by court if he was pleading guilty to "robbing a pizza delivery person," Johnson replied "yes." He claimed, however, that he was entering an *Alford* plea, not because he was in fact guilty, but because he believed that there was enough evidence to convict him.[2] Finding that there was "probable cause" to support the verdict "on the circumstances that the State's Attorney has read into the evidence," the court accepted his *Alford* plea and thereafter sentenced Johnson to five years of imprisonment, with all but two years of that sentence suspended, to be followed by three years of supervised probation.

Coram Nobis Proceeding

Thirteen years later, Johnson filed a petition for writ of error coram nobis in the circuit court claiming that his *Alford* plea was not entered knowingly and voluntarily and that he was now facing an enhanced sentence for controlled dangerous substances and firearm offenses in the United States District Court for the District of Maryland, based, in part, on his 1998 state robbery conviction.

At the hearing on the petition, no witnesses testified. But Johnson's counsel argued, among other things, that the plea hearing transcript was devoid of any indication that Johnson had been advised of the nature of the robbery offense and, moreover, that a "factual

[2] An *Alford* plea, derived from *North Carolina v. Alford*, 400 U.S. 25 (1970), "'is a guilty plea containing a protestation of innocence.'" *Williamson v. State,* 413 Md.521, 526 (2010) (quoting *Marshall v. State*, 346 Md. 186, 189 n. 2 (1997)). *See also* Md. Rule 4-242(c) (court may accept a plea of guilty even though defendant does not admit guilt).

predicate" to support the plea was "not really" presented. The State responded with a "stipulation" that Johnson's trial counsel, Douglas Jefferson, would have testified that, although he could not recall the specifics of this case, it was his practice to review the "charges and the facts" with his clients.[3]

The court accepted the stipulation and found that, based on it and on the totality of the circumstances, including the description of the crime given at the plea hearing, Johnson understood the nature of the offense to which he was pleading and that his plea was validly entered. Accordingly, the court denied the request for coram nobis relief.

Discussion

Coram Nobis Relief

A petition for writ of error coram nobis is an independent, civil action by which an individual collaterally challenges a criminal conviction. *Skok v. State,* 361 Md. 52, 65 (2000). It is an equitable remedy reserved for those who are not incarcerated, on parole, or on probation; are faced with a "significant collateral consequence" of their convictions; "can legitimately challenge the conviction[s] on constitutional or fundamental grounds"; and do not have another statutory or common law remedy available to them. *Id.* at 78-80. Coram nobis relief is an "'extraordinary remedy'" available in "'compelling' circumstances" where

[3] It appears that, prior to the start of the hearing, the parties had agreed to stipulate that Jefferson would have testified as indicated, but Johnson's *coram nobis* counsel objected when the State submitted the stipulation.

a petitioner rebuts the "presumption of regularity that attaches to criminal cases." *Id*. at 72, 78 (quoting *United States v. Morgan,* 346 U.S. 502, 511(1954)). As we said in *Coleman v. State*, 219 Md. App. 339 (2014), *cert. denied*, 441 Md. 667 (2015), it is "not a belated appeal" and "relief that may have been granted upon direct appeal will not necessarily be obtained through a writ of error coram nobis." *Id.* at 354.

Analysis

Johnson asserts that the circuit court erred in denying his petition because his *Alford* plea was involuntarily entered due to the trial court's failure to apprise him of the nature of the robbery offense. We disagree.

In *State v. Daughtry*, 419 Md. 35 (2011), the Court of Appeals reiterated that, "in determining whether a guilty plea" was entered with an understanding of the nature of the offense, we apply the "totality of the circumstances" test. *Id.* 71. In doing so, we may consider, 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.'" *Id.* at 72 (quoting *State v. Priet*, 289 Md. 267, 277 (1981)).

With regard to the complexity of the charge, the Court observed that the "'nature of some crimes is readily understandable from the crime itself.'" *Id.* (quoting *Priet* at 277). Robbery is certainly one such crime. Moreover, Johnson was twenty years old at the time of the plea proceeding, he had completed the eleventh grade and had obtained his GED, and he had a prior conviction for robbery with a deadly weapon.

In addition, the court accepted the stipulation that Johnson's trial counsel would have testified that it was his practice to review charges with his client before a plea was entered. *See State v. Smith*, 443 Md. 572 (2015) (per curiam) (A coram nobis court may consider testimony and evidence outside the record of the plea hearing itself when determining whether a guilty plea was entered knowingly and voluntarily, including defense counsel's testimony that the defendant was properly advised of the nature of the crime). Accordingly, we hold that the coram nobis court did not err in concluding that Johnson was aware of the nature of the offense when he entered his *Alford* plea to robbery.

Johnson also maintains that his plea was defective because the trial court failed to ascertain a factual basis in support of it. And he notes that the trial court did not announce on the record that it had found a factual basis for the plea as required by Rule 4-242(c). We find no merit in this contention.

When Johnson entered his plea in 1998, the Rule provided:

> **Plea of guilty.** The court may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

Rule 4-242(c) (Md. Rules, 1998 Repl. Vol.).

Effective January 1, 2008, the Rule was amended to require the court to "announce on the record" its determination that there was a factual basis for the plea.[4] Thus, when Johnson entered his plea, the Rule did not require the court to "announce" its finding that the proffer of facts supported the offense.

Moreover, before accepting Johnson's plea, the court did state that it found "probable cause that [Johnson] should be found guilty under *Alford* on the circumstances that the State's Attorney has read into evidence." In other words, the court clearly determined that the State's proffer of facts did, indeed, support a conviction for robbery.

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

[4] Rule 4-242(c), in relevant part, presently provides:

> The court may not accept a guilty plea . . . until after an examination of the defendant on the record in open court . . . , the court determines *and announces on the record* that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea.

(Emphasis added.)