

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0674

September Term, 2011

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BARRY GREENE  
a/k/a/ BERRY GREENE

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: May 13, 2016

\*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.

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In 2010, Barry Greene, appellant, filed, in the Circuit Court for Baltimore City, a petition for a writ of error coram nobis in which he challenged the validity of a 2006 guilty plea to attempted distribution of cocaine on the grounds that his plea was not entered knowingly and voluntarily because he was not informed, on the record of the plea proceeding, of various rights he was waiving by pleading guilty.<sup>1</sup> He further asserted that his trial counsel provided ineffective assistance of counsel for not reviewing those rights with him. Following a hearing, the circuit court determined that (1) Greene had waived the right to file the petition because he had not sought leave to appeal after he entered the plea; (2) the petition was barred under the doctrine of laches because Greene had various opportunities to challenge the plea, including in a subsequent violation of probation proceeding, but waited four years to do so; and (3) even if not waived or barred, there was no substantive merit to Greene’s allegations. Accordingly the circuit court denied the petition for *coram nobis* relief.

Although Greene did not waive the right to file the petition for a writ of error coram nobis, *Smith v. State*, 443 Md. 572 (2015) (the statute, enacted in 2012, which prohibits construing the failure to seek an appeal following a guilty plea as a waiver of the right to file a petition for a writ of error coram nobis applies retroactively), the circuit court did not err in concluding that there was no merit to Greene’s allegations and that *coram nobis* relief was not warranted in this case. Accordingly, we affirm the judgment.

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<sup>1</sup> Greene, who was facing a maximum sentence of twenty years’ imprisonment, was sentenced to two years of incarceration, all suspended, and placed on supervised probation for 18 months.

The writ of error coram nobis is an equitable action originating in common law whereby a petitioner seeks to collaterally challenge a conviction after the judgment has become final. *Coleman v. State*, 219 Md. App. 339, 354 (2014), *cert. denied*, 441 Md. 667 (2015). The writ is available to “a convicted person who is not incarcerated and not on parole or probation” and who is “suffering or facing significant collateral consequences from the conviction.” *Skok v. State*, 361 Md. 52, 78 (2000). “[T]he grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character.” *Id.* “[A] presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner.” *Id.* Relief under this “‘extraordinary’” writ is warranted “‘only under circumstances compelling such action to achieve justice.’” *Id.* at 72 (quoting *United States v. Morgan*, 346 U.S. 502, 511-512 (1954)).

The *coram nobis* court’s determination of “issues of effective assistance of counsel ‘is a mixed question of law and fact.’” *State v. Jones*, 138 Md. App. 178, 209 (2001), *aff’d*, 379 Md. 704 (2004). “We ‘will not disturb the factual findings [of the *coram nobis*] court unless they are clearly erroneous.’” *Id.* (quoting *Wilson v. State*, 363 Md. 333, 348 (2001)). We, however, “must make an independent analysis to determine the ultimate mixed question of law and fact, namely, was there a violation of a constitutional right as claimed.” *Id.* (quotation omitted).

Claims for ineffective assistance of counsel are evaluated under the United States Supreme Court’s decision in *Strickland v. Washington*, 466 U.S. 668 (1984).” *Kulbicki v.*

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*State*, 440 Md. 33, 46 (2014) (judgment reversed, 136 S.Ct. 2 (2015)). Accordingly, “our analysis is two-fold: we must decide whether counsel rendered constitutionally deficient performance and whether such performance prejudiced the defendant’s case.” *Id.* (citing *Strickland*, 466 U.S. at 687). “In discerning whether performance was deficient, we start with the presumption that counsel ‘rendered adequate assistance’” and “our review of counsel’s performance is ‘highly deferential.’” *Id.* (quoting *Bowers v. State*, 320 Md. 416, 421 (1990)). To satisfy the prejudice prong in the context of a guilty plea, the petitioner must establish that there “is a reasonable probability that, but for counsel’s errors, [he] would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). *Accord Denisyuk v. State*, 422 Md. 462, 470 (2011).

In his petition for *coram nobis* relief, Greene alleged that the trial court erred in accepting his plea because it either failed to provide certain information about the rights he was waiving, such as the presumption of innocence and the right to cross examine the State’s witnesses, or gave incomplete information about the rights, such as by failing to advise him about peremptory strikes when choosing a jury. The circuit court reviewed the transcript of the plea hearing, addressed each allegation raised by Greene, and concluded that he was properly advised of all of the relevant rights he was waiving by entering a guilty plea.

Based on our independent review of the record, we hold that the circuit court did not err in its findings or conclusions. Moreover, as the Court of Appeals in *Smith, supra*, stated, “a *coram nobis* proceeding’s purpose is not to determine based on the record whether the trial

court erred at the time of a guilty plea, but instead to determine whether a petitioner indeed knowingly and voluntarily pled guilty.” 443 Md. at 654. Greene did not present any evidence at the *coram nobis* proceeding that he, in fact, entered his plea without an understanding of what he was doing and the rights he was waiving.

As to his ineffective assistance of counsel claim, we note that Greene failed to rebut the presumption that his counsel had provided effective assistance and that he failed to establish that, but for defense counsel’s alleged ineffectiveness, he would not have pleaded guilty and would have gone to trial.

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