UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1920

September Term, 2014

ANTHONY CHANDLER

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: April 25, 2016

Anthony Chandler, the *pro se* appellant, appeals from the Circuit Court for Baltimore City's denial of his Petition for Writ of Error Coram Nobis, which challenged a 1999 state conviction resulting from a guilty plea. The circuit court summarily denied appellant's petition based on its finding that he was currently incarcerated – albeit on a separate federal conviction – and therefore not eligible to seek coram nobis relief. The appellant contends that the court's reasoning was based upon an overly broad interpretation of language from *Skok v. State*, 361 Md. 52, 78, 760 A.2d 647, 661 (2000) (stating that the writ of error coram nobis provides a remedy for a "convicted person who is *not incarcerated* and not on parole or probation." (Emphasis added)).

We agree with the appellant that the "not incarcerated" language in *Skok* refers only to incarceration for the challenged conviction, and not incarceration per se. Because the appellant's incarceration for a separate conviction was the sole stated basis for the circuit court's denial of his coram nobis petition, we vacate the judgment and remand for further proceedings.

Factual and Procedural Background

In May of 1998, the appellant was one of two passengers in a vehicle which was stopped by police and found to contain 39 pink-top vials of cocaine. He and the vehicle's driver were arrested and charged as co-defendants. On January 11, 1999, both men appeared before the Circuit Court for Baltimore City. The appellant plead guilty to one count of

possession with intent to distribute. On February 19, 1999, he was sentenced to eighteen months' incarceration.

On August 12, 2014, the appellant filed his *pro se* coram nobis petition challenging the validity of his guilty plea and the effectiveness of his defense counsel. The petition alleged that the appellant had subsequently plead guilty in the United States District Court for the District of Maryland, on September 5, 2006, to one count of possession with intent to distribute. The petition further alleged that the appellant's prior state conviction had been used to qualify him as a career offender, resulting in his federal sentence being increased "to some 292 months." The petition explicitly stated that the appellant "is not incarcerated on the state conviction and is not on parole or probation from his conviction."

On September 5, 2014, the State filed a request for additional time to respond to the petition, claiming:

> "The State has requested information regarding this case from the United States Attorney's Office. Due to the age of the case, the closed federal file may be located in the archives and may take as long as two weeks to obtain. The State therefore will require additional time to respond substantively to the allegations delineated in the petition."

Six days later, however, on September 11, 2014, the circuit court issued an order summarily denying the appellant's petition. The two-page order began with the following observation:

> "**FOUND** that the Court of Appeals of Maryland in *Skok v. State*, 361 Md. 52 (2000), determined that the writ of error *coram nobis* provides a

> remedy for a 'convicted person who *is not incarcerated* and not on parole or probation, who is suddenly faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds.' 361 Md. at 78."

(Emphasis added).

The order concluded as follows:

> "**FOUND** that the Petitioner has been convicted of conspiracy to distribute and possession with intent to distribute controlled substances on September 6, 2005. Petitioner was sentenced on November 29, 2005 and *is incarcerated* at the Federal Correctional Institution, Fort Dix in Fort Dix, New Jersey; it is therefore
>
> **ORDERED** that Petitioner's Petition for Writ of Error Coram Nobis be and hereby is **DENIED**."

(Emphasis added).

A second order was filed contemporaneously which denied, as moot, the State's request for additional time to respond. This appeal followed.

Discussion

This is a civil action. The circuit court, on its own motion, dismissed the action in the belief that, on its face, the petition showed that Chandler was not entitled to relief, as a matter of law, because he was then incarcerated under a federal sentence. That was error. We conclude that the circuit court misinterpreted the phrase "not incarcerated," from *Skok v. State*, 361 Md. 52, 78, 760 A.2d 647, 661 (2000), to mean that incarceration for any reason is an absolute bar to coram nobis relief. There is no such restriction. Understood in

the context of the decision as a whole, it is evident that the phrase "not incarcerated" refers only to incarceration for the challenged conviction itself – not incarceration generally. We explain.

The primary effect of the *Skok* decision was to expand the scope of coram nobis relief to address not only errors of fact, as had historically been the case, but also errors of law. The expansion was born out of perceived necessity. The Court of Appeals observed that although numerous options were available to challenge a conviction for which a person was currently incarcerated (e.g., direct appeal, habeas corpus, post-conviction relief), similar options were unavailable for challenging a conviction when the full term of the sentence had already been served.

> "Very often in a criminal case, because of a relatively light sanction imposed or for some other reason, a defendant is willing to forego an appeal even if errors of a constitutional or fundamental nature may have occurred. Then, when the defendant later learns of a substantial collateral consequence of the conviction, it may be too late to appeal, and, *if the defendant is not incarcerated or on parole or probation, he or she will not be able to challenge the conviction by a petition for writ of habeas corpus or a petition under the Post Conviction Procedure Act*."

Skok, 361 Md. at 77, 760 A.2d at 660 (2000) (Emphasis added; footnote omitted).

The need for such a remedy, in the Court's view, had been highlighted by contemporary changes in state and federal law which increased the prevalence of collateral consequences to criminal convictions in the form of enhanced sentences and deportation. *Skok*, 361 Md. at 77, 760 A.2d 660-61. Therefore, the Court concluded:

> "In light of these serious collateral consequences, *there should be a remedy for a convicted person who is not incarcerated* and not on parole or probation, who is suddenly faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds. Such person should be able to file a motion for coram nobis relief regardless of whether the alleged infirmity in the conviction is considered an error of fact or an error of law."

Id. at 78, 760 A.2d at 661. (Emphasis added).

The Court was quick to emphasize that the expansion of coram nobis relief was "subject to several important qualifications," *Skok*, 361 Md. at 78, 760 A.2d at 661, which were derived from the Supreme Court's decision in *United States v. Morgan*, 346 U.S. 502, 74 S.Ct. 247, 98 L.Ed.2d 248 (1954). Those qualifications include that (1) the grounds for challenging the conviction must be of a constitutional, jurisdictional, or fundamental character; (2) the burden of proof is on the coram nobis petitioner; (3) the petitioner must be suffering or facing significant collateral consequences from the conviction; and (4) basic principles of waiver apply. 361 Md. at 78-80, 760 A.2d at 661.

The fifth and final item on *Skok*'s list of qualifications, and of particular importance for resolving the present appeal, is that there must be no alternative statutory or common law remedy available for challenging the conviction.

> "Finally, one is not entitled to challenge a criminal conviction by a coram nobis proceeding if another statutory or common law remedy is then available. *See, e.g.*, *United States v. Morgan*, 346 U.S. at 512, 74 S.Ct. at 253, 98 L.Ed. at 257 ('no other remedy being then available ..., this motion in the nature of the extraordinary writ of coram nobis must be heard by the ... trial court'); *U.S. v. Mandel*, *supra*, 862 F.2d [1067] at 1075 [(1988)]; *In the*

> *Matter of the Petition of Brockmueller*, *supra*, 374 N.W.2d [135] at 137 [(1985)] ('statutory remedies must be unavailable or inadequate before a petition for coram nobis relief can be granted')."

Skok, 361 Md. at 80, 760 A.2d at 662.

The Court noted that individuals typically have alternative means of challenging convictions for which they are presently incarcerated, and therefore are not entitled to coram nobis relief for *those* convictions:

> "If one is incarcerated *as a result of the challenged conviction* or is on parole or probation, he or she will likely have a remedy under the Post Conviction Procedure Act or habeas corpus. Someone in this position, therefore, shall not be entitled to coram nobis relief."

361 Md. at 80, 760 A.2d at 662. (Emphasis added).

As the above language makes clear, the phrase "not incarcerated" simply references the fifth *Skok* requirement that there be no alternative remedy available; it does not establish some additional eligibility requirement unto itself. *See Hicks v. State*, 139 Md. App. 1, 10, 773 A.2d 1056, 1061 (2001) (Confirming that *Skok* "delineates only five qualifications to *coram nobis* relief[.]").

For purposes of coram nobis eligibility the question is whether or not there are any alternative remedies available for challenging the conviction at issue. In answering that question, a person's current incarceration is relevant if, and only if, it is due to the challenged conviction itself. *See*, *Smith v. State*, 219 Md. App. 289, 292, 100 A.3d 1204, 1206 (2014) (Stating that a coram nobis petitioner must allege "that he is not, *as a result of the underlying*

conviction, incarcerated or subject to parole or probation such that he would possess another statutory or common law remedy." (Emphasis added)); *Parker v. State*, 160 Md. App. 672, 684, 866 A.2d 885, 891-92 (2005) (Petitioner met basic eligibility requirements because, *inter alia*, "[w]hen [he] filed his petitions for coram nobis, he was not incarcerated and was not on parole or probation for any of the convictions at issue in the present case," and therefore could not have challenged his convictions by way of a habeas corpus or post-conviction petition.).

United States v. Morgan, *supra*, upon which the *Skok* decision heavily relied, involved a request for coram nobis relief filed by an individual who was currently incarcerated on a separate conviction. Morgan's fundamental predicament was indeed not unlike that of the appellant in present case:

> "On December 18, 1939, [Morgan] pleaded guilty on a federal charge, in the Northern District of New York, and was given a four-year sentence which he served. Thereafter, in 1950, he was convicted by a New York court on a state charge, sentenced to a longer term as a second offender because of a prior federal conviction, and *is now incarcerated* in a state prison."

346 U.S. at 503-04, 74 S.Ct. 247, 98 L.Ed.2d 248. (Emphasis added; footnote omitted). The Supreme Court's central concern was whether or not there was any alternative remedy available for challenging Morgan's federal conviction. 346 U.S. at 512. The fact that he was currently incarcerated on a subsequent state conviction was relevant only inasmuch as it was a collateral consequence of the challenged conviction. *Id.* at 512-13.

This Court has also issued a number of decisions on the subject of coram nobis in the years since *Skok* which involved challenges to state convictions by individuals who were either "suffering or facing" an enhanced federal sentence. None could be cited to support the proposition that incarceration for a separate conviction is a bar to coram nobis relief. For instance, *Pitt v. State*, 144 Md. App. 49, 796 A.2d 129 (2002), and *Gross v. State*, 186 Md. App. 320, 973 A.2d 895 (2009), both involved requests for coram nobis relief filed by persons who were currently incarcerated for subsequent federal convictions. While both petitions were ultimately denied on their merits, it was never remotely suggested that either person's current incarceration for their federal conviction was a bar to relief. A slightly different situation was presented in *Coleman v. State*, 219 Md. App. 339, 100 A.3d 1234 (2014). Although Coleman had already been convicted in federal court at the time his petition was filed, he had not yet been formally sentenced. He had, in any event, been sentenced by the time of his appeal. It was never suggested that he was no longer eligible for coram nobis relief due to his federal conviction or incarceration.

The State neither challenges the substance of appellant's contention nor defends the circuit court's reasoning. Nor does the State take a position, one way or the other, on the merits of appellant's underlying challenge to the validity of his guilty plea. Rather, the State offers two alternative theories upon which it contends that the circuit court *could* have denied the petition at the stage it did: (1) the appellant's failure to establish a collateral

consequence, and (2) applying the doctrine of laches. The present record is at the pleading stage. It is insufficient to allow for a meaningful determination on either issue.

We recognize that we have discretion to consider alternative grounds of decision. Md. Rule 8-131(a) (An appellate court "ordinarily" will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court."). That discretion, however, "should be exercised only when it is clear that it will not work an unfair prejudice to the parties or to the court." *State v. Bell*, 334 Md. 178, 189, 638 A.3d 107, 113 (1994). Here, permitting the State to invoke these arguments for the first time on appeal would deprive appellant of an adequate opportunity to respond. *See also, Graves v. State*, 215 Md. App. 339, 81 A.3d 516, (2013) (declining to address for lack of preservation the State's arguments regarding laches and failure to establish a collateral consequence); *State v. Smith*, 443 Md. 572, 576 n.1, 117 A.3d 1093 n.1 (2015) ("The State's contention that the doctrine of laches bars the Respondent from obtaining relief was not 'raised in or decided by' the Circuit Court []. Md. Rule 8-131(a). Because the issue is not preserved for appellate review, this Court does not address it."). The State may, of course, raise either issue on remand should it choose to do so.

In the context of a coram nobis proceeding, a petitioner's incarceration solely on the basis of a separate conviction from the challenged conviction does not operate as an absolute bar to relief. The circuit court's denial of appellant's petition on that basis was error. In so

holding, we intimate no opinion on the merits of the claims or defenses, procedural or substantive. Those decisions must be made, in the first instance, by the trial court. Therefore, we vacate the judgment of the circuit court and remand the matter for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED; AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.