UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2140

September Term, 2014

DAMONE D. SCOTT

v.

STATE OF MARYLAND

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

JJ.

Opinion by Krauser, C.J.

Filed: July 5, 2016

In 1992, Damone D. Scott was convicted, in the Circuit Court for Baltimore City, of first-degree murder and related offenses. Nine years later, in 2001, Scott filed a petition for post-conviction relief. The circuit court subsequently denied that petition. Three years after that, in 2014, Scott filed a second petition for post-conviction relief. When that petition was denied, Scott filed an application for leave to appeal, claiming that, in denying his second petition, the circuit court violated Md. Code (1957, 1987 Repl. Vol., 1991 Supp.), Art. 27, § 645A(a)(2), which, in 1992, allowed a defendant to file a maximum of two post-conviction petitions following his trial and conviction for a criminal offense.

We thereafter remanded the case to the circuit court with instructions to vacate the judgment denying the second petition for post-conviction relief and to hold a hearing on that petition. The State moves for reconsideration of that judgment. We shall grant the motion and deny Scott's application for leave to appeal.

Before turning to Scott's specific contentions, a brief review of the history of Art. 27, § 645A(a)(2), as summarized by the Court of Appeals in *Grayson v. State*, 354 Md. 1 (1999), is in order. In *Grayson*, the Court began its recitation of that history by stating:

> The Maryland Post Conviction Procedure Act, as originally enacted in 1958 . . . did not place any limit on the number of post conviction petitions which a petitioner was entitled to file. Nevertheless, by Chapter 647 of the Act of 1986, the General Assembly amended § 645A [the Post Conviction Procedure Act] by adding new Subsection (a)(2) which provided that "[a] person may not file more than two petitions, arising out of each trial, for relief under this Subtitle." Section 2 of Chapter 647 provided "That this Act shall take effect July 1, 1986." . . . .

The General Assembly in 1995 once again addressed the number of petitions under the Post Conviction Procedure Act which could be filed to challenge a particular conviction. By Ch. 110 of the Acts of 1995, which was captioned "Death Penalty Reform" and which primarily amended statutory provisions relating to capital punishment, the General Assembly also amended subsection (a)(2) of the Post Conviction Procedure Act to provide as follows:

> "(2)(I) A person may file only one petition, arising out of each trial, for relief under this subtitle.
>
> "(II) The court may in its discretion reopen a postconviction proceeding that was previously concluded if the court determines that such action is in the interests of justice."

The first of the above-quoted paragraphs was subsequently codified as Art. 27, 645A(a)(2)(i) and the second as Art. 27, § 645A(a)(2)(iii). Sections 2, 3 and 5 of Ch. 110 of the Acts of 1995 stated as follows:

> "SECTION 2. AND BE IT FURTHER ENACTED, That, subject to Section 3 below, the provisions of this Act shall apply to all criminal cases, regardless of whether the case arises out of an offense that is committed before or after the effective date of this Act or whether the trial or sentencing of the defendant occurs before or after the effective date of this Act.
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> "SECTION 3. AND BE IT FURTHER ENACTED, That the provisions of this Act that amend Article 27, § 645A of the Code do not apply to a case in which a second postconviction petition was filed prior to the effective date of this Act. In such a case, the court shall process the case in due course as required under Article 27, § 645A prior to the effective date of this Act."
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> * * *
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> "SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1995."

The effect of these provisions upon § 645A(a)(2) was that a petitioner, who had previously filed a petition relating to a particular trial, had until September 30, 1995, to file another petition under the statute relating to the same trial. Ch. 110 of the Acts of 1995 was signed into law by the Governor on April 11, 1995.

Subsection (a)(2) of the Post Conviction Procedure Act was also amended by Ch. 258 of the Acts of 1995, which was signed into law by the Governor on May 9, 1995. Section 1 of Ch. 258 provided as follows:

> "SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
>
> Article 27 – Crimes and Punishments 645A.
>
> (a)(2)(I) A person may not file more than 2 petitions, arising out of each trial, for relief under this subtitle.
>
> (II) Unless extraordinary cause is shown, in a case in which a sentence of death has not been imposed, a petition under this subtitle may not be filed later than 10 years from the imposition of sentence."

The above-quoted first paragraph of § 645A(a)(2) represented no change in the wording that had been enacted by Ch. 647 of the Acts of 1986. The second paragraph was entirely new language, and is now codified as Art. 27, § 645A(a)(2)(ii). Sections 2 and 3 of Ch. 258 of the Acts of 1995 stated as follows:

> "SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed prospectively to apply only to postconviction proceedings for sentences imposed on or after the effective date of this Act and may not be applied or interpreted to have any effect on or application to postconviction petitions for sentences imposed before the effective date of this Act.

> "SECTION 3. AND IT BE FURTHER ENACTED, That this Act shall take effect October 1, 1995."

Grayson, 354 Md. at 3-6 (internal citations, quotations, and brackets omitted). In 2001, Art. 27, § 645A(a)(2) was recodified as § 7-103(a) of the Criminal Procedure Article.

Scott contends that he is entitled to a second petition for post-conviction relief, because the Legislature intended for Ch. 110 of the Acts of 1995 to "be construed prospectively to apply only to post conviction petitions for sentences imposed on or after the effective date of th[e] Act," and "not . . . have any effect or application to post conviction petitions for sentences imposed before [that] date." We disagree.

The Legislature expressly declared that *Ch. 258* of the Acts of 1995, in which the Legislature added the requirement that a petition for post-conviction relief be filed no later than 10 years from the imposition of sentence, was to be applied prospectively. It then went on to avow that Ch. 110 of the Acts of 1995 applies to *all* cases "*regardless* of whether the case arises out of an offense that is committed *before or after* the effective date of th[e] Act or whether the trial or sentencing of the defendant occurs *before or after* the effective date of th[e] Act." (Emphasis added.) Hence, the Legislature did not intend for Ch. 110 to apply prospectively.

Scott nonetheless contends that *Lopez v. State*, 433 Md. 652 (2013), holds otherwise. It does not. In 1986, Lopez was convicted by a jury of attempted first-degree rape and related offenses, and in a second case, pleaded guilty to first-degree rape and related

offenses. *Id.* at 654. In 2005, Lopez "filed a post-conviction petition covering both cases." *Id.* at 655 (footnote omitted). "The Circuit Court held that laches was available to the State as a defense to a post-conviction petition, and it denied the petition on that basis." *Id.* We "agreed with the Circuit Court that laches was available in post-conviction proceedings" but "found that the record was insufficiently developed for a finding that laches barred the petition in this case" and "vacated the judgment and remanded the matter to the Circuit Court for reconsideration." *Id.* The Court of Appeals subsequently vacated our judgment, concluding that Lopez was "not barred from litigating his post-conviction petition simply by the passage of time." *Id.* at 662-63.

Here, the post-conviction court denied Scott's second petition for post-conviction relief, not on the ground of laches, but because he "has already filed a prior petition under the Post Conviction Procedure Act." Hence, *Lopez* is inapplicable, and the post-conviction court did not err in denying Scott's second petition for post-conviction relief. Accordingly, we grant the State's motion for reconsideration, vacate our previous order granting Scott's application for leave to appeal, and deny the application for leave to appeal.

MOTION FOR RECONSIDERATION GRANTED. ORDER GRANTING APPLICATION FOR LEAVE TO APPEAL VACATED. APPLICATION FOR LEAVE TO APPEAL DENIED. COSTS TO BE PAID BY APPLICANT.