

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1346

September Term, 2016

JAMES W. ROBINSON

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 1, 2017

*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.

In 1986, James W. Robinson, appellant, was convicted by a jury, in the Circuit Court for Baltimore County, of assault with intent to murder, assault with intent to disable, attempted robbery with a dangerous weapon, and use of a handgun in the commission of a crime of violence. This Court affirmed his convictions on direct appeal.

In 2016, Robinson filed his second petition for writ of actual innocence asserting that there was newly discovered evidence demonstrating that Joseph Kopera, a former ballistics expert for the Baltimore City Police Department who Robinson claimed testified at a pre-trial hearing in his case,¹ had testified falsely in other cases. In support of this contention, Robinson referenced a 2007 *Baltimore Sun* article that accused Kopera of lying about his credentials and qualifications as a ballistics expert in numerous trials over a twenty year period. The circuit court denied Robinson's petition without a hearing, and appellant filed this appeal raising a single issue: whether the circuit court erred in not holding a hearing on his petition.² For the reasons that follow, we affirm.³

¹ In his petition, Robinson asserted that Kopera testified at his "arraignment hearing" on July 15, 1986. We note that it is not customary to take testimony during an arraignment hearing and that the record does not indicate that anyone testified on that date. However, for the purposes of this appeal, we assume that Kopera testified at some type of pre-trial hearing in Robinson's case.

² Although appellant's petition also included a conclusory request to perform DNA testing on a handgun, which he claimed had been given to the State by an unnamed informant, he does not contend on appeal that the court erred in not granting that request. In any event, appellant also requested DNA testing of the alleged handgun in his first petition for writ of actual innocence, filed in 2010, and the trial court rejected that request, finding that no handgun had been recovered in his case. Because appellant's petition did not allege the existence of newly discovered evidence regarding the gun, he
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“A petitioner is entitled to a hearing on the merits of [a petition for writ of actual innocence], provided that the petition sufficiently pleads grounds for relief under the statute, includes a request for hearing, and complies with the filing requirements of [Crim. Proc.] § 8-301(b).” *State v. Hunt*, 443 Md. 238, 251 (2015). In deciding whether a petition sufficiently pleads grounds for relief, the trial court must consider whether the allegations, if proven, consist of newly discovered evidence that “could not have been discovered in time to move for a new trial under Maryland Rule 4–331,” and whether that evidence “created a substantial or significant possibility that the result [of the trial] may have been different.” *See Douglas v. State*, 423 Md. 156, 180 (2011).

Even assuming that Robinson could have proven that Joseph Kopera provided “false testimony” at a pre-trial hearing in his case, his petition failed to demonstrate how that testimony created a substantial or significant possibility that the result of his trial might have been different. A review of the record indicates that Kopera did not testify at appellant’s trial and that no handgun or ballistics evidence was introduced. Instead, Robinson’s convictions were based on the identification testimony of two witnesses.

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was not entitled to raise that claim again in his second petition. *See Douglas v. State*, 423 Md. 156, 184-85 (2011) (stating a petitioner may not file multiple petitions for a writ of actual innocence based on the same claim).

³ The State has moved to dismiss the appeal, because appellant did not attach a copy of the circuit court’s final judgment to his brief. Although we agree that such omission violated Maryland Rule 8-504(b), we decline to dismiss this appeal on that basis.

Moreover, Robinson’s petition failed to specifically identify what Kopera testified about at the pre-trial hearing or set forth, even in a conclusory fashion, how that testimony might have influenced his trial. In fact, Robinson’s only claim appears to have been that Kopera’s testimony at the pre-trial hearing prevented him from entering “an [*Alford*] Plea or any other form of plea bargaining.” Consequently, the trial court did not err in finding that Robinson had failed to comply with the pleading requirements of Md. Code Ann. (2008 Repl. Vol., 2016 Supp.), Crim. Pro. Art., § 8-301 (a) and, therefore, did not err in dismissing Robinson’s petition without a hearing.

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