

Circuit Court for Baltimore City
Case No. 190333029

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1397

September Term, 2016

ANTHONY COX

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 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 1991, Anthony Cox, appellant, was convicted by a jury, in the Circuit Court for Baltimore City, of first-degree murder, use of a firearm during a crime of violence, and wearing and carrying a handgun. This Court affirmed his convictions on direct appeal.

In 2016, appellant filed a petition for writ of actual innocence, relying on two documents that, he claimed, constituted newly discovered evidence.¹ The first document was a firearm examiner’s report prepared by Ronald Stafford, the State’s ballistics expert at trial (ballistics report). Included with the ballistics report were three evidence submission forms requesting that certain ballistics evidence be tested. Cox claimed the ballistics report and evidence submission forms contradicted Mr. Stafford’s trial testimony and also showed that several of the tested items had come from an “unrelated shooting.”

The second document was an investigative report stating that the lead detective in Cox’s case had requested the Baltimore City Crime Lab to photograph the inside of a residence located at 2204 Allendale Road, and that no physical evidence was recovered at that location. Cox asserted that the investigative report showed the crime lab had taken “photos of gunshot holes inside the residence,” and, therefore, that the police knew the shooting might have started inside the residence, and not on a street corner as the State had claimed at trial.

The circuit court denied Cox’s petition without a hearing, ruling that he had “failed to set forth how the newly discovered evidence creat[ed] a substantial or significant

¹ Cox claimed that, although his attorney had requested discovery prior to trial, the State never gave him these documents and he did not discover them until 2011.

possibility that the result [in his trial] may have been different[.]” Appellant then 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.

“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).

As an initial matter, we note that the ballistics report was introduced by the State at Cox’s trial. Therefore, his contention that it constituted newly discovered evidence is contradicted by the record. Even if the ballistics report was newly discovered evidence, its conclusions are entirely consistent with Mr. Stafford’s trial testimony. Moreover, contrary to Cox’s claims, nothing in the ballistics report or the evidence submission forms indicate

² In his brief, Cox also sets forth another question presented: “Did the circuit court abuse its direction by failing to comply with Maryland Rule 4-332(e)(3), after request for appointment of counsel by indigent petitioner before dismissing Petition for Writ of Actual Innocence?” However, because Cox makes no further mention of this issue in either his statement of facts or the argument section of his brief, we will not consider it on appeal. *See Diallo v. State*, 413 Md. 678, 692 (2010) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.” (citation omitted)).

that any of the items tested by Mr. Stafford came from an “unrelated shooting.” Therefore, Cox failed to demonstrate how the ballistics report might have affected the outcome of his trial.

Appellant’s claim regarding the investigative report also fails. Even viewed in a light most favorable to appellant, nothing in that report supports appellant’s conclusory assertions that there were “bullet holes” photographed inside 2204 Allendale Road or that the “detectives investigating [the murder] were aware that the shooting began inside of a home at 2204 Allendale Road.” Consequently, the trial court did not err in finding that Cox 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 his petition without a hearing.

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