Circuit Court for Baltimore City
Case No. 109313009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1893

September Term, 2016

JAMES WESLEY SPRIGGS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: September 7, 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.

Following a 2010 bench trial in the Circuit Court for Baltimore City, James Wesley Spriggs, appellant, was convicted of first-degree murder and handgun offenses and thereafter sentenced to life imprisonment. This Court affirmed the judgments. *Spriggs v. State*, No. 2254, September Term, 2010 (filed February 28, 2012). In 2016, Spriggs filed a petition for writ of actual innocence pursuant to the provisions of Maryland Code (2008 Repl. Vol., 2015 Supp.), Criminal Procedure Article ("C.P."), § 8-301 and Maryland Rule 4-332. The circuit court found that the "newly discovered evidence" upon which Spriggs based his petition was not, in fact, "newly discovered" and consequently dismissed the petition without a hearing. Spriggs's sole contention on appeal is that the circuit court erred by dismissing his petition without a hearing. For the reasons to be discussed, we affirm.

BACKGROUND

Trial

On June 19, 2008, Brian Goodwin was shot and killed while standing on the road in the 500 block of Bloom Street in Baltimore. About a year later, Jermaine Covington was brought to the attention of the police as an eyewitness to the shooting. When shown a photo array of possible suspects, Covington identified Spriggs as the shooter.

The State's theory at trial was that Goodwin was a rival drug dealer and that Spriggs shot and killed him in a dispute over drug territory. Covington testified that on the day of the murder, Goodwin had related that he had "had an argument with a dude around the corner" and "the dude told him he couldn't hustle around the corner." Several hours later, Goodwin was leaning into a car double-parked on Bloom Street and conversing with the

occupants of the vehicle. Covington, who was sitting on the steps of a house approximately ten or fifteen feet in front of the parked car, observed a man come from "around the corner" and shoot Goodwin. Goodwin fell to the ground. The shooter then walked over and fired three additional shots at Goodwin. In open court, Covington identified Spriggs as the man who had shot Goodwin.

The trial judge found Covington's testimony to be "very credible" and found that certain "details" in his testimony were consistent with the autopsy report, with Spriggs's statement to the police that he sold drugs on Bloom Street, and with "other physical evidence." The court convicted Spriggs of first-degree murder, use of a handgun in the commission of a crime of violence or felony, and wearing, carrying, or transporting a handgun. As noted this Court affirmed the judgments.

Petition for Writ of Actual Innocence

In 2016, Spriggs, represented by an assistant public defender with the Collateral Review Division of the Office of the Public Defender, filed a petition for writ of actual innocence. Among other things, such a petition must state:

> 6.) that the request for relief is based on newly discovered evidence which, with due diligence, could not have been discovered in time to move for a new trial pursuant to Rule 4-331;
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> 7.) a description of the newly discovered evidence, *how and when it was* discovered, why it could not have been discovered earlier[;]
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> 8.) that the newly discovered evidence creates a substantial or significant possibility, as that standard has been judicially determined, that the result may have been different, and the basis for that statement;

Rule 4-332(d) (emphasis added).

In his petition, Spriggs described his "newly discovered evidence" as a Mr. Avon Leroy Robinson whom he claimed was "an eyewitness" to the Goodwin murder. The petition alleged that Robinson "described the shooter as a black male, over 6' tall, 140-150 lbs, slim build, wearing a Doughboy jacket with sleeves rolled up, and a lizard tattoo on his forearm." The petition stated that Spriggs is "5/6", has a stocky build, and is devoid of lizard tattoos." The petition further stated that Robinson "recognized the shooter and knows him by the street name 'Stretch.'"

As for the requirement that the petition describe "how and when" the newly discovered evidence was discovered and why it could not have been discovered earlier, Spriggs's petition stated:

> Mr. Robinson's testimony is newly discovered because he could not have been produced at trial, despite counsel's diligent efforts. On April 15, 2010, Judge Ellen Heller issued a warrant for Mr. Robinson's arrest in [a Baltimore City case unrelated to Spriggs] due to Mr. Robinson's failure to appear in court. On April 19, 2010, Judge Sylvester Cox issue a violation of probation warrant for Mr. Robinson in the same case. These warrants were not served until March 26, 2015. Mr. Amaral [Spriggs's trial counsel] was unable to locate Mr. Robinson to summons him for trial [in Spriggs's murder case] on August 13, 2010, and could not have located him, because he was on the lam from his warrants. Further, Mr. Robinson was not located within one year of the issuance of the mandate of the Court of Special Appeals of March 29, 2012, which would have allowed counsel to file a timely Motion for New Trial.

Notably, the petition did not expressly address how and when Spriggs became aware that Robinson was an alleged eyewitness to Goodwin's murder. Instead, as the excerpt from the petition demonstrates, the petition merely focused on the unavailability of Robinson at the time of Spriggs's trial.

The circuit court dismissed the petition, without a hearing, after finding that

> the Petitioner alleges that the newly discovered evidence is the statement of Avon Leroy Robinson who allegedly was an eyewitness to the crime for which the Petitioner was charged and the Petitioner further alleges that the contents of the statement were known at the time of trial but Robinson could not be located at the time of trial and was not located until Robinson was arrested on March 26, 2015; and
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> ***
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> the Petitioner has failed to allege the existence of newly discovered evidence as the Court of Appeals has repeatedly held that "'[e]xculpatory evidence known . . . prior to the expiration of the time for filing a motion for a new trial, though *unavailable*, in fact, is not newly discovered evidence. [*Douglas v. State*, 423 Md 156, 187 (2011)] (citing *Argyrou v. State,* 349 Md. 587, 600 n. 9 (1999) (emphasis in text)[.]

DISCUSSION

In this appeal, Spriggs contends that the circuit court erred in denying his petition without a hearing. He states:

> [T]he proffered evidence does state a claim upon which relief can be granted. The proffer was that Avon Leroy Robinson was an eyewitness who would testify that a specific individual other than Mr. Spriggs was the perpetrator. As a result of his own legal problems, Mr. Robinson essentially disappeared from 2010 until 2015, despite warrants issued by the Circuit Court for Baltimore City for which enforcement efforts were presumably made. The proffer therefore was comprised of 'evidence' – the testimony of Mr. Robinson. It was newly discovered – if the Baltimore City's Sheriff's Office could not serve a warrant upon Mr. Robinson's [sic] during this five-year period, it is likely that at the requested hearing Mr. Spriggs could convince a judge that even if he knew of Mr. Robinson's existence, he could not with due diligence have located him and brought him to court.
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> ***
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> It is important to emphasize that Mr. Spriggs is not asking this Court to declare him innocent. He is not even asking for a new trial. What he seeks is what he was erroneously deprived of – a fair hearing upon his petition. Under the law as applied to these facts, that is his entitlement.

The State responds that, because Spriggs's petition failed to "establish that the evidence he advances is 'newly discovered,' his petition was properly dismissed without a hearing." The State points out that Spriggs failed to "identify how or when he became aware of Robinson's account of the shooting" and asserts that "without this 'critical' information, Spriggs failed to meet the pleading requirements" of the actual innocence statute and rule. Moreover, the State maintains that Spriggs's petition "implies that this evidence . . . was known to Spriggs (and trial counsel) at the time of trial," which negates "any notion that such evidence was newly discovered."

"Generally, the standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*." *Smallwood v. State,* 451 Md. 290, 308 (2017). Having reviewed Spriggs's petition, we conclude that, because Spriggs failed to plead that the proffered newly discovered evidence was not discovered (or discoverable) in time to move for a new trial,[1] the circuit court properly dismissed the petition without a hearing. *See* Crim. Proc., § 8-301(e)(2) ("The court may dismiss a petition without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted."); Rule 4-332(i)(1) ("[T]he court may [ ] dismiss the petition if it finds as a matter of law that the petition fails to comply substantially with the requirements of section (d) of this Rule or otherwise fails to assert grounds on which relief may be granted[.]").

[1] The Court of Appeals has stated that, "[t]o qualify as 'newly discovered,' evidence must not have been discovered, or been discoverable by the exercise of due diligence[.]" *Argyrou v. State,* 349 Md. 587, 600-601 (1998).

Spriggs failed to address in his petition "how and when" he discovered the Robinson eyewitness evidence as required by Rule 4-332(d)(7). We agree with the State and the circuit court, however, that his petition certainly implied that he was well aware of Robinson's alleged eyewitness account at the time of trial, as the petition stated that this evidence was "newly discovered because [Robinson] could not have been produced at trial, despite counsel's diligent efforts." His petition further stated that defense counsel "was unable to locate Mr. Robinson to summons him for trial on August 13, 2010, and could not have located him, because he was on the lam from his warrants."

In *Douglas v. State & Curtis v. State,* 423 Md. 156 (2011), the Court of Appeals held that the circuit court properly dismissed Curtis's petition for writ of actual innocence based on the fact that the proffered evidenced was not newly discovered. *Id.* at 187. There, Curtis's claim of newly discovered evidence was an affidavit from his grandmother indicating her willingness to testify in court that she never mentioned the name "Airy" or "Eri" to the police. *Id.* at 186. The Court of Appeals concluded that the grandmother's affidavit was not newly discovered evidence and, therefore, the circuit court properly dismissed the petition without a hearing. The Court stated:

> In *Argyrou v. State,* we explained that, "[e]xculpatory evidence known . . . prior to the expiration of the time for filing a motion for a new trial, though *unavailable*, in fact, is not newly discovered evidence." 349 Md. 587, 600 n. 9 (1998) (emphasis added.) Consequently, even construing Curtis's *pro se* petition liberally, his claim fails. Curtis indicated in his petition that he wanted to obtain an affidavit from his grandmother stating that she never mentioned the name "Airy," or "Eri," to the police, but could not because of his grandmother's health and his own incarceration. As evidence that is known but unavailable does not constitute "newly discovered evidence," Curtis's claim does not meet the requirements to obtain a hearing under C.P. § 8-301.

Id. at 187.

Similarly here, Robinson's alleged eyewitness account of Goodwin's murder was apparently known to Spriggs and his counsel at the time of trial, but this evidence was unavailable because of Robinson's alleged disappearance. Consequently, under *Douglas & Carter*, it does not qualify as "newly discovered evidence" for actual innocence purposes.

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