Circuit Court for Wicomico County
Case No: 22-K-00-001549

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2183

September Term, 2019

WILLIAM HENRY WATSON

v.

STATE OF MARYLAND

Fader, C.J.,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 4, 2021

*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.

William Henry Watson, appellant, appeals a decision of the Circuit Court for Wicomico County denying his petition for a writ of actual innocence without a hearing. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Watson's Trial

Following a 2001 jury trial, Mr. Watson was convicted of attempted robbery with a deadly weapon, conspiracy to commit attempted robbery with a deadly weapon, and a host of related offenses stemming from two robberies, the first occurring on September 5, 2000 and the second two days later. The September 5th attempted robbery was carried out by Kevin Moses, who attempted to rob a man using a pay phone located outside the Beverage Barn in Salisbury. When the man indicated he had no money, Mr. Moses shot him. The second robbery, at a High's store, was also perpetrated by Mr. Moses. Mr. Moses was driven to and from both robberies by Mr. Watson. A third individual, Anthony Badger, was also present in the get-away car and was implicated as the person who had given Mr. Moses the handgun used in the robberies. Mr. Moses pled guilty to first-degree assault, use of a handgun in the commission of a crime of violence, attempted armed robbery, and armed robbery. In exchange, the State placed other charges on the stet docket. The stet

was conditioned on Mr. Moses "testif[ing] truthfully if called as a witness for the State" in the trials of Mr. Watson and Mr. Badger.[1, 2]

Mr. Moses testified for the State at Mr. Watson's trial that he was recruited by Mr. Watson to participate in the robberies. He also related that Mr. Watson had driven him to both the Beverage Barn and the High's store to carry out those robberies and that after the High's robbery, he gave the money he had taken from the cash drawer to Mr. Watson. He admitted that he was the hold-up man for both the robberies and the person who had shot the victim outside the Beverage Barn. Mr. Moses testified that, prior to the September 5th and 7th robberies, he had accompanied Mr. Watson in "scoping out" other businesses and individuals to rob. And he testified that it was Mr. Watson's idea to rob Shore Stop, just prior to the robbery outside the Beverage Barn, but when Mr. Moses entered the store to commit the crime, he "froze up" and "chickened out."

In a statement Mr. Watson gave to the police, which was admitted into evidence at his trial, he admitted that he had driven Mr. Moses to the Beverage Barn and to High's, but he denied knowing that Mr. Moses intended to commit a crime.

As noted, the jury found Mr. Watson guilty of attempted robbery with a deadly weapon, conspiracy to commit attempted robbery with a deadly weapon, and related

[1] It appears that Mr. Badger ultimately pled guilty.

[2] The plea agreement between the State and Mr. Moses left sentencing to the discretion of the court and specifically provided that the State was "not required to ask the Court to sentence Kevin Moses leniently in exchange for his truthful testimony." After the Watson trial, Mr. Moses, who was facing a total maximum term of 85 years' imprisonment, was sentenced to a total term of 50 years.

offenses. At sentencing, held four months later, the State first informed the court that Mr. Moses had been sentenced the day before to 50 years' imprisonment and then urged the court to "sentence William Watson to at least the same sentence that Kevin Moses received, if not more, because William Watson was the ring leader of this gang" and "was the person who solicited Kevin Moses to commit these robberies." The court sentenced Mr. Watson to a total term of 49 years' imprisonment.[3]

Petition For Writ of Actual Innocence

In 2019, Mr. Watson, representing himself, filed a petition for writ of actual innocence "and/or" motion to reopen a closed post-conviction proceeding.[4] His claim of "newly discovered" evidence consisted of his allegations that (1) the prosecutor had "withheld and suppressed an extrajudicial statement" made by Mr. Moses and (2) the prosecutor "withheld and suppressed the mental health/psychiatric condition" of Mr. Moses.

As for the first allegation, Mr. Watson asserted that, in a conversation with Mr. Badger six years after his trial, he had learned that Mr. Moses, in interviews with the prosecutor prior to his trial, had "implicat[ed]" Mr. Watson "in numerous uncharged 'other crimes/prior bad acts.'" He maintained that those statements had been shared with Mr.

[3] On direct appeal, this Court held that certain handgun offenses should have merged for sentencing purposes, but otherwise affirmed the judgments. *Watson v. State*, 1181, September Term, 2001 (filed May 8, 2002). Mr. Watson's total term of incarceration remained the same following the merger.

[4] Mr. Watson's petition for post-conviction relief was denied in 2004 and, in 2007, the circuit court denied his first motion to reopen that proceeding.

Badger at the time, but withheld from him, and the prosecutor "in fact use[d] the withheld statement containing prior crimes evidence (given to him by . . . Moses) at [his] trial." He maintained that, the "suppressed" statements put him "and his defense counsel at a tremendous disadvantage during [his] trial." Mr. Watson cited excerpts from his trial where Mr. Moses testified that he and Mr. Watson had scoped out individuals and businesses to rob prior to the incidents at the Beverage Barn and High's. He maintained that, if he had known about the statements prior to trial, he "would have been able to refute the allegations to show that the State's main witness Kevin Moses was indeed lying." Mr. Watson admitted that "the withheld statement may not have contained any useful 'exculpatory evidence,'" but he asserted that "if the statement was timely disclosed and used properly, [his] defense counsel could have impeached Kevin Moses's testimony by showing evidence to counter Moses implicating [him] in 'other crimes evidence.'" In the alternative, he stated that he "could have entered into a plea agreement" with the State, as Mr. Badger had done. Finally, Mr. Watson maintained that this "evidence could not have been discovered" in time to move for a new trial because the prosecutor "reduced" the statements to "notes" characterized as attorney work product.

As for the second allegation of "newly discovered evidence," Mr. Watson claimed that, nearly 14 years after his trial, he learned that Mr. Moses suffered from a "mental health condition" and was taking the "prescription drug Haldol" at the time he testified at his trial. Mr. Watson relied on Mr. Moses's own petition for post-conviction relief in which he had alleged that the drug had rendered him incapable of entering a guilty plea knowingly and voluntarily because it made him "woozy," "tired," and "incompetent" and he just

wanted to get the case "over with." And Mr. Watson cited excerpts from Mr. Moses's post-conviction hearing where his counsel mentioned that Mr. Moses had been "on Haldol, which is a psychiatric disorder type of drug since December 2000" and "he was given that particular drug [ ] because since childhood . . . he has been hearing voices throughout his life."[5] Mr. Watson also cited excerpts from Mr. Moses's sentencing hearing during which Mr. Moses's counsel informed the court that his client "feels that he's not thinking clearly and has not for a long period of time" and "believes he has some underlying mental health issues."

Mr. Watson further asserted that, during the prosecutor's investigation of his case, the prosecutor had met with Mr. Moses several times and during that time period had learned that Mr. Moses "had been diagnosed with some form of mental illness" for which he had been "prescribed an anti-psychotic medication." He then maintained that the prosecutor "was legally obligated to provide him with Kevin Moses's mental illness information," but he had not done so. Mr. Watson claimed that he only learned of Mr. Moses's mental health condition in 2014 during a conversation "with an associate or family member" of Mr. Moses.

[5] The circuit court denied Mr. Moses's petition for post-conviction relief. In its opinion and order, the court noted that Mr. Moses's trial counsel had testified at the post-conviction hearing that Mr. Moses "demonstrated no unusual behavior that would cause [counsel] to question his mental health status, including fatigue." The post-conviction court further noted that the attorney who had represented him at sentencing testified "that his focus on [Mr. Moses's] mental health did not go to competency, but to mitigation." In addition, the post-conviction court noted that the transcript of Mr. Watson's trial "reflects very coherent testimony by" Mr. Moses.

The State opposed the petition, pointing out that the first allegation of suppressed "other crimes evidence" was considered and rejected in Mr. Watson's post-conviction proceeding and maintained that the allegation relating to Mr. Moses's mental health condition was "impeaching evidence at best." The circuit court found "no merit" to Mr. Watson's "post-conviction claims" and denied the request to reopen the post-conviction proceeding. The court also denied the petition for writ of actual innocence, after concluding that Mr. Watson "has failed to meet the essential requirements" of the actual innocence statute, "most notably, that the allegations would create a substantial or significant possibility that the result [of his trial] might have been different."

DISCUSSION

On appeal, Mr. Watson argues that the circuit court erred in denying, without the benefit of a hearing, his petition for writ of actual innocence and his motion to reopen a closed post-conviction proceeding. The denial of the petition for writ of actual innocence, however, is the only ruling properly before us. In order to seek appellate review of the decision denying the motion to reopen the post-conviction case, Mr. Watson was required to file a timely application for leave to appeal, which he did not. *See* Md. Code Ann., Criminal Procedure § 7-109(a).

I.

Certain convicted persons may file a petition for writ of actual innocence "based on newly discovered evidence." *See* Crim. Proc. § 8-301; Md. Rule 4-332. "Actual innocence" means that "the defendant did not commit the crime or offense for which he or she was convicted." *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

> (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
> (1) creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; and
> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
>
> ***
>
> (g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

"Thus, to prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial." *Smith v. State*, 233 Md. App. 372, 410 (2017). Moreover, "[t]o qualify as 'newly discovered,' evidence must not have been discovered, or been discoverable by the exercise of due diligence," in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-601 (1998)(footnote omitted); *see also* Rule 4-332(d)(6). As this Court explained in *Smith*, the

> requirement, that the evidence could not with due diligence, have been discovered in time to move for a new trial, is a "threshold question." *Argyrou*, 349 Md. at 604. *Accord Jackson v. State*, 216 Md. App. 347, 364, *cert. denied*, 438 Md. 740 (2014). "[U]ntil there is a finding of newly discovered evidence that could not have been discovered by due diligence, no relief is available, 'no matter how compelling the cry of outraged justice may be.'" *Argyrou*, 349 Md. at 602 (quoting *Love v. State*, 95 Md. App. 420, 432 (1993)).

233 Md. App. at 416.

A court "may dismiss a petition [for writ of actual innocence] without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted." Crim. Proc. § 8-301(e)(2). *See also* Rule 4-332(i)(1) ("the 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[.]"). "The standard of review is *de novo* when appellate courts consider the legal sufficiency of a petition for writ of actual innocence that was denied without a hearing." *State v. Ebb*, 452 Md. 634, 643 (2017).

II.

Mr. Watson asserts that the circuit court erred when it denied his petition without a hearing because, given the State's theory that he had conspired with Mr. Moses to commit the crimes, "it would be reasonable that [he] would be able to present any evidence [at trial] that would have shown that the State's main witness had a propensity to lie, due to his mental illness and intake of a mind-altering drug." Although he admits that evidence of Mr. Moses's mental health condition "does not exactly exculpate" him, he claims that he was only required to show that this evidence "speaks" to his actual innocence. He maintains that evidence of Mr. Moses's mental health history was "highly relevant" and "would shed light on the witness['s] credibility[.]" He claims, therefore, that had the State "fully complied with the discovery rule and turned over their main witness['s] mental health condition and medication use during the events of the criminal acts and well into the time of [his] trial, [he] might have been in a much more favorable position to properly and fully impeach the State's only eye witness." He claims that Mr. Moses's trial

testimony was "contradicted numerous times" and alleges that "the many contradictions were due to Moses's mental health condition and medication use at trial." Mr. Watson urges this Court to reverse the judgment and remand for a hearing on the merits of his petition for writ of actual innocence.

The State responds that there "is no indication in the record that the State was aware of Moses's mental health history prior to Moses's sentencing," which took place after Mr. Watson's trial. Moreover, the State maintains that the evidence of Mr. Moses's mental health status "is not newly discovered" and "does not 'speak to' his innocence" and, therefore, the circuit court properly denied his petition.

The State points out that evidence is only "newly discovered" within the contemplation of Crim. Proc. § 8-301(a)(2) if it could not have been discovered in time to move for a new trial under Md. Rule 4-331, which in Mr. Watson's case, was "approximately June 7, 2003." The State notes that Mr. Moses was sentenced on July 19, 2001 – and that is "the proceedings in which Moses's defense counsel first announced his mental health history in open court[.]" Accordingly, the State maintains that, in an exercise of due diligence, this information could have been discovered in time for Mr. Watson to move for a new trial.

But in any event, the State insists that the information about Mr. Moses's mental health condition and prescription use of Haldol is not the sort of evidence that "might support a writ of actual innocence[.]" The State notes that, in Mr. Moses's post-conviction case (which Mr. Watson relies upon), the post-conviction court credited Mr. Moses's defense counsel's testimony that Mr. Moses gave no indication to counsel that he was

suffering from a mental disorder or was on medication during his representation and that at Mr. Moses's sentencing, defense counsel raised the mental health issue for sentencing mitigation purposes, not for competency reasons. The State also points out that the post-conviction court noted that Mr. Moses was on Haldol at the time he testified at Mr. Watson's trial and found his testimony to have been "'very coherent.'" Finally, the State maintains that even if Mr. Watson could have impeached Mr. Moses's credibility based on his mental health status and medication use, "there is no indication that Moses lied about Watson's involvement as the getaway driver in the robberies." And his defense counsel was free to cross-examine Mr. Moses about any alleged "contradictions" in his trial testimony.

We agree with the circuit court and the State that Mr. Watson's allegations did not create a substantial or significant possibility that the results of his trial may have been different if he had known at trial of Mr. Moses's mental health condition and prescription medication use. Evidence at trial established that, the day after the second robbery (at High's), Mr. Watson was interviewed by the police and admitted that he had driven Mr. Moses to the High's store. He also admitted that, after the High's robbery, he, Mr. Moses, and Mr. Badger proceeded to Mr. Badger's sister's apartment where they concealed the weapon that was used in the robbery. And he admitted that he had driven Mr. Moses to the Beverage Barn where Mr. Moses had attempted to rob the victim at the phone booth, although he denied that he was aware of Mr. Moses's plans to commit either robbery.

We also agree with the State that, with an exercise of due diligence, the evidence of Mr. Moses's mental health condition could have been discovered in time for Mr. Watson

to move for a new trial. As the State points out, in July 2001 Mr. Moses's defense counsel informed the sentencing court of Mr. Moses's mental health status in an effort to mitigate his punishment – a proceeding held in open court the day before Mr. Watson's own sentencing and nearly two years prior to the tolling of Mr. Watson's right to move for a new trial pursuant to Md. Rule 4-331.

In sum, we hold that the circuit court did not err in denying Mr. Watson's petition for writ of actual innocence without holding a hearing because he was not entitled to relief.

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