Circuit Court for Prince George's County
Case No. CT110071X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2425

September Term, 2023

THRACY ROBIN PARKS

v.

STATE OF MARYLAND

Friedman,
Zic,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: May 27, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from a petition for a writ of actual innocence filed by Thracy Parks, appellant, in the Circuit Court for Prince George's County. In February 2012, Mr. Parks was convicted by a jury of multiple crimes in connection with two shootings that occurred in November 2010. On September 25, 2023, Mr. Parks filed a petition for a writ of actual innocence based on newly discovered evidence ("Petition"). The circuit court denied the Petition without a hearing. Mr. Parks now appeals and presents one question for our review, which we have rephrased as follows:[1] Did the circuit court err in denying the Petition without a hearing? For the following reasons, we affirm.

BACKGROUND

On November 4, 2010, five days after a dispute between Mr. Parks and his former wife, Rhonda Parks, a shooting occurred at Ms. Parks' residence. Mr. Parks, the couple's son, and Ms. Parks' parents were inside the home at the time of the shooting. A second shooting occurred shortly following the first at Ms. Parks' brother's home. In January 2011, Mr. Parks was indicted on 18 counts related to the two shootings. On February 9, 2012, a jury convicted Mr. Parks of two counts of attempted first-degree murder, four counts of attempted second-degree murder, five counts of first-degree assault, one count

[1] Mr. Parks phrased the question as follows:

> 1. Did the court err in denying [Mr. Parks'] request for a hearing on his petition for Writ of Actual Innocence when the petition met the pleading requirements found in Md. Rule 4-332, [Mr. Parks] requested a hearing, and [Mr. Parks] sufficiently stated grounds for relief?

of reckless endangerment, and two handgun offenses.[2] Mr. Parks filed a direct appeal in April 2012, and this Court upheld his convictions. *Parks v. State*, No 721, Sept. Term 2012 (Md. App. May 16, 2013), *cert. denied*, 434 Md. 314 (2013).[3]

Mr. Parks filed a "Petition For Writ Of Actual Innocence And Request For Hearing" (previously, "Petition") with the circuit court on September 25, 2023. In the Petition, Mr. Parks argued that he was "entitled to relief under [Maryland] Criminal Procedure Code § 8-301 because the Maryland Supreme Court has recognized that numerous studies and reports released in recent years have cast significant doubt on the accuracy of firearms identification evidence." Mr. Parks stated that "an expert in the field of firearms examinations . . . testified that, based on firearms examination methods, a number of ammunition components recovered from the scene of both shootings had been fired from a handgun whose grip was 'consistent' with [Mr. Parks'] DNA." According to Mr. Parks, this evidence was admitted in error under *Abruquah v. State*, 483 Md. 637 (2023). Mr. Parks further argued that "[b]ecause the veracity of firearms

[2] For a more detailed recitation of the underlying facts, see *Parks v. State*, No. 721, Sept. Term 2012 (Md. App. May 16, 2013).

[3] Following the Supreme Court of Maryland's denial of his petition for certiorari, Mr. Parks filed for a writ of certiorari from the Supreme Court of the United States, which was denied on March 3, 2014. *Parks v. Maryland*, 571 U.S. 1240 (2014). Mr. Parks also sought postconviction relief on January 3, 2014, which the circuit court denied. He then filed an application for leave to appeal from the order denying postconviction relief, which was denied by this Court. Mr. Parks also filed a petition for habeas corpus relief with the United States District Court for the District of Maryland, which was denied on February 10, 2016. *Parks v. Corcoran*, No. CV ELH-14-1279, 2016 WL 524281, at *8 (D. Md. Feb. 10, 2016). In the same memorandum opinion, the district court denied Mr. Parks' request for a certificate for leave to appeal. *Id.*

identification has long gone unchallenged, . . . and because of the significant weight jurors are likely to place on 'scientific' evidence offered by expert witnesses, . . . this error creates a significant possibility that the result of the initial trial may have been different." (internal citations and explanations omitted).

Without holding a hearing, the circuit court denied the Petition on January 23, 2024, stating:

> First, [Mr. Parks] does not specify what study was not available prior to his trial in February 2012 or prior to exhausting his direct appeals in March 2014. Second, two of the three studies cited by the Maryland Supreme Court in the *Abruquah* case existed years before [Mr. Parks'] trial and are not, therefore, newly discovered. [Mr. Parks] does not make any argument that the third study cited by the Maryland Supreme Court [in *Abruquah*] was somehow different or particularly pivotal to the holding. Additionally, the holding of the Maryland Supreme Court in *Abruquah* is a legal ruling, not evidence, and was not governing law at the time of [Mr. Parks'] trial, conviction, or period of appellate rights.
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> The [c]ourt therefore finds [Mr. Parks] has failed to describe any newly discovered evidence and is not entitled to a hearing.

Mr. Parks timely appealed the circuit court's denial of the Petition.

STANDARD OF REVIEW

We review the legal sufficiency of a petition for a writ of actual innocence that was denied without a hearing *de novo*. *State v. Ebb*, 452 Md. 634, 643 (2017) (citing *Hunt v. State*, 443 Md. 238, 247 (2015)). As such, we will give no deference to the circuit court's findings. *Oku v. State*, 433 Md. 582, 592 (2013) (defining *de novo* to

require the reviewing court to consider "a matter anew, giving no deference to a [circuit] court's findings" (internal citations and quotation marks omitted)).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR BY DENYING THE PETITION WITHOUT A HEARING.

A. The Parties' Contentions

Mr. Parks argues that the court erred in dismissing the Petition without a hearing because he "complied with the technical and procedural requirements of Md. Crim. Proc. § 8-301 and Md. Rule 4-332[.]" Mr. Parks asserts that he was entitled to a hearing because the Petition "sufficiently stated grounds upon which relief could be granted." Mr. Parks specifically contends that the Petition "detailed numerous studies conducted in recent years that cast significant doubt on the accuracy of firearms identification evidence," the significance of which he argues is bolstered by the Supreme Court of Maryland's holding in *Abruquah*. Mr. Parks further argues that the firearms identification evidence presented at trial was "central to his conviction" and, therefore, "because the newly-discovered studies on firearms identification cast significant doubt on this pivotal facet of Mr. Parks' conviction," Mr. Parks claims there was a "significant possibility that the outcome of his original trial may have been different."

The State argues that the circuit court did not err because the Petition "did not identify newly discovered evidence that, if credited, could have produced a different result in [Mr. Parks'] trial." The State contends that the Petition is insufficient because "*Abruquah* is a court opinion, not evidence" and that, while the Petition does include

reference to two studies also identified in *Abruquah*, "nowhere does the [P]etition allege that either document was newly discovered evidence." In the alternative, the State argues that, even if *Abruquah* applies and the expert's testimony was excluded, the evidence against Mr. Parks was "robust" and there is not a "substantial or significant possibility" that the result would differ.

B. Discussion

Section 8-301 of the Criminal Procedure Article of the Maryland Code (2001, 2018 Repl. Vol.)[4] sets forth the statutory framework for petitions for writ of actual innocence. "[T]he General Assembly enacted [] § 8-301 to address the statutory gap for convicted defendants who could not secure postconviction relief because they obtained newly discovered evidence that was either non-biological, or discovered after the one year limitation in Maryland Rule 4-331."[5] *Ebb*, 452 Md. at 643-44 (citations omitted).

[4] All statutory references are to the Criminal Procedure Article unless otherwise noted.

[5] Rule 4-331(c) provides:

> The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:
>
> (1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief; and
>
> (2) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, § 8-201

(continued)

Section 8-301(a) states:

> 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:
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> (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; or
>
> (ii) if the conviction resulted from a guilty plea, an Alford plea, or a plea of nolo contendere, establishes by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the petitioner's motion; and
>
> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

Section 8-301(b) provides the filing requirements, stating that a petition for a writ of actual innocence shall:

> (1) be in writing;
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> (2) state in detail the grounds on which the petition is based;
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> (3) describe the newly discovered evidence;
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> (4) contain or be accompanied by a request for hearing if a hearing is sought; and
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> (5) distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions.

> or other generally accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.

"Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a petition filed under this section if the petition satisfies the requirements of subsection (b) of this section and a hearing was requested." § 8-301(e)(1); *see Hunt*, 443 Md. at 250-51("[A] petitioner is entitled to a hearing on the merits of the petition, provided the petition sufficiently pleads grounds for relief under the statute, includes a request for a hearing, and complies with the filing requirements of § 8-301(b)." (internal quotation marks and citation omitted)).

Section 8-301(e)(2) creates an exception to the hearing requirement: "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." In *Douglas v. State*, 423 Md. 156, 180 (2011), the Supreme Court clarified that the petitioner has a "burden of pleading grounds for relief, not of proving them," further explaining that:

> The pleading requirement mandates that the trial court determine whether the allegations could afford a petitioner relief, if those allegations would be proven at a hearing, assuming the facts in the light most favorable to the petitioner and accepting all reasonable inferences that can be drawn from the petition. That is, when determining whether to dismiss a petition for writ of actual innocence without a hearing pursuant to [] § 8-301(e)(2), provided the petition comports with the procedural requirements under [] § 8-301(b), 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 "creates a substantial or significant possibility that the result [of the trial] may have been different." [] § 8-301(a).

In addition to § 8-301, petitions for writ of actual innocence are also governed by Maryland Rule 4-332. Rule 4-332(d) outlines the necessary components a petition for writ of actual innocence, providing in relevant part that all petitions 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;
>
> (7) a description of the newly discovered evidence, how and when it was discovered, why it could not have been discovered earlier, and, if the issue of whether the evidence could have been discovered in time to move for a new trial pursuant to Rule 4-331 was raised or decided in any earlier appeal or post-judgment proceeding, the identity of the appeal or proceeding and the decision on that issue;
>
> (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[.]

As a threshold matter, the "newly discovered evidence" must actually be "evidence." *Hawes v. State*, 21 Md. App. 105, 134 (2014). In this context, evidence "necessarily means testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial." *Id.* (concluding that trial counsel's realization that he should have objected to a jury instruction "is not a fact or item or thing that could have been admitted into evidence or used in examination or cross-examination of any witness at trial"). Newly discovered evidence can include, however, "later discovered scientific evidence which casts doubt upon the validity and admissibility of evidence that was introduced at the time of trial." *Ward v. State*, 221 Md. App. 146, 163 (2015).

In the Petition, Mr. Parks centers his argument around *Abruquah*, in which the Supreme Court held that:

> [The expert witness] could testify about firearms identification generally, his examination of the bullets and bullet fragments found at the crime scene, his comparison of that evidence to bullets known to have been fired from [the defendant's] revolver, and whether the patterns and markings on the crime scene bullets are consistent or inconsistent with the patterns and markings on the known bullets. However, the circuit court should not have permitted the State's expert witness to opine without qualification that the crime scene bullets were fired from [the defendant's] firearm.

483 Md. at 698. In Mr. Parks' discussion of *Abruquah*, he provides two footnotes citing to two of the studies that were referenced in the Court's analysis describing the accuracy and reliability of firearms identification evidence. The Petition ultimately alleges that, pursuant to *Abruquah*, the expert witness's testimony that the conclusions as to firearms identification were "within a reasonable degree of scientific certainty" should have been excluded.

We conclude that the Supreme Court's holding in *Abruquah* cannot be considered newly discovered evidence. A legal principle is not "testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial[,]" and, therefore, cannot be defined as "evidence." *Hawes*, 21 Md. App. at 134.

Furthermore, while the studies may be considered newly discovered evidence, *Ward*, 221 Md. App. at 163, the Petition does not specifically identify or describe the studies as the newly discovered evidence upon which the Petition is based. The

paragraph of the Petition in which the studies are cited provides the broad statement that the Court in *Abruquah* "looked to numerous reports and studies addressing the lack of specific protocols and highly subjective nature of firearm identification methodology," as well as the statement that "one report noted that the examiners are unable to specify how many points of similarity are needed to assure confidence in an accurate match." The studies are not referred to as evidence and, as far as we can discern, are only cited to as explanation of the Court's decision in *Abruquah*.

Beyond the quotations above, the studies are not described in any further detail in the Petition. Accordingly, we conclude that the studies are not described as required by § 8-301(b)(3) and Rule 4-332(d)(7). Because Mr. Parks did not satisfy the requirements of § 8-301(b), the court did not err in denying the Petition without a hearing.

CONCLUSION

We hold that the Petition did not describe newly discovered evidence as required by § 8-301(b)(3) and Maryland Rule 4-332(d)(7). We, therefore, affirm the circuit court's denial of the Petition without a hearing pursuant to § 8-301(e)(2).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.