

Circuit Court for Baltimore County  
Case No: 03-K-02-002951

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2534

September Term, 2019

---

KENYATTA M. SMITH

v.

STATE OF MARYLAND

---

Graeff,  
Friedman,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: April 20, 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.

For the third time, Kenyatta M. Smith, appellant, appeals a decision of the Circuit Court for Baltimore County denying her petition for a writ of error coram nobis. In its latest ruling, the circuit court acknowledged that Ms. Smith had met the prerequisites for relief, but in the exercise of its discretion, determined that granting Ms. Smith a writ of error coram nobis was not in the interests of justice. On appeal, Ms. Smith contends that her “particularly compelling circumstances” warrant relief. In the alternative, given that the court ruled without a hearing, she urges this Court to vacate the judgment and remand the case for a hearing. We affirm the judgment because we are not persuaded that the court abused its discretion in rendering its decision, and because the court was not required to hold a hearing before denying relief. *See* MD. R. 15-1206(a).

### **BACKGROUND**

The facts of this case are fully described in *Smith v. State*, No. 1605, September Term, 2015 (filed August 1, 2016) (“*Smith I*”), and *Smith v. State*, No. 1721, Sept. Term, 2017 (filed May 20, 2019) (“*Smith II*”). Suffice to say that after we remanded for a second time in *Smith II*, the State, apparently on its own accord, filed “State’s Answer to Petition for Post Conviction Relief” (“Answer”) with the circuit court on October 2, 2019, in which it reviewed the undisputed facts of the case and asserted that, “[g]iven that it was abundantly clear what the nature of the offenses were, given the statement of facts [proffered in support of the plea], common understanding of the offenses, and the age of the Petitioner [24 at the time the pleas were entered], compelling circumstances do not necessitate coram nobis relief in order to achieve justice.” The State served a copy of its

Answer on Ms. Smith, by mail addressed to her home address. Ms. Smith did not file a response to the State’s Answer or a supplement to her petition.

By memorandum opinion and order dated January 28, 2020, the circuit court acknowledged that Ms. Smith had met all the prerequisites for obtaining a writ of error coram nobis. The court, however, denied relief, without a hearing, after concluding that Ms. Smith had not persuaded the court that “this extraordinary remedy is necessary to effectuate justice.” The court explained its position:

The Petitioner has filed her Writ of Error Coram Nobis largely in part due to Maryland requiring that mortgage originators obtain a license to carry out their profession. Maryland does not allow those who were convicted or pled guilty to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering to obtain a mortgage originator’s license. [Footnote with citation to statute omitted.] Petitioner pled guilty to a felony involving fraud, dishonesty, breach of trust, or money laundering when she used her former employer’s name, tax identification number, and social security number to obtain a commercial loan as well as forging her employer’s signature to deposit the ill-gotten gains into her personal bank account. Petitioner had access to personal and private information given to her by her employer when she committed the offenses that led her to plead guilty to one count of Forgery and two counts of Fraud (Identity Theft).

Petitioner would also have access to personal and private information as a mortgage originator. The legislation requiring mortgage originators to have a license was passed to “address increasing problems with mortgage origination by unscrupulous or untrained individuals.” [Footnote omitted.] The legislation was also passed to give people aggrieved by a mortgage originator the ability to file a complaint with the Commissioner of Financial Regulation so that the complaint can be investigated, and the proper steps taken. [Footnote omitted.] A review of the legislative history clearly indicates that the Maryland General Assembly in enacting this legislation intended to combat the problems arising from the dishonesty amongst individuals employed in the mortgage origination field and by necessity given access to the private financial information of individual members of the general public be of good moral character, free from issues of dishonesty

and lack of trustworthiness. [Footnote omitted.] The Court finds that the circumstances before it do not warrant the issuance of a Writ of Error Coram Nobis to achieve justice and therefore DENIES Petitioner’s request for a Writ of Error Coram Nobis.

Two days later, counsel with the Office of the Public Defender (OPD) entered an appearance on behalf of Ms. Smith. Two weeks later, counsel filed a motion for reconsideration of the court’s decision. In the motion for reconsideration, counsel asserted that OPD’s late entry of its representation of Ms. Smith was due to an “administrative oversight” within OPD and not to any fault of Ms. Smith, who had sought representation in a timely manner after receiving the State’s Answer filed after the *Smith II* remand. Counsel requested an opportunity to respond to the State’s Answer and requested a hearing on whether this case “presents compelling circumstances” justifying coram nobis relief.

Counsel also filed a timely notice of appeal of the circuit court’s January 28th denial of the petition, and the case was transmitted to this Court. It appears that the circuit court has not ruled on the motion for reconsideration.

### **DISCUSSION**

The Court of Appeals has stated that “[a] writ of error coram nobis is an extraordinary remedy justified only under circumstances *compelling such action to achieve justice.*” *State v. Rich*, 454 Md. 448, 461 (2017) (quotation marks and citations omitted; emphasis in the original). This Court has observed that, even “assuming that a petitioner has met the prerequisites for coram nobis relief, we are not aware of any Maryland decision mandating that relief be granted in the absence of ‘circumstances compelling such action

to achieve justice.” *Vaughn v. State*, 232 Md. App. 421, 429 (2017) (quoting *Coleman v. State*, 219 Md. App. 339, 353-54 (2014)). In both *Vaughn* and *Coleman* we quoted the United States Supreme Court that “judgment finality is not to be lightly cast aside; and courts must be cautious so that the extraordinary remedy of coram nobis issues only in extreme cases.” *Vaughn*, 232 Md. App. at 429 (quoting *United States v. Denedo*, 556 U.S. 904, 916 (2009)); *Coleman*, 219 Md. App. at 354 (quoting *United States v. Denedo*, 556 U.S. at 916). Thus, given the extraordinary nature of this remedy, we review the circuit court’s ultimate decision to deny Ms. Smith relief under the abuse of discretion standard, with legal determinations reviewed without deference and factual findings left undisturbed unless clearly erroneous. *Rich, supra*, 454 Md. at 470-71. In the present appeal, there are no legal determinations to review and no one disputes the circuit court’s factual findings.

“There is an abuse of discretion where no reasonable person would take the view adopted by the trial court.” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007) (cleaned up). “To be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* at 418-19 (cleaned up).

Here, it is clear from its memorandum opinion and order that the circuit court recognized that Ms. Smith met the prerequisites for obtaining a writ of error coram nobis, but, for the reasons it stated, nonetheless determined that this was not one of those rare circumstances where issuance of the writ was necessary to achieve justice. Although we might have granted Ms. Smith the relief she sought, we certainly cannot say that the circuit

court’s decision to deny the writ was so far removed from any center mark as to constitute an abuse of discretion.

Finally, we decline Ms. Smith’s suggestion that we vacate the judgment and remand the case to allow her to file a response to the State’s Answer filed after *Smith II* and permit her to request a hearing on whether the circumstances of her case compel relief. We note that the State’s Answer was not solicited by the circuit court; the State’s Answer was served on Ms. Smith; the circuit court waited nearly four months after the State filed its Answer before ruling; and the circuit court neither referenced the State’s Answer in its memorandum opinion and order nor adopted its reasoning. Moreover, Md. Rule 15-1206(a) provides that a court “in its discretion, may hold a hearing on the petition” for coram nobis relief, but may deny the petition without holding a hearing.

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

Circuit Court for Baltimore County  
Case No: 03-K-02-002951

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2534

September Term, 2019

---

KENYATTA M. SMITH

v.

STATE OF MARYLAND

---

Graeff,  
Friedman,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

---

Concurring Opinion by Friedman, J.

---

Filed: April 20, 2021

Let me begin by saying that I concur in the per curiam opinion of the Court. I do not think the circuit court abused its discretion in denying the petition for a writ of error coram nobis.

I write separately because I cannot imagine a more deserving petitioner than Kenyatta Smith. The elements for issuance are, by this point, not contested by the State. They are uncontroverted and incontrovertible. They are res judicata and they are the law of this case:

- The judicial process by which Kenyatta Smith pleaded guilty was defective and unconstitutional. *Smith II* at 2.
- Kenyatta Smith completely and fully paid her debt to society. She served her probation without incident. She wasn't ordered to pay restitution because by the time of her guilty plea she had already made restitution to the victim, voluntarily. *Smith II* at 1.
- Kenyatta Smith then worked as a mortgage originator. As far as the record discloses, she was a good mortgage originator. There were certainly no complaints and no whiff of scandal. *Smith II* at 4.
- The General Assembly then suddenly and unexpectedly imposed a new licensing criterion for mortgage originators that no one could have anticipated when she committed her crime, took her guilty plea, or chose her career. Kenyatta Smith was suddenly prohibited from working as a mortgage originator. *Smith II* at 4.

Moreover, Kenyatta Smith is certainly more deserving than the recidivists who are the ordinary (and whom the Attorney General argues are the paradigmatic) recipients of coram nobis relief—folks who commit additional crimes before discovering that they are now subject to penalty enhancements or immigration consequences. It is a backwards,

upside down world in which the Attorney General of Maryland argues to the contrary.<sup>1</sup> On every possible criteria, Kenyatta Smith is deserving.

All of this was known and decided by the end of *Smith II*.

This Court remanded the matter for the trial court to do something that only the trial court can do, to determine if justice demands the extraordinary relief of the issuance of the writ of error coram nobis. *Smith II* at 5. While the circuit court’s stated reason for denying Kenyatta Smith the writ of error coram nobis may not have been an abuse of its discretion, *Smith III* at 2-3, it seems to me to have been a very weak reed on which to base a denial. The circuit court, as the per curiam opinion reports, denied Ms. Smith’s petition for only one reason, to support the legislature’s policy of preventing convicted felons from serving as mortgage originators. *Smith III* at 2-3. Imagine if, in *Skok*, the Court of Appeals had first identified the risk of deportation as the collateral consequence Skok faced as a result of his unconstitutional conviction, but then affirmed the denial of coram nobis relief solely to support the congressional policy of deporting convicted felons. *Skok v. State*, 361 Md. 52 (2000) (granting writ of error coram nobis despite congressional policy of deporting convicted felons). Or if, in *Jones*, the Court of Appeals had identified the recidivist penalty enhancement as the collateral consequence that Jones faced as a result of his unconstitutional conviction, but then affirmed the denial of the issuance of the writ of error

---

<sup>1</sup> My point is not that the Attorney General should advocate for granting Kenyatta Smith’s writ of error coram nobis if he doesn’t think it is appropriate. He should, of course, oppose it. My point rather, is that his oft-repeated position, in this case and others, that coram nobis is only available when the sudden collateral consequence is deportation or an enhanced penalty, misidentifies those most worthy of the writ.

coram nobis solely to support the legislative policy of enhancing penalties for recidivists. *Jones v. State*, 445 Md. 324 (2015) (granting writ of error coram nobis despite legislative policy of enhancing penalties for recidivists). This logic is circular and essentially eliminates the possibility of coram nobis relief. The collateral consequence is always—by definition—a respect-worthy legislative policy judgment, whether about deportation, about recidivism, or about licensing of mortgage originators. But, in my view, the existence or merit of that legislative policy ought not be the sole reason to deny relief.

I disagree completely with the circuit court’s decision to decline to issue the writ of error coram nobis. But it was its decision to make. I must abide.