Circuit Court for Washington County
Case No. 21-K -03-33092

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2620

September Term, 2016

DELANTE ANTWYNE ROPER

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 8, 2018

Delante Antwyne Roper appeals the dismissal, by the Circuit Court for Washington County, of his petition for writ of error coram nobis. We affirm.

BACKGROUND

In 2004, Mr. Roper appeared with counsel in the circuit court and pleaded guilty to possession of a controlled dangerous substance (crack cocaine) with intent to distribute and driving while under the influence. The court accepted the plea and agreed to bind itself to a maximum sentence of ten years of "active incarceration."[1]

The statement of facts in support of the plea related that Mr. Roper had been stopped for speeding. The police officer on the scene observed that Mr. Roper's "eyes were bloodshot and glassy" and that he had "a strong odor of alcoholic beverage" about his person. The officer also observed "a three quarter empty bottle of Gin in the car, half pint of Gin in the car and a half empty Icehouse beer in the cup holder." Mr. Roper failed several field sobriety tests. The officer recovered a bag containing sixty-two grams of crack cocaine from Mr. Roper's person. Another officer summoned to the scene ascertained that the cocaine was "an amount sufficient to indicate an intent to distribute." The defense expressly agreed with the State's proffer of facts. The court then sentenced Mr. Roper to twelve years' imprisonment, with all but six and one-half years suspended,

[1] In advising the court of the sentencing terms of the plea agreement, the prosecutor stated that "the State will seek no more than ten years active incarceration" and the defense was free to seek less time, but no less than five years. In examining Mr. Roper before accepting the plea, the court asked him if he understood that, under the terms of the agreement, the court could "impose a sentence of no more than ten years but no less than five years." Later in the proceeding, the court stated that it would bind itself "to the sentencing understanding where the sentence of actual time served would be no less than five, no greater than ten, with credit for time served."

and to a three-year period of unsupervised probation upon release. Mr. Roper did not seek leave to appeal.

In 2015, Mr. Roper filed a "Pro Se Writ of Error Coram Nobis to Review Prior Proceeding Pursuant to Title 28 U.S.C. § 1651." He challenged the validity of the 2004 guilty pleas on two grounds: (1) his trial counsel provided ineffective assistance because he had "failed to explain the nature and elements of the charged offenses to [him] at anytime during the State proceedings"; and (2) the sentence imposed exceeded the sentencing terms of the plea agreement because he believed that the maximum sentence he would receive was ten years' imprisonment. The State moved to dismiss the petition because, among other things, Mr. Roper had failed to "recite 'the significant collateral consequences that resulted from the challenged conviction'" as required by Md. Rule 15-1202(b)(F). On June 24, 2015, the court issued an order dismissing the action. On January 9, 2017, the court issued a "corrected" order that Mr. Roper's petition "be dismissed, as of June 24, 2015, *nunc pro tunc.*" Mr. Roper then filed a timely appeal of the latter order.

DISCUSSION

The writ of error coram nobis is an equitable action originating in common law whereby a petitioner seeks to collaterally challenge a conviction after the judgment has become final. *Coleman v. State*, 219 Md. App. 339, 354 (2014), *cert. denied*, 441 Md. 667 (2015). The writ is available to "a convicted person who is not incarcerated and not on parole or probation" and who is "suffering or facing significant collateral consequences from the conviction." *Skok v. State*, 361 Md. 52, 78-79 (2000). "[T]he grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or

fundamental character." *Id.* at 79. "[A] presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner." *Id.* Relief under this "'extraordinary'" writ is warranted "'only under circumstances compelling such action to achieve justice.'" *Coleman,* 219 Md. App. at 353 (quoting *United States v. Morgan*, 346 U.S. 502, 511-512 (1954)).

As noted, the State moved to dismiss Mr. Roper's petition because he failed to allege that he was facing any significant collateral consequence as a result of the 2004 conviction. *See* Md. Rule 15-1202(b)(F) ("The petition shall include . . . the significant collateral consequence that resulted from the challenged conviction."). Mr. Roper did not respond to that motion, and the court summarily dismissed the action.

On appeal, Mr. Roper contends that the circuit court erred in dismissing his petition without first holding an "evidentiary hearing." We disagree. Maryland Rule 15-1206(a) provides that, "in its discretion," the court may hold a hearing on a petition for writ of error coram nobis and "may deny the petition without a hearing." We hold that the court did not err in dismissing the petition without a hearing because, by failing to allege that he was facing any significant collateral consequence as a result of the 2004 conviction, Mr. Roper failed to state a cause of action for which relief could be granted. *Smith v. State*, 219 Md. App. 289, 292-293 (2014) (where petition for coram nobis relief failed to allege a significant collateral consequence, the petition was "fatally flawed" and the court did not err in dismissing the action without a hearing).

Mr. Roper also maintains that the circuit court erred in dismissing his petition without giving a "reasonable explanation" for its ruling. Rule 15-1207(a) provides that

the "judge shall prepare and file or dictate into the record a statement setting forth separately each ground on which the petition [for writ of error coram nobis] is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the ruling." The court here, however, did not address the merits of Mr. Roper's petition, but instead dismissed it. Although we agree that the court should have provided a reason for the dismissal, its failure to do so in this case does not warrant a remand as the ground for the dismissal is evident – Mr. Roper's petition failed to state a cause of action upon which relief could be granted.

Finally, we note that, even if Mr. Roper had alleged a significant collateral consequence, such as an enhanced sentence for a subsequent conviction,[2] his challenges to his 2004 plea are meritless. Although the transcript of the plea hearing does not reflect that the nature and elements of driving under the influence and possession with intent to distribute cocaine were explained to Mr. Roper on the record of the plea hearing, the nature of those crimes are self-evident. *See Gross v. State*, 186 Md. App. 320, 342 (2009) (the charge of possession of cocaine with intent to distribute "is straightforward and simple."). Moreover, the statement of facts in support of the plea were sufficient to inform Mr. Roper of the nature of those charges. And significantly, the plea colloquy included the following exchange:

> THE COURT: Now, how old are you?
>
> ROPER: Thirty.

[2] It appears that Mr. Roper is currently incarcerated in a federal prison.

THE COURT: Thirty. You're able to read and write and you understand the nature of the charges against you?

ROPER: Yes, sir.

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THE COURT: Have you had ample opportunity to discuss this case with your attorney and are you satisfied with the services of Mr. Hutchinson?

ROPER: Yes sir.

THE COURT: Is there anything about these proceedings you do not understand?

ROPER: No sir.

Furthermore, the sentencing portion of the hearing reflects that Mr. Roper was no stranger to the criminal justice system. The prosecutor informed the court that Mr. Roper had "been convicted three times of prior drug offenses," including "distribution of cocaine in 1992."

Mr. Roper's second allegation was that his sentence of twelve years, all but six and one-half years suspended, breached the terms of the binding plea agreement. Even if we were to conclude that the plea agreement was ambiguous as to whether he was to receive a maximum ten years of *active* incarceration or a maximum sentence (including any suspended time) of ten years, the issue is moot because he has completed the sentence. Moreover, the alleged ambiguity in the sentencing terms of the plea bargain would not

warrant the extraordinary remedy of vacating his 2004 guilty plea years after the sentence was completed.

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