UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2781

September Term, 2011

SEAN BUNDY

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: October 14, 2015

From the denial, by the Circuit Court for Baltimore City, of his petition for writ of error coram nobis, Sean Bundy noted this appeal, presenting one question, which, in his words, is: "Under the current law, and the irrefutable evidence in the record should Judge Bryant's decision be reversed with instructions to issue a Writ of Coram Nobis?" Finding no error, we affirm.

In 1999, Bundy was charged with possession of cocaine with intent to distribute and related offenses. In 2004, Bundy, with counsel, appeared before the court and submitted an *Alford* plea[1] to possession of cocaine with intent to distribute. During the plea hearing, Bundy told the court that he was 30 years old, that he had received his "GED," that he could "read and write" and "speak and understand English," and that he did not "have any disability that might affect [his] judgement."

The following colloquy ensued:

> [THE COURT: Y]ou ha[ve] a right to go to trial. If you went to trial, the State would have to prove its case against you. The State would do that by calling witnesses. Your lawyer would cross-examine them. The State would try to introduce evidence. Your lawyer would object.
>
> If you had gone to trial, you could put on a defense. You could testify. You could summon witnesses. The [c]ourt would make them come in. . . . And you could introduce evidence.
>
> When you plead guilty or enter an *Alford* plea, you waive your right to put on a defense. If you had gone to trial, you could have remained silent, and the [c]ourt or the jury would not have held that against you.

[1]An *Alford* plea, named for *North Carolina v. Alford*, 400 U.S. 25 (1970), "is a guilty plea containing a protestation of innocence, . . . where a defendant does not contest or admit guilt." *Jackson v. State*, 207 Md. App. 336, 361 (2012) (internal citation and quotations omitted).

* * *

> If you had gone to trial, you would have chosen to be tried by a judge or a jury. If you chose a judge, that would be one person who would have to be satisfied beyond a reasonable doubt that you were guilty in order to find you guilty.
>
> If you chose a jury, you and your lawyer and the State would pick twelve people from the voter rolls and the driver rolls of Baltimore City. They would represent a cross section of the community.
>
> And each one of the twelve would have to be satisfied beyond a reasonable doubt that you were guilty in order to find you guilty. All twelve would have to agree you were not guilty in order to find you not guilty.
>
> If they could not agree, that would be a hung jury. And the State could try you over till you were found not guilty or guilty.
>
> But when you plead guilty or enter an *Alford* plea, you waive your right to a trial.

(Italics added.)

The court advised Bundy that the "maximum sentence" was "twenty years," whereupon the prosecutor submitted the following statement of facts:

> [O]n August 24th, 1999, at 9:45 p.m. in the three hundred block of South Collins Avenue, Baltimore City, officers observed . . . Bundy . . . exit a car and walk across the street.
>
> [Bundy] was observed holding a plastic bag . . . with suspected cocaine in it. Officers exited their car to approach [Bundy]. [Bundy] ran, and officers saw him throw the bag over a fence.
>
> [Bundy] stopped. The bag . . . was recovered and found to contain approximately forty-eight grams of cocaine. Search incident to arrest of [Bundy] a digital scale with residue and $137[.]

After defense counsel stated that he had "[n]o additions or corrections or modifications as to what the State would adduce in . . . testimony," the court convicted Bundy of the offense and sentenced him to "time served." Five years later, on July 17, 2009, Bundy filed a coram nobis petition, in which he stated:

> On September 21, 2009, Mr. Bundy is scheduled to go to trial before the United States District Court for the District of Maryland . . . for conspiracy to possess with intent to distribute heroin. . . . If convicted, at sentencing Mr. Bundy will be exposed to potential enhanced sentencing under 18 USC § 851, which will require a mandatory life sentence if the federal court determines that he has at least two prior convictions for narcotics felonies. Mr. Bundy respectfully submits that the instant conviction complained of may well qualify as such.
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> * * *
>
> Mr. Bundy respectfully avers that in accepting his plea in the criminal matter at issue, the [c]ourt failed to address each of the below-referenced issues, each of which rendered his plea involuntary and inadequate to fulfill the applicable constitutional and procedural requirements.
>
> 1) The [c]ourt failed to advise Mr. Bundy that he had at all times a right to maintain his innocence and to plead not guilty[.]
>
> 2) The [c]ourt failed to address or allude in open court to the elements of the offense in any manner at any point; the required elements of the offense could not be extrapolated from the facts adduced by the State.
>
> 3) The [c]ourt failed to address in open court the waiver of . . . trial rights by Mr. Bundy[.]

According to Bundy, in 2011, he pleaded guilty, in the United States District Court for the District of Maryland, to "Conspiracy to Distribute and Possess with Intent to Distribute 1 Kilogram or more of Heroin," and the federal court thereafter "adjudged [him]

guilty of the offenses" and sentenced him to a term of 292 months' imprisonment. The only source of this claim is Bundy's brief.

In 2012, the circuit court denied his petition for a writ of coram nobis, stating:

> The Court of Appeals in *Skok v. State*, 361 Md. 52, 750 A.2d 647 (2000), determined that a petitioner must satisfy and prove five conditions in order to obtain relief by way of a coram nobis petition. As to each of the five conditions, the burden of proof rests upon [Bundy]. First, the grounds for challenging the criminal conviction must be of a constitutional, jurisdictional, or fundamental character. *Skok* at 78. Second, a presumption of regularity attaches to the criminal case and the burden of proof is on the coram nobis petitioner to overcome the presumption. *Id.* Third, the coram nobis petitioner must be suffering or facing significant collateral consequences from the conviction. *Skok* at 79. Fourth, basic principles of waiver and final litigation are applicable to issues raised in coram nobis proceedings. Therefore, the same body of law concerning waiver and final litigation of an issue that is applicable under the Maryland Post Conviction Procedure Act is applicable to a coram nobis proceeding challenging a criminal conviction. *Skok* at 80. Fifth and finally, one is not entitled to challenge a criminal conviction by a coram nobis proceeding if another statutory or common law remedy is available. *Id.*
>
> [Bundy] has satisfied the first, second and fifth conditions laid out in *Skok*. . . .
>
> Regarding the third condition, . . . the [c]ourt understands that his July 12, 2004 conviction will likely impact his federal sentence. The [c]ourt is satisfied that [Bundy] meets the burden of proof as it relates to the third condition under *Skok*. The fourth condition is the obstacle [Bundy] cannot overcome.
>
> * * *
>
> [Bundy] failed to raise his allegations in an application for leave to appeal his conviction based on his guilty plea. As a result of this failure, . . . there is a rebuttable presumption that he knowingly and voluntarily failed to make his allegations.

* * *

. . . [Bundy] failed to rebut this statutory presumption. Additionally, [Bundy] failed to meet his statutory burden of proving that special circumstances existed which excused him from previously litigating his allegations. As a result of [Bundy's] failure to file an application for leave to appeal and his failure to prove the existence of special circumstances, [he] has waived his right to challenge his *Alford* plea through his writ of error coram nobis.

Despite [Bundy's] waiver, the [c]ourt shall nonetheless address [his] allegations regarding the knowing and voluntary nature of his *Alford* plea.

* * *

At the time of [Bundy's] plea, Maryland Rule 4-242(c) set forth the standards controlling when a judge may accept a guilty plea:

> . . . The court may accept a plea of guilty only after it determines, upon examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that (1) the defendant is pleading guilty voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea.

* * *

[Bundy] pled guilty to possession with intent to distribute cocaine. The crime of possession with intent to distribute cocaine is readily understandable from the crime itself, especially in consideration of the statement of facts read into the record[.]

* * *

. . . The record, in its totality, clearly reflects that [Bundy] was advised by the court and understood the nature of the charges and the consequences of the . . . plea and that [the] plea comported with Maryland Rule 4-242.

(Italics added.)

Bundy contends that the court erred in denying his coram nobis petition for four reasons. First, he contends that "there is no record[] to show that [he] understood the charges against him." We have stated, however, that "[w]hen an appellant . . . claims that a guilty plea was not knowingly and voluntarily entered with an understanding of the nature of the charge . . . as required by Maryland Rule 4–242(c), we look at the totality of the circumstances as reflected on the record as a whole that was before the trial judge during the plea proceeding." *Coleman v. State*, 219 Md. App. 339, 355 (2014) (internal citations and quotations omitted), *cert. denied*, 441 Md. 667 (2015). We have also stated that "a factual basis proffered to support the court's acceptance of the plea may describe the offenses charged in sufficient detail to pass muster under Rule 4–242[.]" *Id.* at 358 (internal citation, quotation, and brackets omitted).

Bundy told the court that he was 30 years old, had the equivalence of a high school education, could read, write, speak and understand English, and did not have any disability that might affect his judgment. Moreover, "possession with intent to distribute is so simple in meaning that it can be readily understood by a lay person." *Id.* at 357 (quotations omitted). Finally, the prosecutor proffered that Bundy "was observed holding a plastic bag" containing approximately 48 grams of cocaine and that, when police officers approached Bundy, he ran and threw the bag over a fence. That proffer provided sufficient detail to pass muster under Rule 4–242, and in light of the totality of the circumstances, the coram nobis

court did not err in concluding that Bundy understood the nature of the offense.

Bundy next contends that defense counsel failed "to advise" him "of the collateral consequences of his plea." Defense counsel was not required to advise Bundy that the conviction could subsequently be used to enhance a sentence. We rejected a similar claim in *Booze v. State*, 140 Md. App. 402 (2001), where we stated that a "prior conviction itself should constitute adequate warning that continuation of the same conduct will potentially result in a more harsh punishment." *Id.* at 411.

Bundy further contends, in his reply brief, that the court misadvised him of the maximum potential sentence, because he "was served with a notice of mandatory and additional penalties" that "double[d] the maximum to" 40 years. But, the court did not sentence Bundy to a term of 40 years' incarceration, or even a term of 20 years' incarceration. The court sentenced Bundy to "time served," and hence, no prejudice resulted from the failure of the court to inform Bundy of the maximum potential sentence.

Finally, Bundy contends, in his reply brief, that "the record harbors in silence any advisement as to Bundy's presumption of innocence." We agree that the court did not advise Bundy that he would be presumed innocent if he went to trial. The Court of Appeals has stated, however, that "the test . . . in determining whether a guilty plea is voluntary . . . is whether the totality of the circumstances reflects that a defendant knowingly and voluntarily entered into the plea." *State v. Daughtry*, 419 Md. 35, 71 (2011) (footnote omitted). As noted earlier, Bundy told the court that he was 30 years old, had received his "GED," could

read, write, speak, and understand English, and did not have any disability that affected his judgment. The court then advised Bundy of his right to a trial by a judge or a jury of residents of Baltimore City, as well as his rights to cross-examine witnesses, object to evidence, present evidence, testify, summon witnesses, compel witnesses to appear, and remain silent. It further advised him that to convict of any crime, the jury's verdict had to be unanimous, that the State had to prove its case beyond a reasonable doubt, that if he remained silent, his silence would not be held against him, and that by pleading guilty, he was waiving his right to trial. We conclude that the totality of these circumstances established that Bundy knowingly and voluntarily submitted his *Alford* plea and, hence, the court did not err in denying his petition for a writ of coram nobis.[2]

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

[2]Bundy makes a fifth contention, specifically that his coram nobis counsel erred in failing to notify the court that Bundy "had in fact been sentence[d] in federal court . . . to 292 months." But, in denying this petition, the court expressly accepted that Bundy was "facing significant collateral consequences from the conviction." Hence, no prejudice resulted from the failure of coram nobis counsel to supplement the record with the federal sentence.