Circuit Court for Baltimore City
Case Nos. 508242001
809260022
809027026

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 720 & 1372

September Term, 2017

TEREZ SIMPSON, a/k/a TEREZ JACKSON,

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Fader,

JJ.

Opinion by Graeff, J.

Filed: June 15, 2018

*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.

On January 28, 2009, Terez Simpson, aka Terez Jackson, appellant, pleaded guilty to one count of attempted distribution of heroin in the Circuit Court for Baltimore City.[1] The court sentenced appellant to four years' imprisonment, all suspended, with three years of supervised probation.

On January 4, 2010, in the same court, appellant pleaded guilty, on two different indictments, to one count of first degree assault and one count of attempted distribution of cocaine. On the charge of first degree assault, the court sentenced appellant to ten years' imprisonment, all but time served suspended, with five years of supervised probation. On the charge of attempted distribution of cocaine, the court sentenced appellant to two years' imprisonment, to be served consecutively to the ten years' imprisonment, all but time served suspended, with five years of supervised probation.

On January 27, 2017, after appellant was charged with additional offenses in the United States District Court for the District of Maryland, he filed two petitions for writ of error coram nobis. In his first petition, appellant argued that his guilty plea on January 28, 2009, to one count of attempted distribution of heroin, was not made freely and voluntarily because he did not agree to the factual basis for the plea proffered by the State. In his second petition, appellant argued that his guilty pleas on January 4, 2010, to first degree assault and attempted distribution of cocaine, were not freely and voluntarily made because

[1] Although appellant states that he pled guilty to attempted possession with intent to distribute heroin, the docket entries, charging document and transcript of the plea hearing identify the charge as attempted distribution of heroin.

the elements of each charge were not explained to him. The court rejected the claims raised in both petitions.

In this consolidated appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Was appellant's guilty plea to the charge of attempted distribution of heroin involuntary because he disputed the factual basis that the State proffered in support of the plea?

2. Were appellant's guilty pleas to charges of first degree assault and attempted distribution of cocaine involuntary because the court failed to apprise him of the nature of the charges and the elements of the offenses to which he was pleading guilty?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Guilty Pleas

A.

January 28, 2009, Guilty Plea

In late 2008, appellant was charged with multiple narcotics violations. On January 28, 2009, he pleaded guilty to one count of attempted distribution of heroin. He stated that he was making the guilty plea voluntarily and of his own free will. He stated that he was 18 years old, had not been threatened or promised anything to accept a plea, could read, write, and understand English, was not under the influence of alcohol or drugs, had never been a patient in a mental institution or under the care of psychologist or psychiatrist,

understood the details of the plea agreement, and understood the nature of the charge.[2] Appellant further acknowledged that, by pleading guilty, he was giving up a "certain number of legal constitutional rights, privileges, and defenses," including the right to a trial by jury or a bench trial, the right to confrontation, and the right to remain silent. Appellant stated that he understood that he was giving up his right to an appeal, and he would have the opportunity to seek leave to appeal only in certain limited circumstances.

Based on the foregoing, the court stated that it was "satisfied tentatively" that appellant's plea was being made knowingly, intelligently, and voluntarily, and it requested a proffer of facts to evaluate the factual basis for appellant's plea. The State proffered the following facts:

> [THE STATE]: On or about December 22nd, 2008 at approximately 9 a.m., an officer was in a[] covert location observing the 3900 block of Belvedere Avenue. At that time, he observed co-Defendant Davis approach the [appellant]. They talked to the [appellant], exited the area, and then returned a few minutes later with suspected CDS [controlled dangerous substances]. He – the [appellant] gave the suspected CDS to co-Defendant Davis in exchange for U.S. currency. At that time, the officers believe – the officer believed he had observed a hand-to-hand CDS transaction. The [appellant] was placed under arrest. Recovered were three bags of marijuana, $28 in U.S. currency. Recovered from the co-Defendant Davis was one vial of heroin from his pocket.
>
> The items that . . . were recovered were submitted to ECU. They were analyzed and found to be heroin, a schedule I narcotic. At this time, the State would offer into evidence as State's Exhibit 1 a copy of the analysis after having previously shown it to Defense counsel.

[2] The court explained on the record that "attempted distribution of heroin means you had the heroin and you were going to do it or transfer it to someone else." The court also explained that the "maximum sentence for attempted distribution of heroin[] . . . is 20 years [] and/or a $25,000 fine."

[DEFENSE COUNSEL]: No objection.[3]

[THE STATE]: If called to testify, the officers would identify the [appellant] standing to my left with counsel and all events occurred in Baltimore City, State of Maryland.

Following the State's proffer, the court asked appellant whether he agreed with the State's contention that the police officer would testify to the facts as presented. The following exchange ensued:

THE COURT: [Appellant], do you agree that's what the police officer would say? Did you hear what she said?

[APPELLANT]: I don't know what he would say.

THE COURT: You don't know what he would say?

[APPELLANT]: No.

THE COURT: Well, do you agree that's what happened?

[APPELLANT]: No.

THE COURT: That's not what happened?

At this point, defense counsel requested to confer with appellant.

After defense counsel conferred with appellant, the court asked the State if it could produce the police officer to testify to the proffered facts. Before the State could respond, appellant stated: "I'm pretty sure that's what he would say." No objection to the facts or other additional facts were offered to the court. The State then confirmed that it could produce the police officer to testify to the facts it proffered to the court.

[3] The exhibit was admitted into evidence.

The court indicated that the facts were "sufficient to find [appellant] guilty." Appellant was given an opportunity to allocute, but he stated only that he "just want[ed] to go home to [his] family." The court then sentenced appellant. Informing appellant that he was "getting an opportunity," which the court "hope[d] [he would] take advantage of," the court imposed a sentence of four years' imprisonment, all suspended, with three years of supervised probation.[4]

B.

January 4, 2010, Guilty Pleas

Approximately one year later, on January 4, 2010, appellant pleaded guilty in the same court to two charges on two separate indictments. With respect to the first indictment, which charged appellant with robbery, first degree assault, second degree assault, theft of property valued less than $500, and conspiracy to commit robbery, appellant pleaded guilty to first degree assault. With respect to the second indictment, which charged appellant with attempted distribution of cocaine and possession of cocaine, appellant pleaded guilty to attempted distribution of cocaine.

At the beginning of the plea hearing, the court discussed the two indictments. With respect to the first indictment, the court stated:

> All right. So what are we doing with [appellant]? Let's see, while on foot patrol, Officer Alvarez flagged down by witnesses. Stated that the victim was surrounded by a group of males who were punching and kicking him. When the officer arrived at the victim, all males had fled and victim

[4] Appellant subsequently violated his probation, and on March 15, 2011, the court ordered appellant to the serve the balance of his sentence, which totaled three years, ten months, and 24 days.

> was bleeding from the head and semi-conscious. Victim . . . gave written statement claiming he was walking when the males began approaching him. One male took the phone from [the victim's] waistband. . . . Was robbed, punched.

The court then noted that the second indictment involved police observations of apparent drug transactions.

After a discussion regarding the weaknesses in the robbery charge in the first indictment, the State recommended proceeding with the charge of first degree assault. Defense counsel asked the court to consider the following sentence:

> [I]f the State wants eight, suspend all but a year, I would ask the Court to consider ten, suspend all but time served on the [first degree assault] count.[5] And one year, suspend all but time served on the attempted distribution count and simply entering a guilty verdict on that.

The State agreed to the request, and the court stated: "All right. Talk to [appellant] and see if he wants it." The State then put the terms of the plea agreement on the record:

> Your Honor, in case ending in 001 [the first indictment], the State would be calling Count 2 of the indictment, first-degree assault. The agreed-upon disposition is ten years, suspending all [but] time served with five years of supervised probation. Additionally, the State would be calling . . . Count 1 of [the second] indictment attempted distribution of cocaine. The agreed-upon disposition is two years, suspending all [but] time served, five years of supervised probation to be served consecutive to the ten years suspended.

The court then questioned appellant, who stated that he was 19 years old, had completed the tenth grade, and could read, write, and understand the English language. Appellant stated that he was not under the influence of drugs or alcohol, had never been a

[5] Defense counsel initially referred to the robbery count, but after prompting from the court, clarified that he meant to refer to the charge of first degree assault.

patient in a mental institution, and was not currently being treated by a mental health professional. Appellant acknowledged that, if he was on probation or parole, he could be charged with violating conditions of that release. He stated that he understood the possibility of collateral consequences resulting from his plea, and that, by pleading guilty, he was forfeiting certain trial rights, as well as the right to appeal. Appellant stated that he understood the maximum sentence associated with each charge, and that the sentences he would receive from the plea agreement were legal sentences. He stated that he was making the guilty plea freely and voluntarily and was not being forced to plea or promised anything in exchange for his plea.

Following the plea colloquy, the court found that appellant was entering the guilty plea freely, voluntarily, knowingly, and intelligently. The court then asked for a statement of facts relating to each charge.

With respect to the charge of first degree assault, the prosecutor provided the following statement of facts:

> [THE STATE]: Your Honor, the facts to sustain a guilty plea for . . . [the first indictment], are that on May 17th, 2008 approximately 5:48 p.m., . . . in the 3200 block of Ingleside Avenue while on foot patrol, Officer Alvarez was flagged down by a witness and stated that the victim, later identified as Christopher Ruiz, was surrounded by a group of males who were punching and kicking him. When the officer arrived at the victim's location, all of the males had fled and the victim was bleeding from the head and semiconscious. He was . . . taken to Sinai Hospital where he was treated and discharged a few days later.
>
> The victim gave a written statement indicating that he was walking when a group of males slowly began to approach him. One of the males took the victim's cell phone from his waistband. He began to follow that unknown man – male when a group surrounded him and asked him what happened.

> When the victim told him that he was robbed, the victim was punched in the face by one of the males and continuously struck in the head and face area. He woke up in a pool of his own blood and then his memory of the rest of the incident fades.
>
> The investigation led to the [appellant] as the suspect. When the victim was shown a photo array containing [appellant's] photo, he positively identified [appellant] in the photo array as the person who threw the first punch. And he specifically remembered his face.
>
> If called to testify, Mr. Ruiz would identify [appellant] standing to my left at trial table as the individual who threw the first punch in the assault that landed him in the hospital for a few days. All events occurred in Baltimore City, State of Maryland.
>
> [DEFENSE COUNSEL]: We don't have any exceptions, Your Honor.

The court noted that appellant did not object to the statement of facts and found beyond a reasonable doubt that appellant "committed the offense of assault in the first degree." The court sentenced appellant to ten years' imprisonment, all but time served suspended, with five years of supervised probation.

With respect to the second indictment, the charge of attempted distribution of cocaine, the State proffered the following statement of facts:

> [T]he facts are that on June 15th, 2009, at approximately 9:50 p.m., in the 3900 block of Bellevue Avenue, members of the Baltimore City Police were on patrol when they observed the [appellant] . . . engage in what they believed to be a hand-to-hand drug transaction with a buyer later identified as Charles Hightower. The [appellant] handed the buyer a small-like colored object in exchange for U.S. currency. The buyer was observed to examine the object in his hand and began to walk away. The [appellant] then sat on the steps of 3947 Bellevue Avenue.
>
> The Officers approached the buyer who noticed them and dropped the object to the ground. The officers were able to recover the object and identified it as one red Ziploc containing a rock of suspected cocaine. The

> buyer was arrested and based upon that arrest and their observations, the officers approached the [appellant] and immediately placed him under arrest.
>
> The substance received from the buyer was submitted to the Baltimore City Police Lab and tested under the Department of Mental Health and Hygiene standards and did test positive for cocaine. . . .[6]
>
> If called to testify, the officers involved in this case would identify [appellant], standing to my left, as the individual who sold Mr. Hightower a red Ziploc containing a white rock substance identified as cocaine.

Defense counsel did not have any exceptions to the State's proffer of facts. The court found beyond a reasonable doubt that appellant was guilty of "hav[ing] attempted to distribute a schedule II CDS, cocaine." The court sentenced appellant to two years' imprisonment, consecutive to appellant's sentence of ten years' imprisonment, all suspended, with five years of supervised probation.

II.

Petitions for Writ of Error Coram Nobis

On January 27, 2017, appellant filed two petitions for writ of error coram nobis, challenging the voluntariness of the three guilty pleas he made in circuit court and seeking to have those convictions vacated. In these petitions, he alleged that he was facing collateral consequences from these convictions because, in 2016, he was charged in the United States District Court for the District of Maryland with being a Felon in Possession of a firearm, in violation of 18 U.S.C. § 922(g), and due to his prior convictions, he

[6] The lab report was admitted, without objection, into evidence.

qualified as a "career offender" and was subjected to "significantly higher penalties under the U.S. Sentencing Guidelines."[7]

A.

January 28, 2009, Guilty Plea

In appellant's petition for a writ of error coram nobis seeking to vacate his January 28, 2009, conviction for attempted distribution of heroin, he alleged that his guilty plea was unconstitutional, asserting that he did not enter into the plea freely and voluntarily because he explicitly disagreed with the facts proffered by the State. He argued that his disagreement with the State's facts constituted evidence that he "did not understand the proceedings and that he did not knowingly and voluntarily enter into the guilty plea."

The State argued that appellant's petition for coram nobis relief was barred by the doctrine of laches, noting that appellant never withdrew his guilty plea or appealed the plea and asserting that a delay of more than eight years since the offense occurred to request that the conviction be vacated was unreasonable. The State argued that granting appellant's petition would "irreparabl[y] hamper the State's ability to prosecute this case successfully to trial, and the State would be in a less favorable position to re-try this case." It stated that, even if it could locate all of the police officers and other witnesses, they "might have difficulty remembering any specific details from an observed sale from nine years ago."

[7] Appellant ultimately pleaded guilty to illegally possessing a firearm and was sentenced to imprisonment for 96 months.

In any event, the State argued that the "[f]ailure to agree to the facts of the guilty plea [did] not invalidate the plea," noting that Maryland Rule 4-242 did not require appellant to agree or admit his guilt. It asserted that the purpose of the statement of facts for a plea is to demonstrate whether a factual basis for the plea exists, not whether "the accused admits or accepts the factual basis." Moreover, the State argued that appellant "acquiesced" to the State's facts when, in response to the court's inquiry regarding whether the statement of facts pertaining to the officer's observations were accurate, he stated: "I'm pretty sure that's what he would say."

The court denied appellant's petition for coram nobis relief. It first rejected the State's argument that the doctrine of laches barred appellant's request. Although the court agreed that appellant's delay in bringing his petition was unreasonable, it found that "the State produced no evidence nor witnesses to demonstrate the prejudice the State would suffer in defending against his Petition or in re-prosecuting [appellant]. Accordingly, the State has failed to meet its burden in demonstrating that [appellant's] delay prejudice[d] the State."

The court next addressed the voluntariness of the plea. Based on the plea colloquy and the exchange relating to the State's proffered facts, the court stated that it was "satisfied that the record reveal[ed] that the trial court complied with Maryland Rule 4-242(c) when accepting [appellant's] guilty plea." It explained that the "primary purpose of the factual basis requirement of Maryland Rule 4-242(c) is to ensure that the accused is not convicted of a crime that he or she did not commit," and "[w]hen determining if there is a factual

basis for a plea, a trial court has 'broad discretion as to the sources' it may consider," including the statement of facts proffered by the State. (quoting *Metheny v. State*, 359 Md. 576, 601 (2000)). The court then stated:

> This Court is satisfied that [appellant] understood the complexity of the charge as explained to him by the court, and by the accompanying statement of facts read by the State. [Appellant's] personal characteristics indicate that he understood the plea colloquy. At the time of [appellant's] guilty plea, he was eighteen years old, had a prior probation before judgment, and was represented by competent counsel with whom he conferred with during the plea colloquy. Additionally, during [appellant's] allocution, he told the court, 'I just want to go home to my family. I've got a child. I want to go home. . . I just want to go home to my family.' Tr. T. at p. 24.[] It is clear from the record that [appellant] intended and desired to plead guilty. In *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970), the Supreme Court stated, "An individual accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit to his participation in the acts constituting the crime. . . whether he realized or disbelieved his guilt, he insisted on his plea because in his view he had absolutely nothing to gain by a trial and much to gain by pleading."
>
> Finally, the factual basis proffered was sufficient to support the court's acceptance of the plea. Accordingly, the plea colloquy demonstrates that [appellant's] plea was entered into knowingly, intelligently, and voluntarily, and that there was a factual basis for the plea.

B.

January 4, 2010, Guilty Pleas

Appellant's second petition for writ of error coram nobis, seeking to vacate his January 4, 2010, convictions for first degree assault and attempted distribution of cocaine, alleged that these pleas were not made freely and voluntarily. In that regard, he argued that he was not informed of the elements of the charges of first degree assault or attempted

distribution of cocaine, and the elements of the crimes were not "'readily understandable from the label of the crime itself.'" (quoting *State v. Daughtry*, 419 Md. 35, 73 (2011)).

The State disagreed. With respect to the guilty plea to first degree assault, the State initially argued that appellant's petition was barred by the doctrine of laches, noting that appellant "tendered his guilty plea over seven years ago, with no subsequent filings after taking advantage of his post-trial rights." It asserted that this delay was unreasonable and it prejudiced the State, noting that the case involved an out-of-town victim who, even at the time of the incident, had a limited memory of what transpired, and likely would have difficulty recalling those events nine years later.

In any event, the State argued that the failure to advise appellant of the elements of the charge did not "automatically mean that the plea was invalid" because Maryland Rule 4-243 "merely requires that the defendant have a basic understanding of the essential substance of the offense." Here, where there were five postponements in the case and appellant was "represented by the same [c]ounsel from his arraignment, where he was advised on the record what he was being charged with and what the maximum penalties were for each offense through the plea date," the plea was knowing and voluntary.

The State further argued that, during a motions hearing where appellant was present, the victim testified that, "as a result of the robbery and assault, he was punched in the face by the [appellant], required several days of medical treatment in the hospital, and suffered a fractured jaw, concussion, eight staples in the head, and a busted lip." And it was appellant's counsel who "advocate[ed] that this case should be pled to a first degree assault

and not a robbery," and when the State provided factual support for the plea, it "elicited all the elements of a first degree assault through its recitation of the facts, citing specifically that the victim was bleeding from the head, and semi-conscious," and that the victim "required several days treatment at Sinai hospital and identified [appellant] as the male who punched him in the face, before he lost consciousness and woke up in a pool of his own blood."

With respect to appellant's guilty plea to the charge of attempted distribution of cocaine, the State, as before, argued that the doctrine of laches barred the relief appellant sought. Again referencing the lack of "subsequent filings after taking advantage of his post-trial rights," the State asserted that "[a] delay of seven years, eight years since the actual offense occurred, [was] unreasonable," and granting the petition "would irreparably hamper the State's ability to prosecute this case successfully to trial." It stated that, even assuming the State could locate all of the witnesses, the officers involved at the time were "part of a specialized unit who participated in hundreds of narcotics sales observations a year and might have difficultly remembering any specific details from an observed sale from eight years ago."

Regarding appellant's specific allegation of error, the State again asserted that "[f]ailure to advise on the record of the elements of the crime [did] not automatically mean that the plea was invalid." It argued that, under the totality of the circumstances, appellant was aware of the nature of the charge of attempted distribution of cocaine. In that regard, it asserted that the nature of the crime was "readily understandable" from the name itself.

It further noted that appellant "pled guilty to the same exact charge in January 2009 in front of a different judge," where the court "went over the elements of attempted distribution."

The court denied the petition. With respect to laches, the court stated that, because "[d]elay for purposes of laches begins when a petitioner knew or should of known of the facts underlying the alleged error," i.e., at the time of appellant's pleas, "the State [] met its burden in demonstrating that [appellant's] delay was unreasonable and that the delay prejudice[d] the State." In any event, it found that, "[f]or each of the charges for which [appellant] entered a guilty plea, there was a detailed, agreed statement of facts to which the [appellant] had no changes, additions, nor corrections." The court stated that, after reviewing the transcript, it was satisfied that the pleas were entered into knowingly, intelligently, and voluntarily.

Appellant appealed the denial of both petitions for writ of error coram nobis, which were consolidated for this Court's review.

DISCUSSION

Appellant contends that the circuit court erred in denying his petitions for coram nobis relief because his guilty pleas were involuntary. With respect to the January 28, 2009, guilty plea, appellant asserts that his plea was "involuntary because he did not agree to the factual basis proffered by the [S]tate." With respect to the January 4, 2010, guilty pleas, appellant argues that those pleas were "involuntary because the convicting court failed to apprise him of the nature of the charges and the elements of the offenses." He also contends that the "doctrine of laches does not bar relief."

The State contends that the circuit court correctly denied appellant's petitions for writ of error coram nobis. Initially, it argues that the doctrine of laches bars the petitions. In any event, it argues that the court correctly denied the petitions because the record reflects that the pleas were made knowingly and voluntarily.

As the Court of Appeals has explained, "[c]oram nobis is extraordinary relief designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation where no other remedy exists." *State v. Smith*, 443 Md. 572, 623 (2015). Such relief is "justified 'only under circumstances *compelling such action to achieve justice*.'" *State v. Rich*, 454 Md. 448, 461 (2017) (quoting *Smith*, 443 Md. at 597).

To be eligible for coram nobis relief, several requirements must be met:

> (1) "the grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character" . . . ; (2) "a presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner" . . . ; (3) "the coram nobis petitioner must be suffering or facing significant collateral consequences from the conviction" . . . ; (4) the issue raised in a coram nobis action must not be waived or finally litigated . . . ; and (5) there must not be another statutory or common law remedy available."

Smith, 443 Md. at 623-24 (quoting *Skok v. State*, 361 Md. 52, 78-80 (2000)).

We review the circuit court's ultimate decision to grant or deny a petition for coram nobis relief for an abuse of discretion. *Rich*, 454 Md. at 471. We do not "disturb the *coram nobis* court's factual findings unless they are clearly erroneous, while legal determinations shall be reviewed *de novo*." *Id.* An appellate court will review without deference "a trial court's conclusion as to whether the doctrine of laches bars a party's filing." *Jones v. State*, 445 Md. 324, 337 (2015).

I.

Doctrine of Laches

Before we turn to the specific allegations underlying each petition for writ of error coram nobis, we address first the State's argument that the doctrine of laches bars coram nobis relief. The Court of Appeals recently explained that the doctrine of laches applies where: (1) there was an unreasonable delay in asserting a claim; and (2) the unreasonable delay prejudiced the opposing party. *Jones*, 445 Md. at 339. The party asserting the defense, which is the State here, "has the burden of proving laches by a preponderance of the evidence." *Id.*

In determining whether there was unreasonable delay, the court must first determine the length of the delay. *Id.* at 343-44. In this regard, "delay begins when the petitioner knew or should have known of the facts underlying the alleged error." *Id.* at 344. In *Jones*, the Court of Appeals held that Jones "should have known of the facts underlying the alleged error (*i.e.*, the allegedly involuntary guilty plea) on" the date he pled guilty, and his delay of 13 years in raising the claim was unreasonable. *Id.* at 355-57.

Similarly, here, appellant was present at his guilty pleas, and therefore, he should have known of the facts underlying the alleged error regarding the voluntariness of his pleas. He nevertheless waited more than seven years to raise the claims in his January 27, 2017, petitions for writ of error coram nobis. The circuit court, in each case, found this delay to be unreasonable, a finding that is not erroneous or an abuse of discretion.

We turn next to the question whether the unreasonable delay prejudiced the State. In that regard, "prejudice involves not only the State's ability to defend against the coram nobis petition, but also the State's ability to reprosecute." *Id.* at 357. "To establish prejudice, the State need not prove that the delay makes it impossible to reprosecute a petitioner; instead, the State must prove simply that the delay places the State 'in a less favorable position' for purposes of reprosecuting the petitioner." *Id.* at 360 (quoting *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 586 (2014)).

In *Jones*, 445 Md. at 360, the State met that burden when it called as a witness at the coram nobis hearing the officer who had observed Jones give an individual white objects. *Id.* at 331, 360. The officer testified that, "even after reviewing the statement of charges and an offense report he had prepared in connection with the case, he had no independent recollection of Jones." *Id.* at 360. In finding prejudice, the Court stated: "It is difficult to imagine anything more prejudicial than the circumstance that the State's only eyewitness can no longer testify about what the eyewitness saw." *Id.*

Here, unlike in *Jones*, there is no evidence in the record to support the State's claim of prejudice. Rather, the prosecutor merely proffered that: (1) the witnesses "might" have difficulty remembering details of the events; and (2) the victim's "ability to recall the events, much less the identity of [h]is assailants would certainly be called in to [sic] question." This proffer, amounting to mere speculation, was not sufficient to meet the

State's burden to show prejudice from the delay. Accordingly, the doctrine of laches is not a bar to coram nobis relief.

We thus turn to appellant's specific claims of error.

II.

January 28, 2009, Guilty Plea

On January 28, 2009, appellant advised the court that he was pleading guilty to attempted distribution of heroin. He stated that he was making this plea voluntarily, that he understood the terms of the plea, that the offense meant that he "had the heroin and [he] [was] going to do it or transfer it to someone else," and that he was giving up certain rights by pleading guilty. The court then stated that it was "satisfied tentatively" that the plea was made knowingly, intelligently, and voluntarily. At that point, the prosecutor read into the record the facts in support of the plea.

Appellant contends that his guilty plea to attempted distribution of heroin was "involuntary because he did not agree to the factual basis proffered by the [S]tate." Specifically, he argues that, because he "explicitly disagreed with the facts the State proffered to the court, which the court then used as the basis for accepting his guilty plea," the plea was not knowingly, intelligently, and voluntarily made.

The State disagrees. It contends that "Maryland Rule 4-242 [] does not require that the defendant agree with the State's proffer of facts in support of the plea. Rather, the court must determine that 'there is a factual basis for the plea.'" (quoting Md. Rule 4-242(c)).

The coram nobis court concluded that the trial court complied with Md. Rule 4-242(c), and the "factual basis proffered was sufficient to support the court's acceptance of the plea." We agree.

Maryland Rule 4-242(c) provides:

> The court may not accept a plea of guilty, including a conditional plea of guilty, until after an 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, the court determines and announces on the record that (1) the defendant is pleading 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. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

Here, the circuit court complied with Rule 4-242 when accepting appellant's guilty plea. The court determined that the plea was knowing and voluntary. As explained below, once that determination is made, the court can accept the plea if there is a factual basis for it, even if there is disagreement by the defendant.

"[T]he primary purpose of the factual basis requirement of Maryland Rule 4-242(c) is to ensure that the accused is not convicted of a crime that he or she did not commit." *Rivera v. State*, 409 Md. 176, 194 (2009). The court "'must determine that the conduct which the defendant admits constitutes the offense charged to which he has pleaded guilty.'" *State v. Thornton*, 73 Md. App. 247, 255 (1987) (quoting *McCall v. State*, 9 Md. App. 191, 199 (1970)), *cert. denied*, 312 Md. 127 (1988). In determining whether there is a factual basis for the plea, the court may consider the statement of facts proffered by the

State, even if the defendant does not agree with those facts. *See Rivera*, 409 Md. at 187, 195. *See also Ward v. State*, 83 Md. App. 474, 481 (1990) (although Ward's trial already had begun at the time the plea was entered and he had presented an alibi defense, which conflicted with the State's recitation of facts in support of the defendant's plea, the court did not err when it accepted Ward's plea and relied on the State's recitation of the facts as the factual basis in support of the plea).

Moreover, here, the record, reviewed as a whole, does not demonstrate that appellant disagreed with the State's proffer regarding the testimony of the police officer. Although he initially stated that he did not agree with the proffer, after consulting with defense counsel, appellant ultimately stated that he was "pretty sure" that the officer would testify, as proffered by the State, to witnessing a drug transaction. Based on that statement, and the prosecutor's statement that the police officer would say that, the court found that the facts were sufficient to find appellant guilty. We perceive no error in this regard, and therefore, the coram nobis court did not abuse its discretion in denying appellant's petition for writ of error coram nobis.

III.

January 4, 2010, Guilty Pleas

Appellant contends that his guilty plea to the charges of first degree assault and attempted distribution of cocaine were "involuntary because the convicting court failed to apprise him of the nature of the charges and the elements of the offense." In support, he asserts that "[t]he court did not make a single reference in the plea colloquy to the elements

of either of the offenses, did not describe the nature of the offenses, and did not ask [appellant] or his attorney whether they had discussed the nature of the charges or the elements of the offenses."

The State contends that the coram nobis court correctly rejected appellant's claim. It asserts that "the record is clear that [appellant] understood the nature of the charges to which he entered a guilty plea."

In addressing this claim, the circuit court stated: "For each of the charges for which [appellant] entered a guilty plea, there was a detailed, agreed statement of facts to which the [appellant] had no changes, additions, nor corrections." After reviewing the transcript of the plea hearing, the court was satisfied that the pleas were entered into knowingly, intelligently, and voluntarily. We agree.

As indicated, Maryland Rule 4-242(c) requires that a court may accept a guilty plea only after it determines that "the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea." Rule 4-242(c) "'does not require that the precise legal elements comprising the offense be communicated to the defendant as a prerequisite to the valid acceptance of his guilty plea.'" *Daughtry*, 419 Md. at 53 (quoting *State v. Priet*, 289 Md. 267, 288 (1981)). Rather, the court must determine that the accused has "a basic understanding of its essential substance, rather than of the specific legal components of the offense to which the plea is tendered." *Id.* (quoting *Priet*, 289 Md. at 288).

In this regard, the Court of Appeals has stated:

> The nature of some crimes is readily understandable from the crime itself. Necessarily, the required determination can only be made on a case-by-case basis, taking into account the relevant circumstances in their totality as disclosed by the record, including, among other factors, the complexity of the charge, the personal characteristics of the accused, and the factual basis proffered to support the court's acceptance of the plea.

Priet, 289 Md. at 288. *See Daughtry*, 419 Md. at 72 (factors to consider when determining whether, under the totality of the circumstances, a defendant's guilty plea is knowing and voluntary include the complexity of the charge, personal characteristics of the accused, and the factual basis offered in support of the plea). The test to evaluate the voluntariness of a plea is "whether, considering the record as a whole, the trial judge could fairly determine that the defendant understood the nature of the charge to which he pleaded guilty." *Priet*, 289 Md. at 291. *Accord Smith*, 443 Md. at 651.

With this background in mind, we turn now to the two guilty pleas in 2010.

A.

First Degree Assault

As appellant correctly points out, the colloquy at the guilty plea proceeding regarding the charge of first degree assault did not include any discussion by the court or defense counsel regarding the elements of the offense. That is not dispositive of the issue, however, because we must assess the totality of the circumstances to evaluate whether appellant's plea to first degree assault was knowing and voluntary.

We begin with the "complexity of the charge." As the Court of Appeals has recognized, "'[t]he nature of some crimes is readily understandable from the crime itself.'" *Daughtry*, 419 Md. at 72 (quoting *Priet*, 289 Md. at 288)). In that regard, we have stated

that "[a]ssault is not a complex crime." *State v. Rich*, 230 Md. App. 537, 555 (2016), *aff'd on other grounds*, *State v. Rich*, 454 Md. 448 (2017). In *Rich*, 230 Md. App. at 555, we held that, although "the court did not spell out the elements of the assault charge," Rich was capable of understanding the nature of the crime, which was "not a complex crime," from the proffered statement of facts.

Appellant contends, however, that he pleaded guilty to first degree assault, and the different degrees of assault rest on difficult distinctions, which are difficult to understand without explanation. The State disagrees. It contends that "[t]he State's proffer contained all the elements of first degree assault and specifically described the victim's serious injuries."[8]

Assault in the first degree encompasses, as relevant to this case, intentionally causing or attempting to cause serious physical injury to another. Md. Code (2012 Repl. Vol.) § 3-202(a) of the Criminal Law Article ("CR").[9] The State's proffer of facts in support of appellant's guilty plea stated that the victim was "surrounded by a group of males who were punching and kicking him," and when the police arrived, the victim "was bleeding from the head and semiconscious." He was taken to the hospital, "where he was

[8] The State also argues that the record reflects that appellant understood the nature of the charge of first degree assault based on his presence at the suppression hearing, where the victim testified about his injuries, and because the charges were explained to him at his arraignment. The record, however, does not contain the transcripts of these proceedings, and therefore, we cannot confirm what was said at those proceedings.

[9] Md. Code (2012 Repl. Vol.) § 3-202(a)(1) of the Criminal Law Article ("CR") provides, in pertinent part, as follows: "A person may not intentionally cause or attempt to cause serious physical injury to another."

treated and discharged a few days later." The victim identified appellant in a photo array "as the person who threw the first punch."

These facts were sufficient to explain the nature of the offense of first degree assault to which appellant was pleading guilty. *See Smith*, 443 Md. at 651 ("'[I]t is possible that the factual basis proffered to support the court's acceptance of the plea may describe the offenses charged in sufficient detail to pass muster under [Maryland] Rule [4-242(c)].") (quoting *Daughtry*, 419 Md. at 74). And as previously discussed, there was nothing to suggest that appellant had diminished capacity to understand the nature of the charges. *See Daughtry*, 419 Md. at 73 (the personal characteristics of an accused are important because a defendant with a "diminished capacity is less likely to be able to understand the nature of the charges against him than one with normal mental faculties."). In the plea colloquy, appellant stated that he was 19 years old, had completed the tenth grade, could read, write, and understand English, had never been a patient in a mental institution, and was not presently not being treated by a mental health professional.

The coram nobis court properly found that the plea on the charge of first degree assault was entered into knowingly, intelligently, and voluntarily. Accordingly, it did not err in denying appellant's petition for coram nobis relief.

B.

Attempted Distribution of Cocaine

Appellant similarly contends that his guilty plea to attempted distribution of cocaine was involuntary because "the inchoate crime of attempted distribution of cocaine is not

readily understandable from the name of the crime." Accordingly, he asserts that he "could not have voluntarily entered into a guilty plea to Attempted Distribution of Cocaine without having been explained the elements of that offense."

The State contends that "[t]he record is clear that [appellant] understood the nature of the charge [of] attempted distribution of cocaine." In that regard, it asserts that the "nature of the charge of attempted distribution of cocaine is apparent from the charge itself as well as the proffered statement of facts." Moreover, the State argues that appellant's "prior experience with the judicial system informed him of the nature of the charge of attempted distribution of cocaine," noting that "he already had a conviction for another 'attempt' crime."

Again, we must assess the totality of the circumstances to determine whether appellant's guilty plea was knowing and voluntary. *See Priet*, 289 Md. at 288. Addressing first the complexity of the crime, we agree with the State that the nature of the charge of attempted distribution of cocaine is readily understandable from the crime itself. This Court previously has held that the offense of possession with intent to distribute "is so simple in meaning that it can be readily understood by a lay person." *Coleman v. State*, 219 Md. App. 339, 357 (2014), *cert. denied*, 441 Md. 667 (2015). *Accord Gross v. State*, 186 Md. App. 320, 342 (offense of possession of cocaine with intent to distribute is "straight forward and simple."), *cert. denied*, 410 Md. 560 (2009). Similarly, we hold here that the offense of attempted distribution is "so simple in meaning that it can be readily understood by a lay person." *Coleman*, 219 Md. App. at 357. And as indicated, there was

nothing in appellant's personal characteristics that prevented him from understanding the nature of the charge.

Moreover, in the statement of facts proffered by the State, the prosecutor stated that the police observed appellant "engage in what they believed to be a hand-to-hand drug transaction with a buyer," explaining that "[appellant] handed the buyer a small-like colored object in exchange for U.S. currency." When the police approached the buyer, he noticed them and dropped the object to the ground. The officers were able to recover the object, and the lab confirmed that it tested positive for cocaine. The factual basis described the offense "'in sufficient detail to pass muster'" under Maryland Rule 4-242. *Coleman*, 219 Md. App. at 358 (quoting *Daughtry*, 419 Md. at 74).

Finally, we note that, as the State points out, appellant previously pleaded guilty to the same offense. During that plea hearing, the court explained that attempted distribution of heroin meant that appellant "had the heroin and [he was] going to do it or transfer it to someone else." Appellant affirmed that he understood what that meant. Under the totality of the circumstances, we perceive no error in the circuit court's finding that appellant's guilty plea was knowing and voluntary.

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