UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2449

September Term, 2013

ANTHONY LEVI TAYLOR

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: May 7, 2015

From the denial, by the Circuit Court for Calvert County, of a Petition for Writ of Error Coram Nobis[1] (hereinafter "the Petition"), appellant, Anthony Levi Taylor, presents one question, which for clarity we rephrase,[2] for our review: Did the court err in denying the Petition? Finding no error, we affirm the court's judgment.

Facts and Proceedings

In 1992, Taylor was charged in circuit court case number 92-451 with possession of a controlled dangerous substance, specifically cocaine, and in circuit court case number 92-522 with distribution of a controlled dangerous substance. In January 1993, Taylor was convicted in case number 92-522 of distribution of a controlled dangerous substance.

On February 23, 1993, Taylor appeared with counsel before the court in case number 92-451, and the following colloquy occurred:

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[1]The writ of coram nobis

> is a remedy for a convicted person who is not incarcerated and not on parole or probation. 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) the coram nobis petitioner must be suffering or facing significant collateral consequences from the conviction; (3) the claim for which coram nobis relief is sought cannot be waived or finally litigated; and (4) the petitioner must show prejudice.

Graves v. State, 215 Md. App. 339, 348 (2013) (internal citations and quotations omitted), *cert. granted*, 437 Md. 637, *dismissed*, 441 Md. 61 (2014).

[2]Taylor's question presented *verbatim* is: "Is a Writ of Corum [sic] Nobis available to the Appellant and should this Honorable Court grant such motion therefore relieving Appellant of the full force of the current federal sentence in the favor of justice?"

[TRIAL COUNSEL: Taylor] wishes to . . . enter a plea at this time of guilty of the one and only charge, possession of controlled dangerous substance cocaine[.]

* * *

Mr. Taylor is pleading guilty with the understanding that the State's Attorney is agreeing . . . that he be sentenced to no more than four years jail time, active jail time in his companion case, which is distribution of controlled dangerous substance, and that he get no active jail time in this possession case[.]

* * *

[PROSECUTOR: T]he recommendation is that he gets no more than four years active time for that and he gets no extra time for this.

* * *

THE COURT: All right. Let me ask you a few questions then, Anthony. Anthony Levy [sic] Taylor; is that right?

[TAYLOR]: Yes, sir.

* * *

THE COURT: Do you understand what you read in this indictment here, this particular one?

[TAYLOR]: Yes, sir.

* * *

THE COURT: Now, you are charged in count number one with possession of cocaine. Your attorney indicated you wish to plead guilty to that charge; is that correct?

[TAYLOR]: Yes, sir.

THE COURT: Do you understand in order to prove what the State would have to prove to prove you guilty of this charge?

[TAYLOR]: Yes, sir.

* * *

THE COURT: State's Attorney, tell us something about the case.

I want you to listen because I am going to ask you if you agree those facts are substantially correct.

[PROSECUTOR]: Your Honor, there was a search warrant done on . . . February 7th of last year on Mr. Taylor's residence. There was a residue of cocaine . . . on top of his dresser.

* * *

[] We would, if we went to trial, we would submit a laboratory analysis indicating that the substance located on Mr. Taylor's . . . dresser drawer did in fact test out to be cocaine.

* * *

THE COURT: Do you agree that that's what the State would prove if the case were to be tried?

[TAYLOR]: Yes, sir.

THE COURT: Have you discussed the matter of the plea you are offering, all the charges presently pending against you with your attorney?

[TAYLOR]: Yes, sir.

* * *

> [THE COURT:] You also understand in the event the court accepts the plea, nothing else remains to be done except to sentence you, and in this case . . . I wouldn't give you more than four years, and . . . that would run concurrent with any other sentence that you get in the other case.
>
> * * *
>
> [] This is a maximum of four years.
>
> * * *
>
> [] Not going to get any more on this than in the other case.
>
> * * *
>
> [] Not going to get any more than four years in the other case.
>
> [TAYLOR]: Okay.

The court thereafter convicted Taylor of the offense. On March 16, 1993, the court sentenced Taylor in case number 92-522 to a term of six years' imprisonment and suspended all but four years. The court then sentenced Taylor in case number 92-451 to a term of two years' imprisonment, to be served concurrently with the sentence in case number 92-522.

In 2013, Taylor filed the Petition in case number 92-451.[3] Taylor requested coram nobis relief for the following reasons:

> The February 23, 1993 plea colloquy record clearly reflects three undisputable reasons why Taylor's guilty plea was made involuntary [sic], unknowing [sic], and unintelligently . . . ; to wit, the [c]ourt's failure to

[3]Taylor did not file a Petition in case number 92-522.

properly advise Taylor of: (1) the nature of the charge; (2) a sufficient factual basis; and (3) a direct consequence, i.e., the statutory maximum sentence.

* * *

[First], the [c]ourt assumed that Taylor understood the nature of the charge just because he merely answered "yes" when asked. Conversely, the [c]ourt assumed Taylor understood the charge's required ramifications without first reading over and/or reciting the specific elements ascertained in the indictment.

* * *

[Second], the State failed to provide a sufficient factual basis . . . , absent proof of the results from [a] laboratory test. It is still undetermined whether "cocaine residue" really existed without proof from the laboratory test, because Taylor did not unequivalently [sic] admit that he agreed to the facts.

* * *

[Third,] the [c]ourt explicitly failed to advise[] Taylor of . . . the statutory maximum penalty for . . . possession of cocaine[.]

* * *

[Next,] Taylor submit[s] that [trial] counsel . . . gave him ineffective assistance in this case, and that but for her inaptness [sic] the out come [sic] of his guilty plea – plea agreement would have been different[.]

* * *

Last but not least, Taylor asserts that . . . he is currently suffering significant collateral consequences from the constitutionally infirmed [sic] conviction[.] For example, Taylor is currently in federal custody following a conviction for conspiracy to distribute and possession with intent to distribute 5 kilograms or more of a mixture or substance containing a

> detectable amount of cocaine, and 50 grams of cocaine base in violation of 21 U.S.C. § 841(b)(1)(A)(ii) [-] (iii). Under this statutory provision Taylor's mandatory minimum and maximum penalties are 10 years to life.
>
> The applicable base offense level for 5 kilograms or more of cocaine and 50 grams of cocaine base combined under [the] United States Sentencing Guidelines . . . is offense level 32. Taylor is giv[en] 7 criminal history points, in part, for the Maryland . . . prior conviction, and therefore is placed in category IV, between guideline range []121 - 151[] months[.]
>
> If the [c]ourt did not attribute 3 points towards Taylor's criminal history, his scores would have instead tolled at category III, between guidelines range []108-135[] months[.]

(Quotations, brackets, and exhibit references omitted.)

In 2014, the court issued an Order in which it denied the Petition. In 2015, the court issued a Statement in support of the Order. The court first concluded that Taylor entered his plea "knowingly and voluntarily." (Capitalization and boldface omitted.) The court next concluded that a post-conviction "proceeding would have been the proper method to address allegations of ineffective assistance of counsel," and "[n]otwithstanding the [c]ourt's ruling," Taylor was "adequately apprised . . . of his constitutional rights and the nature of the charges." Finally, the court concluded that the alleged increase in the guidelines for Taylor's federal sentence was "not a significant adverse consequence."

Discussion

Taylor contends that the court erred in denying the Petition. We disagree. First, we conclude that Taylor entered his plea with an understanding of the nature of the charge. We

have stated 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),[4] 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).

Here, Taylor told the trial court that he "read [the] indictment," understood "what the State would have to prove to prove [him] guilty of th[e] charge," and "discussed . . . all the charges . . . pending against [him] with" trial counsel. Also, we have stated that "possession [of a controlled dangerous substance] is so simple in meaning that it can be readily understood by a lay person." *Id.* at 357 (quotations omitted). Finally, the prosecutor

[4]Rule 4-242(c) states:

> 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.

proffered that, during a search of Taylor's residence, "residue [was located] on top of his dresser," and "a laboratory analysis indicat[ed] that the substance . . . did in fact test out to be cocaine." This factual basis described the offense charged in 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 Taylor entered his plea "knowingly and voluntarily."

Taylor contends that the trial court was required "to ask [trial counsel] or the State's Attorney whether or not they advised him of the nature of the charge and/or read over the indictment with him, and whether or not they were satisfied Taylor had a clear understanding of the charge." We disagree. The Court of Appeals has stated that "[a]lthough Rule 4–242(c) and the caselaw require on-the-record, in open court, evidence from the plea colloquy that the defendant is aware of the nature of the charges against him, the source or speaker from which such evidence emanates is immaterial." *State v. Daughtry*, 419 Md. 35, 74 (2011). "Thus, it is of no matter whether (1) *the defendant* informs the trial court that either he understands personally or was made aware by, or discussed with, his attorney the nature of the changes against him . . . ; (2) *the attorney* informs the trial court that he informed his client of the charges against the client . . . ; or (3) the *trial court itself* informs the defendant of the charges against the defendant[.]" *Id.* at 74-75 (citations omitted) (emphasis in original). Hence, the coram nobis court did not err in denying the Petition on this ground.

Next, we conclude that State was not required to submit to the trial court "results from [a] laboratory test" in order "to provide a sufficient factual basis." Taylor expressly agreed that, "if the case were to be tried," the State "would prove" that the substance located on his dresser was cocaine. Hence, the coram nobis court did not err in denying the Petition on this ground.

Next, we conclude that Taylor was advised of the maximum penalty for possession of cocaine.[5] The trial court expressly told Taylor that the offense carried a "maximum of four years," that the court "wouldn't give [Taylor] more than four years," and that the sentence would not exceed the "active" sentence of four years' imprisonment in case number 92-522. Hence, the coram nobis court did not err in denying the Petition on this ground.

Finally, we conclude that Taylor's contention regarding trial counsel's effectiveness is not appropriate for a coram nobis proceeding. We have stated that, "absent any objective, uncontroverted, or conceded error, the issue of defense counsel's effectiveness is raised most appropriately in a post-conviction proceeding." *Steward v. State*, 218 Md. App. 550, 570

[5] At the time of the plea hearing, the maximum penalty for possession of cocaine was a term of four years' imprisonment. Md. Code Art. 27, § 287(e) (1957, 1992 Repl. Vol.).

(internal citation and quotations omitted), *cert. denied*, 441 Md. 63 (2014). Hence, the coram nobis court did not err in denying the Petition.[6]

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[6]Because we do not find any "constitutional, jurisdictional[,] or fundamental" error in Taylor's plea and sentencing proceedings, *Graves*, *supra*, 215 Md. App. at 348 (internal citation omitted), we need not review whether he has suffered a significant collateral consequence from his conviction.