UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1714

September Term, 2011

CONSTANTINO RUIZ

v.

STATE OF MARYLAND

Meredith,
Woodward,
Friedman,

JJ.

Opinion by Woodward, J.

Filed: December 16, 2015

In 2006, appellant, Constantino Ruiz, a native of Peru and lawful permanent resident of the United States, pleaded guilty to fourth degree sexual offense and bond jumping in the Circuit Court for Montgomery County. Three years later, when facing removal from the United States, Ruiz filed a petition for writ of error coram nobis alleging that his plea was tendered involuntarily. Without holding a hearing, the circuit court denied Ruiz's petition. Ruiz appealed and presents two questions for our review, which we have slightly rephrased:

1. Did the circuit court err in denying the petition for coram nobis relief based on the conclusion that Ruiz's guilty plea was tendered knowingly and voluntarily?

2. Did the circuit court err or abuse its discretion in not holding a hearing on the petition for coram nobis relief?

For the reasons to be discussed, we shall affirm the denial of the petition as to appellant's conviction for bond jumping, and we shall remand for further proceedings, without affirming or reversing, the denial of the petition as to the fourth degree sexual offense conviction.

BACKGROUND

In 2004, Ruiz was charged in the circuit court with one count of child abuse and six counts of third degree sexual offense for having sexual contact with his stepdaughter, who was eight to ten years old at the time of the alleged offenses. Pursuant to a subsequent plea agreement with the State, Ruiz agreed to plead guilty to two amended counts, namely, fourth degree sexual offense and bond jumping.

A plea hearing was held on May 26, 2006. The circuit court presented the terms of the agreement:

> There's a plea agreement that's been filed which reflects that [ ] Ruiz is pleading guilty to amended Count 1 and Count 2, which is fourth degree sexual offense and bond jumping. Maximum penalty is up to two years in jail. There's a cap of no further executed incarceration; no agreement with respect to suspended time and length . . . of probation.

The court then examined Ruiz on the plea:

[THE COURT]: What is your name?

[APPELLANT]: Constantino Ruiz.

[THE COURT]: How old are you?

[APPELLANT]: 46.

* * *

[THE COURT]: What type of work do you do?

[APPELLANT]: I'm a pastor.

[THE COURT]: And how far have you gone in school?

[APPELLANT]: Until, is minister (unintelligible) graduation.

[THE COURT]: Do you read, speak, and understand English?

[APPELLANT]: Yes, sir.

[THE COURT]: You understand that the charges you're pleading guilty to, fourth degree sex

offense and bond jumping, are both misdemeanors?

[APPELLANT]: Yes, sir.

[THE COURT]: Carries, fourth degree sex offense carries a possible one-year jail sentence; bond jumping carries a possible one-year jail sentence. So the total possible sentence is up to two years in jail. However, under the terms of the plea agreement, the maximum possible sentence is two years, suspend all but the time that you've served in jail, which is approximately three months, the balance suspended with five years' supervised probation.

Do you understand that?

[APPELLANT]: Yes, sir.

After hearing Ruiz acknowledge that he was satisfied with defense counsel's representation, and was not under the influence of any substances, the circuit court informed Ruiz of the rights that he was giving up by pleading guilty. The court also (1) ensured that no one had made any promises (outside the terms of the plea agreement), threats, or representations to Ruiz that caused him to plead guilty, (2) determined that Ruiz was not on parole or probation when he committed the subject offenses, and (3) advised Ruiz that potential immigration consequences may occur as a result of the guilty plea and conviction. Ruiz indicated that he was waiving his right to a jury trial because he wanted to do so and that he was pleading guilty to the offenses because he was, indeed, guilty.

The prosecutor then proffered facts in support of the guilty plea. In 1991, Ruiz married the victim's mother. On several occasions during the marriage, which ended in 1995, Ruiz would call the victim into his bedroom and have her masturbate him. Ruiz would also touch the victim's vagina and fondle her breasts and vaginal area. Additionally, Ruiz would shower with the victim and soap up the victim's body while touching her breasts and vaginal area.

In 2004, after learning for the first time about the alleged abuse, Ruiz's ex-wife told investigators that she remembered Ruiz showering with her daughter and "at some point in time," she told Ruiz that the victim was "too old" for that "sort of thing." Ruiz voluntarily presented himself to the police for an interview. After denying that anything occurred between him and the victim, the police administered a polygraph examination, which Ruiz failed. Ruiz eventually admitted to the police: "Well, yeah, I did shower with [the victim], and yeah, I bathed [her], but, and I soaped [her] up, but that wasn't for any, you know, sexual gratification." Ruiz continued: "Well, there were a couple times when I woke up in the morning, and I would find [the victim] in my bed. And [she] would be touching me. And I, yes, I was erect, but I thought it was my wife touching me."

The victim had also implicated Ruiz in similar conduct involving Ruiz's biological daughter; the daughter, however, adamantly denied that anything inappropriate happened to her or that she witnessed any such conduct between Ruiz and the victim.

As to bond jumping, the State proffered that Ruiz did not appear for a May 23, 2005 court proceeding, and did not surrender himself within 30 days after the revocation of his bond.

Defense counsel took exception "to all the facts proffered other than the fact that [Ruiz] did touch the young lady inappropriately at times" during the time period alleged, "and that he did jump bond, which he was placed on as a result of his arrest in this case." Defense counsel did not elaborate, but simply reiterated: "We do believe there was a, there's a factual basis for this plea, but we do not accept fully the proffer that was made by the State."

The circuit court found that the "proffer supports the plea" and that Ruiz "freely, intelligently, and voluntarily" pleaded guilty to both fourth degree sexual offense and bond jumping. Accordingly, the court accepted the plea and entered guilty verdicts.

On June 26, 2006, the circuit court sentenced Ruiz to two concurrent terms of 364 days' imprisonment, suspending all but his time served (ninety-six days), and placed him on supervised probation for three years. The court also ordered that Ruiz have no contact with the victim, have no unsupervised contact with minors, and participate in a sex offender treatment program. The State *nolle prossed* the remaining counts. Ruiz did not file an application for leave to appeal his convictions. He did, however, unsuccessfully seek modification of his sentence.

On November 24, 2009, Ruiz filed the subject petition for writ of error coram nobis in the circuit court, complaining that his guilty plea was not knowingly and voluntarily entered. Ruiz alleged that federal immigration authorities had initiated removal proceedings due to his 2006 convictions.

As to the involuntariness of his plea, Ruiz asserted that the transcript of the guilty plea hearing failed to support a finding that he was aware of the "nature and character of the offenses" to which he had pleaded guilty, and that "the record fails to demonstrate facts from which it [could] be inferred that counsel had, prior to the guilty plea, gone over the elements of the crimes." Ruiz maintained that fourth degree sex offense can be "perpetrated" in "a number of ways," and it is "not the type of an offense where one would 'generally' know the nature of the crime" simply by its title. Ruiz also claimed that, following the State's proffer of facts, he "specifically denied the allegations that embodied an intent to commit a sexual offense." Finally, Ruiz requested a hearing on the matter.

The circuit court denied the petition without a hearing in a Statement of Reasons and Order entered on September 1, 2011. The court stated the following:

> The plea colloquy in this case shows that [ ] under a totality of the circumstances, Petitioner voluntarily entered his guilty pleas. Petitioner alleges he did not understand the nature of the charges against him. While Petitioner did not specifically tell the Court that he understood the charges, nor did his attorney specifically tell the Court that he advised his client of the elements of the charge, nor did the Court explicitly ask the defendant if he understood the nature of the charges, it is nevertheless clear from the record that Petitioner

understood the nature of the charges against him. Therefore, his guilty pleas were entered into voluntarily and must stand.

Petitioner was asked by the Court if he understood that the charges he was pleading guilty to, "fourth degree sex offense and bond jumping," are both misdemeanors, to which the Petitioner replied yes. The Judge explained the possible sentence each charge carried.

Further, the Court advised the defendant that the defendant or his attorney or both may make any additions, modifications, or corrections after the State's proffer. The State then recited its proffer of both the sexual offense fourth degree and bond jumping, after which the Court asked if the defense had any additions, corrections, or modifications. The Defense attorney then stated:

> Yes Your Honor. We would take exception to all the facts proffered other than the fact that my client did touch the young lady inappropriately at times when, during the period that the State has indicated; and that he did jump bond, which he was placed on as a result of his arrest in this case. We do believe there was a, there's a factual basis for this plea, but we do not accept fully the proffer that was made by the State.

Based on the foregoing exchange, and the fact that the defendant admitted to voluntarily entering his guilty pleas because he was guilty, the totality of the circumstances indicates the defendant understood the nature of the charges against him. **The defendant's attorney took exception to some of the facts proffered by the State but agreed with the remaining facts, specifically the inappropriate touching of the young lady**, and the bond jumping. Bond jumping is self explanatory and clear enough from its name to not warrant additional explanation. As to sexual offense fourth degree, the State proffered more facts than the defense agreed to. However, **the defense agreed that there was a factual basis for the plea with the acknowledgment that the defendant did in fact inappropriately touch the young lady.** This acknowledgment indicates that the defendant understood that at the very least, the

> activities to which he was admitting were sufficient to form the basis of the charge of sexual offense fourth degree. **The Defendant's admission to those limited facts indicates that he understood the charge against him enough to understand that those facts would be a proper basis upon which the judge could accept the plea.**
>
> Defendant knew the charges against him and acknowledged his actions which formed the proper basis for a plea to those charges. He cannot now claim his pleas were entered involuntarily.

(Emphasis added) (citations omitted).

Ruiz then noted a timely appeal. This appeal had a submitted-on-brief argument date of November 19, 2014. By order dated December 12, 2014, the appeal was stayed pending the Court of Appeals' decision in *State v. Smith*, No. 47, September Term, 2014. The Court of Appeals filed its decision in the *Smith* case, reported at 443 Md. 572, on July 13, 2015.

DISCUSSION

Coram Nobis Relief

A petition for writ of error coram nobis is an independent civil action by which an individual collaterally challenges his criminal conviction. *Skok v. State*, 361 Md. 52, 65 (2000). It is an equitable remedy reserved for "a convicted person who is not incarcerated and not on parole or probation, who is suddenly faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds." *Id.* at 78. Such a person does not have another statutory or common law remedy available to him. *Id.* at 80. Coram nobis relief is an "'extraordinary remedy'" available in "'compelling' circumstances," and requires a

petitioner to rebut the "presumption of regularity [that] attaches to the criminal case." *Id*. at 72, 78 (quoting *United States v. Morgan*, 346 U.S. 502, 511-12 (1954)). Notably, it is "not a belated direct appeal," and "relief that may have been granted upon direct appeal will not necessarily be obtained through a writ of error coram nobis." *Coleman v. State*, 219 Md. App. 339, 354 (2014), *cert. denied*, 441 Md. 667 (2015).

Ruiz has demonstrated that he is eligible to petition for coram nobis relief. First, Ruiz was not incarcerated or serving a term of probation or parole in relation to the subject convictions, and thus had no alternative remedy under the Post Conviction Procedure Act or habeas corpus. *See Skok*, 361 Md. at 80. Second, he was facing removal from the United States, a significant collateral consequence of his 2006 convictions. *See Rivera v. State*, 409 Md. 176, 193 (2009) (noting that facing removal proceedings is a significant collateral consequence for coram nobis purposes). Third, Ruiz's ground for relief—that his guilty plea was tendered unknowingly and involuntarily—was of a constitutional character and within the ambit of coram nobis relief. *See Skok*, 361 Md. at 80-81. Finally, Ruiz's claims have not already been litigated, and he has not waived them by failing to file an application for leave to appeal from his guilty plea and convictions. *See* Md. Code (2001, 2008 Repl. Vol., 2013 Cum. Supp.), § 8-401 of the Criminal Procedure Article ("CP") ("The failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error coram nobis."); *Smith,* 443 Md. at 588, 610 (holding that CP § 8-401, which was enacted in 2012, applies retroactively).

Guilty Pleas

Before turning to the merits, we pause to discuss guilty pleas generally. A fundamental point is that "a plea cannot support a judgment of guilt unless it was voluntary in a constitutional sense." *Henderson v. Morgan,* 426 U.S. 637, 644-45 (1976) (footnote omitted). This means that the plea must have "constituted an intelligent admission that [the defendant] committed the offense," which cannot be true "unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" *Id.* at 645 (quoting *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)).

Maryland Rule 4-242(c) was designed to effectuate "the constitutional requirement that guilty pleas must be voluntarily and intelligently entered." *State v. Priet*, 289 Md. 267, 277 (1981) (interpreting the former version of Rule 4-242, Rule 731(c)). At the time Ruiz pleaded guilty, the Rule provided:

> (c) **Plea of guilty.** The court may accept a plea of guilty only after it determines, upon 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, 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 (e) 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.

Md. Rule 4-242(c) (2005).

Although the Rule "does not impose any ritualistic or fixed procedure to guide the trial judge in determining whether a guilty plea is voluntarily and intelligently entered," and "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," the Rule "contemplates that the court will explain to the accused, in understandable terms, the nature of the offense to afford him a basic understanding of its essential substance." *Priet*, 289 Md. at 288. The content of the necessary explanation will vary from case to case, dependent upon the totality of the circumstances, which may include, 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." *Id.* Unless the nature of the crime is "readily understandable from the crime itself," there must be some evidence on the record to support a finding that the defendant understood the nature of the crime before entering his plea. *Id.* In *State v. Daughtry*, 419 Md. 35 (2011), the Court of Appeals reaffirmed its holding in *Priet*, stating that "the test, as stated in *Priet*, in determining whether a guilty plea is voluntary under current Rule 4-242(c), is whether the totality of the circumstances reflects that a defendant knowingly and voluntarily entered into the plea." *Id*. at 71 & n.17.

State v. Smith

The Court of Appeals in *Smith* addressed two issues. A majority of the Court, in Part I of the opinion authored by Chief Judge Barbera, held that the coram nobis petitioner did not waive her coram nobis claims by failing to file an application for leave to appeal her

conviction. 443 Md. at 587, 595. Another majority of the Court, in Part II of the opinion authored by Judge Watts, held, among other things, that the testimony of defense counsel that he had informed petitioner, prior to her entry of the plea, of the nature of the offense to which she was pleading guilty was admissible in a subsequent coram nobis hearing. *Id.* at 649. It is the majority's decision in Part II of the opinion authored by Judge Watts to which we hereafter cite.

The Court in *Smith* held that the coram nobis court could properly consider defense counsel's testimony at the coram nobis hearing, years after the plea was entered, that he had advised the petitioner about the nature of the charges against her before she entered the plea. *Id.* at 654. The Court explained:

> [I]n a coram nobis case such as this one, the only issue is whether the defendant understood the nature of the charges—**regardless** of whether the trial court could determine as much. By contrast, in an appeal of a conviction after a plea such as the one in *Daughtry*, the ultimate issue depends on what the trial court could find, and that issue is necessarily limited to what happened at the plea hearing, which includes the entirety of what the trial court could find. **Simply put, here, it does not matter what the trial court could find; what matters is whether Smith's lawyer told Smith about the nature of the charges.**
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> ***
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> [W]e hold that a lawyer's testimony at a coram nobis hearing concerning having advised a defendant prior to the guilty plea of the nature of the charges against him or her is admissible. Such testimony may be considered in a coram nobis proceeding in determining whether a defendant pled "voluntarily, with

> understanding of the nature of the charge" within the meaning of Maryland Rule 4-242(c). . . . Matters beyond the scope of the record of the guilty plea hearing are already, by nature of the proceeding, relevant to the trial court at a coram nobis proceeding. **And, most importantly, a coram nobis proceeding's purpose is not to determine based on the record whether the trial court erred at the time of a guilty plea, but instead to determine whether a petitioner indeed knowingly and voluntarily pled guilty.**

Id. at 653-54 (first bold emphasis in original, remainder bold emphasis added).

The Court continued:

> In this case, at the hearing on the petition for coram nobis relief, [defense counsel] testified that he "[a]bsolutely" reviewed the statement of charges and indictment with Smith, and that he did not have any concerns that Smith did not understand the nature of the charges against her. [Defense counsel] testified that he discussed with Smith the amending of the charge from possession with intent to distribute to conspiracy to distribute, and that he discussed the definition of conspiracy with Smith. From this testimony, the circuit court determined that Smith was actually advised of the nature of the charges, and that her plea was knowing and voluntary. [Defense counsel's] testimony "is strong evidence, absent other circumstances tending to negate a finding of voluntariness . . . , that [Smith] entered the guilty plea knowingly and voluntarily." *Daughtry*, 419 Md. at 75, 18 A.3d at 83-84. Nothing in the record indicates that Smith was mentally incapacitated at the time of the hearing, that she lacked a grasp of the English language, or that she was coerced by someone into pleading guilty—in other words, nothing in the record undermines the determination that Smith understood the nature of the charges. Indeed, at the time of the guilty plea hearing, Smith was twenty-two years old, had completed the eleventh grade, and had resided in the United States for fourteen years.

Id. at 654-55 (footnote omitted).

Accordingly, the Court concluded that "the circuit court was correct in determining that Smith understood the nature of the charges; Smith's plea was knowing and voluntary; and the circuit court was correct in denying Smith's request for coram nobis relief." *Id*. at 655.

Analysis

Ruiz argues that his guilty plea must be set aside, because the record is devoid of any indication that he was aware of the nature and elements of fourth degree sexual offense[1] when he pleaded guilty, and that the circuit court should have held a hearing on his coram nobis petition, given "the petition's clear statement of a cause of action and the ambiguity as to the voluntariness of [Ruiz's] guilty pleas." The State responds that the court properly denied Ruiz's petition for coram nobis relief based on the totality of the circumstances of

[1] Ruiz makes no argument in his appellate brief to support his bald allegation that his guilty plea to bond jumping was also entered unknowingly and involuntarily. Instead, he states in a footnote that the "gravamen" of his "complaint lies with the fourth degree sex offense conviction, without waiving lack of voluntariness as to the bail act violation." Because Ruiz has not presented any argument on the claim of an unknowing or involuntary plea to the bail jumping charge in this appeal, we shall not address it. *See* Md. Rule 8-504(c); *see also Ochoa v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 315, 328 (2013) (issue not addressed by appellate court where appellant failed to "develop" his argument "in any meaningful way").

the plea hearing, and that "no hearing was required or warranted to address the matters on which Ruiz sought relief."[2]

Maryland Rule 15-1206(a) provides that a court, "in its discretion," may hold a hearing on a petition for coram nobis relief and "may permit evidence to be presented by affidavit, deposition, oral testimony, or any other manner that the court finds convenient and just." In the case *sub judice*, at the time of its denial of Ruiz's petition, the trial court did not have the benefit of the Court of Appeals' decision in *Smith*, which held that evidence outside of the record of the plea hearing that is relevant to the defendant's understanding of the nature of the charges to which he or she pleaded guilty is admissible at a hearing on a petition for writ of error coram nobis. *See Smith*, 443 Md. at 653-55. In light of *Smith*'s holding, we believe that both parties should be afforded the opportunity to present evidence outside the record of the plea hearing regarding Ruiz's knowledge at the time of the entry of his plea concerning the nature of the fourth degree sexual offense to which he pleaded guilty, such as testimony from his trial counsel regarding counsel's communications with Ruiz prior to the plea hearing. Accordingly, we shall remand the case to the circuit court for

[2] The State also contends that Ruiz waived his right to seek coram nobis relief by failing to seek leave to appeal following his conviction. We reject this contention based upon the Court of Appeals' holding in *State v. Smith* that the statutory language that "[t]he failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error coram nobis" applies retroactively. 443 Md. 572, 588 (2015).

further proceedings without affirming or reversing the court's decision denying coram nobis relief on the conviction for fourth degree sexual offense.[3]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED AS TO THE DENIAL OF CORAM NOBIS RELIEF ON THE CONVICTION FOR BOND JUMPING. AS TO THE DENIAL OF CORAM NOBIS RELIEF ON THE CONVICTION FOR FOURTH DEGREE SEXUAL OFFENSE, CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS WITHOUT AFFIRMING OR REVERSING. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY MONTGOMERY COUNTY.

[3]As stated above, Ruiz's first question concerns whether his guilty plea must be set aside because the record is devoid of any indication that he was aware of the nature and elements of fourth degree sexual offense when he pleaded guilty. Given our decision to remand for the circuit court to receive and consider evidence on Ruiz's knowledge at the time of the plea hearing that is not contained in the record of such hearing, we need not decide this question.