UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2628

September Term, 2011

DAVID BRAXTON

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,[1] David Braxton noted this appeal, presenting one issue for our review which, as expressed in his words, is: "Whether the circuit court coerced him into accepting two guilty pleas on October 18, 1999, that the court formulated, orchestrated and sponsored." Finding no error, we affirm.

In 1999, Braxton was charged with two counts of possession of cocaine with intent to distribute. On October 18, 1999, Braxton appeared, with counsel, before the circuit court, and the following colloquy occurred between the court and the prosecutor:

> THE COURT: And which count are you calling in each case?
>
> [PROSECUTOR]: On 036 calling count one, possession with the intent to distribute cocaine and on 042, count two, possession with the intent to distribute cocaine.
>
> THE COURT: And the sentence is five, suspend all but time served, three years probation –
>
> [PROSECUTOR]: What's that[,] judge?

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[1]The writ of coram nobis

> is a collateral challenge to a criminal conviction[.] It 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).

THE COURT: I think it was five – let me find it again.

[PROSECUTOR]: That's not the State's recommendation and if the [c]ourt –

THE COURT: Well, wait a minute. Let me find it. Five suspend time served, three years probation.

[PROSECUTOR]: What's that[,] judge?

THE COURT: Five suspend all but time served, three years probation. That would be on each concurrent with one another. I remember – [prosecutor], you're just a warm body in this case. This case – this thing, this case was negotiated last week.

[PROSECUTOR]: Well, I spoke to Mr. Pyle. He said it was also he didn't agree to that, but –

THE COURT: No, that was the [c]ourt's offer, but he didn't say that he wouldn't. I mean he didn't say he would agree to it, but [Braxton] is not eligible for mandatory time.

[PROSECUTOR]: (Inaudible.) He has an extensive juvenile record.

THE COURT: Right. I understand. We did go through that. All right and [defense counsel] was present and she was negotiating as well. So, that's what we'll do.

During voir dire, the court asked Braxton: "Other than the plea agreement, has anyone made any threat or promise to make you plead guilty[?]" Braxton replied: "No."

The court thereafter convicted Braxton of the offenses and sentenced him to two concurrent terms of five years' imprisonment, suspending all but time served. Then, in 2008, Braxton filed a petition, requesting coram nobis relief on the grounds that the record does not "reflect[] that [Braxton] ever entered a plea at all," that the court failed to

"ascertain[] whether [Braxton] understood the nature of the charge, the facts of the case[,] or the relationship between the two," and that he "now faces significant collateral consequences" based on those convictions, because the convictions "satisf[y] the . . . felon portion of the federal crime" of possession of a firearm by a person who has been convicted of a crime punishable by imprisonment for a term exceeding one year. It therefore "expose[d Braxton] to an enhanced sentence . . . for" the offense.

Subsequently, he was ordered to "serv[e] a federal term of imprisonment of 235 months," a "sentence," he maintains, was "enhanced upward of more than 165 months due to" his 1999 convictions. The only source of that claim, however, is Braxton's brief.

Specifically, Braxton contends that the court erred in denying his coram nobis petition, because the trial judge's "participati[on] in the plea negotiations coerced him into accepting a plea agreement that he simply did not want." We decline to address that contention for two reasons: First, Rule 8-411 states that "the appellant shall order" a "transcription of . . . all the testimony . . . that . . . is necessary for the appeal" and "cause the original transcript to be filed . . . with the clerk of the lower court for inclusion in the record[.]" Here, the transcript of the negotiations that took place before the plea hearing is necessary for the appeal, but Braxton did not provide that transcript. Hence, the record does not contain all the testimony that is necessary for this appeal. Second, the Court of Appeals has stated that "[b]asic principles of waiver are applicable to issues raised in coram nobis proceedings." *Skok v. State*, 361 Md. 52, 79 (2000) (citation omitted). As Braxton did not

raise this contention in his petition, it was waived.

Even if we did consider this claim, Braxton would not prevail. There is no evidence, in the record, that Braxton was ultimately convicted of an offense in a federal court, or if he was so convicted, that the 1999 convictions caused the federal court to impose a sentence greater than that which he would have otherwise received. Hence, there is no evidence that Braxton is suffering significant collateral consequences stemming from the 1999 convictions.

Furthermore, there is no evidence that Braxton "did not want" the plea agreement. The record shows that, if the court coerced any party into entering the plea agreement, it was the prosecutor, not Braxton. Neither Braxton nor defense counsel lodged any objection to the terms of the agreement during the plea hearing. Moreover, when the court expressly asked Braxton whether "anyone [had] made any threat" to coerce his plea, Braxton stated: "No." Hence, there is no evidence of prejudice, and the court did not err in denying the petition.

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