

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2770

September Term, 2015

WILLIAM BOLTON

v.

STATE OF MARYLAND

Wright,
Berger,
Shaw Geter,

JJ.

Opinion by Wright, J.

Filed: January 27, 2017

*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 December 29, 2010, following a bench trial, William Bolton was convicted of first degree assault, second degree assault, reckless endangerment, and intoxicated endangerment in the Circuit Court for Washington County. That same day, he was sentenced to a twenty-two year term of incarceration, with all but twelve years suspended on the first degree assault charge, and a concurrent sixty days on the intoxicated endangerment charge, as well as five years of supervised probation. The circuit court also entered judgments against him in favor of the Criminal Injuries Compensation Board in the amount of \$315.89, and in favor of the Advantra Freedom Insurance Company in the amount of \$2,744.28.

On appeal, this Court affirmed Bolton's convictions in an unreported opinion filed on June 11, 2012.¹ On August 27, 2012, the Court of Appeals denied his petition for writ of certiorari. Bolton has since filed numerous motions challenging his conviction.

On December 8, 2015, Bolton filed a Md. Rule 4-331(b) motion captioned: "Motion to Vacate Convictions," and requested a hearing by separate motion. The circuit court denied the motion and the requested hearing on December 29, 2015. Bolton timely appealed from that denial, presenting a single question for our review, which we have reworded for clarity:²

¹ *Bolton v. State*, No. 2796, September Term, 2016 (June 11, 2012).

² In his brief, Bolton asked:

"Was the courts denial of the Appellants Motion To Vacate Conviction Under The Courts Revisory Power Under, MD.R.4-331(b), in case of fraud, mistake or irregularity, without granting the Appellant a hearing he

Did the circuit court err or abuse its discretion when it denied the Appellant's 4-331(b) motion without a hearing?

Finding no error, we affirm.

Background

On October 4, 2008, at approximately 9:15 a.m., 68-year old John Miller was standing in his fenced backyard. Bolton exited his home next door and, without provocation, began screaming at Miller, calling him names and threatening to kill him. Bolton pulled out a club, slapped it on the fence, and dared Miller to come closer. Miller, sensing that Bolton was intoxicated, called him a "drunken yellow belly," after which Bolton continued screaming names at Miller. Bolton came toward Miller and hit Miller with the club on the left side of his head, splitting his ear, and nearly causing him to lose consciousness. Hearing the commotion, Bolton's girlfriend, Josephine Spessard, came out of Bolton's house and took him inside. Miller retreated to his own porch and called 911. Deputy Thomas and Deputy Routzahn (together, "the Deputies"), from the Washington County Sherriff's Office, responded and found Miller sitting on his porch, dazed and suffering from severe injuries. After giving a statement, Miller was transported by ambulance to Washington County Hospital where he was treated for injuries to his back, eye, and ear.

requested under MD.R.4-331(b), requires the trial court to hold a hearing in open court before rendering a decision disposing of a claim or defense."

Based on Miller's statement, the Deputies went to the house next door to Miller's to locate the assault suspect. Dept. Routzahn observed Bolton sitting on the couch with his head down, and a wooden riot baton resting at his feet. Although Dept. Routzhan believed Bolton had been drinking, Bolton was able to walk to the police cruiser for transport to the Sherriff's Office under his own power and knew who and where he was. Bolton twice stated to Dept. Routzhan, "I did it, I hit him," and told Dept. Routzahn three times during the transport that he "would kill this man and he would finish it once he got out."

At the close of the State's case, the defense moved for judgment of acquittal on the grounds that Bolton's voluntary intoxication negated the specific intent required for the crime of first degree assault and had "some adequate bearing" on the general intent crime of reckless endangerment. Bolton also argued that his actions constituted imperfect self-defense, which should serve as mitigation to the charged crimes. The circuit court denied the motion.

The defense called Spessard and Bolton to testify about the events on the morning of October 4, 2008. In rendering its verdict, the circuit court termed the matter "a case of simple credibility" and determined that Dept. Routzahn's testimony was "utterly and totally credible," while that of Spessard was not. In regard to the defenses raised, the court found that Bolton's intoxication did not prevent him from formulating a specific intent required for first degree assault, and that his statements to Dept. Routzahn on the transport ride provided additional support for that conclusion.

It is this weighing of credibility and consideration of the evidence that Bolton raises in his Md. Rule 4-331(b) motion. In his motion, Bolton avers that he should not have been convicted of first degree assault because evidence and testimony supporting his defense were presented during trial, but were disregarded by the trial judge.

Discussion

I. No Right to a Hearing Under Md. Rule 4-331(b)

It is important before we begin our analysis to lay out Md. Rule 4-331:

(a) **Within ten days of verdict.** On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

(b) **Revisory power.** (1) Generally. The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

(A) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;

(B) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

(1) Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(2) Act of prostitution while under duress. On motion filed pursuant to Code, Criminal Procedure Article, § 8-302, the court has revisory power and control over a judgment of conviction of prostitution to vacate the judgment, modify the sentence, or grant a new trial.

(c) **Newly discovered evidence.** The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) on motion filed within one year after the later of (A) the date the court imposed sentence or (b) the date the court received a mandate issued

by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted a post conviction relief; and

(2) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, § 8-201 or other generally accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.

(d) **DNA evidence.** If the defendant seeks a new trial or other appropriate relief under Code, Criminal Procedure Article, § 8-201, the defendant shall proceed in accordance with Rules 4-701 through 4-711. On motion by the State, the court may suspend proceedings on a motion for new trial or other relief under this Rule until the defendant has exhausted the remedies provided by Rules 4-701 through 4-711.

(e) **Form of motion.** A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.

(f) **Disposition.** The court may hold a hearing on any motion filed under this Rule. Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed, (2) the motion satisfies the requirements of section (e) of this Rule, and (3) the movant has established a *prima facie* basis for granting a new trial. The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

As evident from the applicable Maryland Rule, the circuit court was not required to hold a hearing on Bolton's Md. Rule 4-331(b) motion. Maryland Rule 4-331(f) requires a court to hold a hearing when a Md. Rule 4-331 motion is filed pursuant to subsections (c) or (d), otherwise, the court may, but is not required to, hold a hearing on the motion prior to disposition:

The use of the word “may” in subsection (f) leaves to the court’s discretion the decision to grant a request for a hearing on Md. Rule 4-331 motions not filed under subsections (c) or (d). A motion filed pursuant to subsection (c) must concern newly discovered evidence. *Jackson v. State*, 358 Md. 612, 625 (2000) (The trial court erred in denying petitioner’s motion for new trial, based on newly discovered evidence under Md. Rule 4-331(c), without conducting a hearing). A motion filed pursuant to subsection (d) must seek relief on the basis of DNA evidence.

Bolton’s motion did not allege newly discovered evidence, and he did not seek a new trial on the basis of DNA evidence. In fact, Bolton acknowledges in his brief that his appeal is not based on newly discovered evidence or on the basis of DNA evidence. To the contrary, he states that he is entitled to a new trial because of evidence presented and disregarded at trial. Because the Md. Rule 4-331 motion was not filed pursuant to (c) or (d), the court was not required to hold a hearing on Bolton’s motion.

A motion seeking relief through the revisory power of the court must be filed within the time prescribed by Md. Rule 4-331(b) and empowers a court to set aside an unjust or improper verdict “on a motion filed within ninety days of sentencing.”

Bolton’s motion was filed on December 8, 2015, more than 90 days following the imposition of his sentence on December 29, 2010.³ As Bolton’s motion was untimely, the circuit court’s decision to deny the motion without a hearing was not arbitrary or

³ One thousand eight hundred and four days to be exact.

capricious, and it was within the proper exercise of the court's discretion. *See Ramsey v. State*, 178 Md. App. 257, 279 (2008).

However, a motion seeking a new trial on the basis of fraud, mistake, or irregularity need not be filed within ninety days. Although Bolton avers that he asserted fraud, mistake, or irregularity, “[t]he terms ‘fraud, mistake, or irregularity,’ as used in Md. Rule 2-535(b) [the civil counterpart to Md. Rule 4-331(b)] . . . are narrowly defined and to be strictly applied.” *Early v. Early*, 338 Md. 639, 652 (1995) (citing *Autobahn v. Baltimore*, 321 Md. 558, 562 (1991)).

An irregularity “is a failure to follow required process or procedure.” *Id.* Bolton’s assertion that the circuit court disregarded evidence does not allege an irregularity in the proceedings.

Similarly, Bolton’s motion did not satisfy the fraud component of Md. Rule 4-331(b). “Fraud is extrinsic when it actually prevents an adversarial trial [T]he question is not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but whether the fraud prevented the actual dispute from being submitted to the fact finder at all.” *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990). Bolton does not claim that the actual dispute was prevented from being submitted to the circuit court, but instead he argues that evidence was presented and then disregarded. However, the court properly evaluated the credibility of the witnesses and assigned weight to the witnesses’ testimony. Bolton’s motion challenging that assignment of weight does not adequately allege fraud.

Finally, Bolton's motion does satisfy the mistake component of Md. Rule 4-331(b). Mistake does not mean a unilateral error of judgment on the part of one of the parties, but, rather, means a jurisdictional mistake. *Hamilos v. Hamilos*, 52 Md. App. 488 (1982) (citations omitted). Bolton avers that the circuit court was mistaken in disregarding evidence presented, thus misunderstanding the term 'mistake' as intended by the Rule. There is no alleged jurisdictional mistake by Bolton.

Since Bolton did not timely file his Md. Rule 4-331(b) motion, and his claim that the circuit court disregarded evidence failed to sufficiently allege fraud, mistake, or irregularity, the court properly exercised its discretion in denying the motion without a hearing.

**JUDGMENT OF THE CIRCUIT
COURT FOR WASHINGTON
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**