Circuit Court for Caroline County
Case Nos. C-05-CR-17-000216 &
C-05-CR-17-000217

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 175

September Term, 2022

VAUGHN AVERY WATSON, SR.

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 9, 2022

In 2017, Vaughn Avery Watson, Sr., appellant, pleaded guilty in the Circuit Court for Caroline County to possession of a controlled dangerous substance (CDS) in Case No. 05-CR-17-000217, and illegal possession of ammunition in Case No. 05-CR-17-000216.[1] On October 4, 2017, the court sentenced him to one year and one day imprisonment for the CDS offense, and to a concurrent term of one year imprisonment for the ammunition offense.[2]

According to appellant, several weeks later, on November 13, 2017, as a result of his guilty pleas in this case[3], the Maryland Parole Commission revoked his release on parole in an otherwise unrelated criminal case (Case No. 17-K-00-005054) and ordered him to serve the remaining 13 years and 6 months imprisonment on that sentence.[4]

On January 21, 2022, appellant filed a petition for writ of error coram nobis claiming that his trial counsel had made a prejudicial serious attorney error by misadvising him about the maximum possible period of imprisonment he faced if his parole was revoked in Case No. 17-K-00-005054, as a result of his guilty pleas in this case. He claimed that, had he

[1] Appellant entered his guilty pleas pursuant to the holding of *North Carolina v, Alford*, 400 U.S. 25 (1970).

[2] Appellant did not thereafter seek leave to appeal from his guilty pleas.

[3] Although appellant pleaded guilty in two separate cases, he did so at the same time on the same day. In this appeal, for ease of reference, we refer to both guilty pleas collectively as "this case."

[4] If there is any evidence in the available appellate record to substantiate this assertion, appellant has failed to direct this Court to it. In any event, for the purpose of this appeal, we shall assume its truth.

been properly advised of the maximum possible amount of imprisonment he faced as a result of parole revocation, he would not have pleaded guilty.

After a hearing, the circuit court denied appellant's petition from the bench. Appellant noted an appeal, and for the reasons explained herein, we affirm the judgment of the coram nobis court.

BACKGROUND

The Guilty Plea

On September 6, 2017, appellant pleaded guilty to CDS possession and illegal possession of ammunition. During that proceeding, the court examined appellant and determined that he voluntarily and intelligently entered his guilty pleas. During the guilty plea colloquy, appellant confirmed that he was not on probation, but he acknowledged that he was on parole in a separate case. The following exchange then took place wherein, among other things, the court confirmed that appellant was aware that the entry of his guilty plea in this case could result in the revocation of his parole:

> THE COURT: Okay. Has anyone suggested that they were, I mean has there been any kind of parole retake, anything issued at this point or are they just pending the outcome of this?
>
> APPELLANT: Parole retake was issued. I was turned back over to face my charges.
>
> THE COURT: Okay. Well, so in any event, that's something that's going to happen as you know with the Parole Board some other date, time and place, but you understand that these, pleading guilty in these cases could trigger that parole revocation. Do you understand that?
>
> APPELLANT: Yes, sir.

After the State read statements of facts into the record in support of the guilty pleas, and after the court accepted appellant's guilty pleas, a discussion ensued pertaining to scheduling a sentencing date. As part of that scheduling discussion, the conversation returned to the status of the potential revocation of appellant's parole. During that conversation, after appellant told the court he faced the possibility of six years' imprisonment for his parole revocation, the court explained that it "can't predict" the outcome of that proceeding, as follows:

THE COURT:	Well, what's, where the parole retake? Is that out of the jail or out of the DOC?
DEFENSE COUNSEL:	DOC or local?
APPELLANT:	DOC.
THE COURT:	Okay. So how much time do you have. . .
DEFENSE COUNSEL:	It hasn't been issued yet.
THE COURT:	How much time do you have possibly hanging over that?
APPELLANT:	Six years.[5]
THE COURT:	Six years?
APPELLANT:	Yes, sir.
THE COURT:	So when do you think they're going to issue a parole retake warrant?
DEFENSE COUNSEL:	You never know.

[5] Apparently, appellant was mistaken about the amount of prison time he faced if his release on parole was revoked. During the hearing on his petition for a writ of error coram nobis, appellant confirmed that, as a result of the revocation of his release on parole, he was ordered to serve 13 ½ years' imprisonment.

APPELLANT: Yeah, I talked to my parole officer. It can be resolved through the (unintelligible) commissioner.

THE COURT: All right.

APPELLANT: They're well aware of what's going on here. They're well aware of my work status and also my family life.

DEFENSE COUNSEL: And I've been conducting the parole retakes over here at the local jail, notwithstanding the fact that there, it may be something pending. Ms. Miller has been coming over here to the jail, Your Honor.

THE COURT: Right, but I don't know, I'm not sure, I mean for that it was a DOC sentence. Wouldn't they have to take him. . .

DEFENSE COUNSEL: I've been doing both, Your Honor.

THE COURT: Do they? Okay. All right, well anyway, I mean I can't predict what's going to happen or not with that. So, I'm not going to try to. I just figured I'd, as far as timing, Mr. Long, what days, I mean I know you're normally here on Wednesdays, so Wednesdays are not. . .

The discussion then returned to scheduling a sentencing date for October 4, 2017.

The Sentencing

On October 4, 2017, the court held a sentencing hearing. During that proceeding, another discussion occurred on the subject of the potential revocation of appellant's release on parole as a result of the guilty pleas in this case. After it came to light that a "parole retake warrant" had been issued for appellant, the following exchange took place:

THE COURT: Okay. All right. So, if I were to give [appellant] a PBJ today, [appellant will be] taken out of here on a parole retake warrant. Is that, everyone's

clear on that?

THE STATE: Your Honor, the State has, it's come to the State's attention that if he's given a local sentence that it would not affect him negatively in terms of the parole retake warrant. State is asking for a DOC sentence and is obviously opposed to a probation before judgment.

THE COURT: All right. Well, I mean, notwithstanding that, I mean I think I do have the right or obligation to inquire how much time does [appellant] have backed up on his parole?

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DEFFENSE COUNSEL: 2024, Your Honor.

THE COURT: 2024.

****

DEFFENSE COUNSEL: Your Honor, he's been advised that were he to receive a local sentence, that they may continue him on his parole.

****

We would be asking for a local sentence, Your Honor. [Appellant,] [i]s there anything else you would like to say? You have just moved into a new house, is that correct?

APPELLANT: Yes, sir.

DEFFENSE COUNSEL: And you're actively working on the water?

APPELLANT: Yes, sir.

DEFFENSE COUNSEL: Your probation officer [has] indicated that if you got a local sentence they would probably continue you on your parole, is that correct?

APPELLANT: Yes, sir.

The court, after hearing both parties' sentencing presentations, imposed sentence stating, *inter alia*, the following:

> I'm content that the sentence [for the CDS charge] shall be one year and one day to the Division of Corrections. So that might be a day beyond the rule of lenity. I don't know that means it's not going to amount to a whole heck of a lot of time DOC-wise. *How that affects the parole retake, I couldn't any more guess that than I could predict what you're going to get in Anne Arundel County, if anything.* But, I think it is sort of beyond the point where the local jail should be concerned about housing you and setting up work arrangements, etc. So, that is the sentence. It's a flat sentence as to case ending in 217. The case ending in 216 with the possession of ammunition, that I'm going to impose the full year, but I'll, I'll impose that concurrently, so that's, I don't think that [wreaks] any havoc. That one, actually that would be a local jail sentence. I'm not sure how they'll look at that[.]

(Emphasis added).

After a discussion with the courtroom clerk about some administrative matters, the court then stated, among other things, the following:

> I mean my prediction with the Parole Commission is that they will, again, they somehow look at a DOC versus a local sentence and that means something to them. I can virtually guarantee whatever time they impose is probably going to be concurrent again to what was done here. That's their normal practice unless they've got some huge axe to grind with you. But, that's something that you can take up with Agent Lindsey and the Parole Board whenever and wherever that happens.

The Petition for a Writ of Error Coram Nobis

As noted earlier, several years after entering his guilty pleas in this case, appellant filed a petition for a writ of error coram nobis in the circuit court attacking the validity of his guilty pleas. Specifically, appellant claimed that he had been denied his right to effective assistance of counsel when his counsel provided appellant "with incorrect advice regarding the maximum possible sentence [he] could receive if his parole was revoked due

to the guilty pleas and sentences rendered" in this case.

Appellant further asserted that trial counsel had incorrectly advised him "in the presence of his wife that he would only serve eight months in this case" if his parole was revoked. He claimed that he had been prejudiced by trial counsel's incorrect advice because, had he been correctly advised that he faced imposition of a 13½ year sentence upon parole revocation, "there is a reasonable probability that [he] would have proceeded to trial rather than enter pleas of guilty in the instant cases."

During the hearing on appellant's petition, appellant testified that his trial counsel told him that, regardless of the possibility of a parole revocation, "if [he] took the plea, that [he] would serve nine months and that would be it."

Appellant's trial counsel also testified during the coram nobis hearing. He testified that he has handled "thousands" of criminal cases as both a prosecutor and defense attorney. He said that, as part of his representation of appellant in this case, he advised him of the maximum penalty that he could receive and that, as a result of pleading guilty, "he could be forced to serve the entire back-up time in his parole case." Trial counsel explained that he advises defendants who are on parole or probation that, by pleading guilty, they could get the "full sentence, full back-up time, for the parole or probation and that it could be consecutive." Trial counsel also said:

> There's so – the permutations of a parole re-take, there's no way any attorney could guess what a parole commissioner would do and, again, I do, on a quarterly basis, I do a number of parole re-takes for Caroline County and Queen Anne's County, this county, and I would never venture a guess or make any representations to a defendant as to what a parole commissioner would do with regard to a parole re-take.

Trial counsel denied telling appellant before he decided to plead guilty that he would only serve nine months. He explained that he might have said,

> if you get a year and you're not violated, your parole is not violated, you don't necessarily serve a year on a year sentence in DOC – in Caroline County Detention Center. You get good time, 10 days. If you work in the kitchen, you get five days and you could get that sentence down from a year to, like, nine months, yes. I mean, we probably tell that to everybody.

Trial counsel testified that appellant was aware of the foregoing and that appellant knew "the DOC system. He's had three violations before this."

As noted earlier, the coram nobis court denied appellant's petition from the bench at the conclusion of the February 28, 2022 hearing. In pertinent part, the coram nobis court ruled as follows:

> The Court having reviewed the record and the exhibits that are in the file and hearing testimony here today, the Court is going to deny [appellant's] request for [coram nobis] relief. I do not believe he met his burden of proof that [trial counsel] provided ineffective assistance of counsel.
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> ****
>
> [C]ertainly, by the plea litany and the transcript, [appellant] was advised that this plea would violate the conditions of his parole and that he was facing back-up time in that case.

LEGAL BACKGROUND

Right to Effective Assistance of Counsel

In *Duncan v. State*, this Court succinctly set forth the legal standards generally applicable to ineffective assistance of counsel claims, as follows:

> Both the Sixth Amendment, made applicable to the states through the Due Process Clause of the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights guarantee the right to effective assistance of trial counsel. *See Coleman v. State*, 434 Md. 320, 334 (2013); *see also* U.S.

> Const. amend. VI, XIV; Md. Const. Decl. of Rts. art. 21. Under *Strickland v. Washington*, 466 U.S. 668 (1984), ineffective assistance of counsel claims involve a two-prong analysis. *See Harris v. State*, 303 Md. 685 (1985). To establish ineffective assistance of counsel, a petitioner must demonstrate (1) that, under the "performance prong," counsel's performance was deficient, *i.e.*, counsel committed serious attorney error, and (2) that, under the "prejudice prong," counsel's deficient performance prejudiced the defense. *See Strickland*, 466 U.S. at 687.
>
> To meet the requirements under the "performance prong" and demonstrate "serious attorney error," a petitioner must show that the acts or omissions of counsel were the result of unreasonable professional judgment and that counsel's performance fell below an objective standard of reasonableness considering prevailing professional norms. *Cirincione v. State*, 119 Md. App. 471, 484 (1998). In other words, the "performance component" requires a "show[ing] that counsel's performance was deficient," and "counsel made errors so serious that 'counsel' was not functioning as the counsel guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687. Under the "performance prong," if counsel's acts were reasonable trial strategy or tactic, counsel's performance will not be deemed ineffective. *Strickland*, 466 U.S. at 687-89; *see also Oken v. State*, 343 Md. 256, 283 (1996). To demonstrate prejudice a petitioner must show a "substantial or significant possibility" that, but for the serious attorney error, the result would have been different. *Bowers v. State*, 320 Md. 416, 426 (1990).

236 Md. App. 510, 527-28 (2018).

Standard of Review

In *Smith v. State*, the Court of Appeals set forth the applicable standard of review for reviewing a circuit court's decision to grant or deny a petition for a writ of error coram nobis:

> This Court reviews a circuit court's decision to grant or deny a petition for writ of error *coram nobis* for abuse of discretion. *See* [*State v.*] *Rich*, 454 Md. [448,] 470-71 [(2017)]. "However, in determining whether the ultimate disposition of the *coram nobis* court constitutes an abuse of discretion, [this Court] should not disturb the *coram nobis* court's factual findings unless they are clearly erroneous[.]" *Id.* at 471. An abuse of discretion "occurs where

> no reasonable person would take the view adopted by the circuit court." *Mainor v. State*, 475 Md. 487, 499 (2021) (quoting *Montague v. State*, 471 Md. 657, 674 (2020)) (internal quotation marks omitted).

480 Md. 534, 546 (2022).

Whether a petitioner has been denied their right to effective assistance of counsel is "a mixed question of fact and law." *State v. Purvey*, 129 Md. App. 1, 10 (1999) (citing *Strickland*, 466 U.S. at 698). We exercise our "own independent judgment as to the reasonableness of counsel's conduct and the prejudice, if any." *State v. Jones*, 138 Md. App. 178, 209 (2001) (citing *Oken*, 343 Md. at 285); *see also Coleman v. State*, 434 Md. 320, 331 (2013).

Coram Nobis

In *Skok v. State*, 361 Md. 52 (2000), the Court of Appeals changed Maryland common law with respect to the circumstances under which a person could overturn a prior conviction by filing a petition for a writ of error coram nobis. *Id*. at 70.

In *Skok*, the Court listed five conditions a defendant must meet in order to obtain coram nobis relief. *Id.* at 78-79. Those five "qualifications" for a person to be eligible for coram nobis relief, are as follows:

(1) "[T]he grounds for challenging the criminal conviction must be of a constitutional, jurisdictional, or fundamental character[;]"

(2) "the burden of proof is on the … petitioner[;]"

(3) the coram nobis petitioner "must be suffering or facing significant collateral consequences from the conviction[;]"

(4) "[b]asic principles of waiver are applicable to issues raised in coram nobis proceedings[;]" and

(5) "one is not entitled to challenge a criminal conviction by a [coram nobis] proceeding if another statutory or common law remedy is then available."

Smith, 480 Md. at 546-47 (quoting *Skok*, 361 Md. at 78-80).

Moreover, the Court of Appeals has recognized that the writ of error coram nobis is an "extraordinary remedy" available to "correct errors of fact that affect the validity or regularity of a judgment and to correct constitutional or fundamental legal errors." *Id.* at 546 (citation omitted). As such, the writ "should be utilized only under circumstances compelling such action to achieve justice." *Id*. (quoting *Skok*, 361 Md. at 72).

DISCUSSION

On appeal, appellant claims that the circuit court erred in denying his coram nobis petition. He contends that the record established that trial counsel made a prejudicial attorney error by (1) giving appellant inaccurate information and/or failing to correct appellant's mistaken understanding about the total amount of incarceration he faced if his parole were revoked as a result of his guilty pleas, and (2) promising appellant that, by pleading guilty, he would only serve a term of nine months even if his parole were revoked.

The State asserts that appellant failed to establish the second and third *Skok* conditions, and thus he is not entitled to coram nobis relief. Specifically, the State claims that appellant did not rebut the presumption of regularity because the record of the guilty plea and sentencing proceedings, coupled with the testimony from the coram nobis proceeding, supported the coram nobis court's conclusion that trial counsel adequately advised appellant concerning his potential parole revocation. In addition, the State asserts

that appellant that did not establish that he suffered from a collateral consequence, within the meaning of the relevant law, because the record demonstrates that appellant was aware that revocation of his parole was a potential consequence of his guilty pleas.

We agree with the State.

In *Vaughn v. State*, 232 Md. App. 421 (2017), Vaughn filed a petition for a writ of error coram nobis seeking to attack his conviction for third-degree sexual offense on the basis that, for various reasons, his guilty plea to that offense was invalid. *Id*. at 425. Before he pleaded guilty, Vaughn was told, *inter alia*, that if the plea was accepted, he would be required to register as a sex offender "as required by law." *Id*. at 424. During his coram nobis proceedings, the collateral consequence Vaughn relied upon to support his requested relief was the requirement that he register as a sex offender.[6] *Id*. at 426. Although Vaughn knew in 2004 when he entered his guilty plea that he would be required to register as a sex offender, he argued that "since 2004, the General Assembly has 'increased year after year . . . what sex offenders have to do.'" *Id*. at 426, n.2.

This Court squarely held that, in order to establish the third *Skok* condition, *i.e.*, that the coram nobis petitioner is "suffering or facing significant collateral consequences from the conviction," the "petitioner must show that the 'collateral consequence[]' is one that [the petitioner] did not know about at the time the guilty plea was entered." *Id*. at 430. We rejected the notion that a collateral consequence that a person is aware of at the time of the

[6] In his original coram nobis petition, Vaughn failed to assert that he was suffering from any collateral consequences. *Id.* at 426. He later made such an assertion, which the circuit court treated as if made in the original petition. *Id.*

entry of a guilty plea is sufficient under *Skok* because:

> as *Skok* made clear, the reason for changing the common law was to give a possible avenue of relief to criminal defendants who could allege significant collateral consequences arising from the conviction that were, from the defendant's point of view, unexpected at the time the guilty verdict was entered.

Id. at 423 (*citing Skok*, 361 Md. 77). We therefore held that Vaughn was not entitled to coram nobis relief. *Id.* at 430.

Similar to *Vaughn*, the record is clear that appellant understood, at the time of his guilty pleas, that he was subject to parole revocation. What we said in *Vaughn* is equally applicable here:

> Appellant has cited no case, and we know of none, where any appellate court in this State has held that a petitioner for *coram nobis* relief meets the "significant collateral consequence" requirement by pointing to a consequence of the guilty plea that the petitioner knew about on the day he pled guilty. In fact, in every reported Maryland case in which *coram nobis* relief has been allowed since *Skok* [*v. State*, 361 Md. 52 (1999)] was decided, the petitioner was able to point to a collateral consequence of the guilty plea that the petitioner did not know about on the day the guilty plea was entered.

232 Md. App. at 429. Here, the collateral consequence—incarceration upon parole revocation—was not unexpected and cannot support the granting of coram nobis relief.[7]

[7] Although the coram nobis court did not rely on this Court's holding in *Vaughn* in denying appellant's coram nobis petition, we observed in *Yaffe v. Scarlett Place Residential Condo., Inc.*:

> [F]or the purposes of this case, it is important to note that[,] although an appellate court will not ordinarily consider an issue that was not previously raised in the trial court, an appellate court can affirm when "the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties." *Robeson v. State*, 285 Md. 498, 502

(continued)

In any event, even if appellant had asserted that he was suffering from a legally adequate collateral consequence as a result of his conviction, we would affirm the decision of the circuit court on the merits. As noted previously, the coram nobis court, after acknowledging the evidence that had been adduced on the petition, stated that it "[did] not believe [appellant] met his burden of proof that [trial counsel] provided ineffective assistance of counsel," and found that "appellant was advised that this plea would violate the conditions of his parole and that he was facing back-up time in that case." It is implicit, yet clear, from the coram nobis court's ruling that it did not believe appellant's assertions that his trial counsel provided inaccurate advice about the parole revocation consequences he faced if his parole was revoked as a result of pleading guilty. Instead, the court credited trial counsel's testimony, which was supported by the record of the guilty plea and sentencing, that he advised appellant that he faced "the entire back-up time in his parole case" as a result of his guilty pleas and pending parole revocation.[8]

In conclusion, we discern no error or abuse of discretion on the part of the circuit

> (1979) (citations omitted). In other words, we can affirm when the trial court's decision was right for the wrong reasons. "Considerations of judicial economy justify the policy of upholding a trial court decision which was correct although on a different ground than relied upon." *Id.*

205 Md. App. 429, 440 (2012).

[8] We note that coram nobis relief is reserved for cases "with circumstances compelling such action to achieve justice." *Smith*, 480 Md. at 548. Because appellant knew about the parole retake warrant and the possibility of additional incarceration resulting from parole revocation, this case is not one that merits coram nobis relief to "achieve justice."

court in denying appellant's petition for a writ of error coram nobis. Consequently, we affirm the judgment of the circuit court.

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