

Circuit Court for Somerset County
Case Nos.: 97-CR-04909 & 04910

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 238

September Term, 2021

DAVID BRIGHTWELL

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 29, 2021

*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.

In 1997, a jury in the Circuit Court for Somerset County found appellant, David Brightwell, guilty of two counts of armed robbery, use of a handgun in the commission of a felony, and related offenses stemming from his participation in a robbery of a gas station. The court sentenced him to 50 years’ imprisonment. This Court affirmed the judgments. *Brightwell v. State*, No. 502, September Term, 1998 (Md. App. March 30, 1999).

In March 2021, Mr. Brightwell, representing himself, filed a petition for writ of actual innocence, which the circuit court summarily denied and dismissed without a hearing. For the reasons to be discussed, we shall affirm the judgment.

Certain convicted persons may file a petition for a writ of actual innocence based on “newly discovered evidence.” *See* Md. Code Ann., Crim. Proc. § 8-301; Md. Rule 4-332(d)(6). “Actual innocence” means that “the defendant did not commit the crime or offense for which he or she was convicted.” *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

- (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
 - (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]

- (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

(g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

“Thus, to prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial.” *Smith v. State*, 233 Md. App. 372, 410 (2017). Moreover, “[t]o qualify as ‘newly discovered,’ evidence must not have been discovered, or been discoverable by the exercise of due diligence,” in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnote omitted); *see also* Rule 4-332(d)(6).

A court may dismiss a petition for actual innocence without a hearing “if the court concludes that the allegations, if proven, could not entitle a petitioner to relief.” *State v. Hunt*, 443 Md. 238, 252 (2015) (quotation marks and citation omitted). *See also* Crim. Proc. § 8-301(e)(2). “[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*.” *Smallwood*, 451 Md. at 308.

“Evidence” in the context of an actual innocence petition means “testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial.” *Hawes v. State*, 216 Md. App. 105, 134 (2014). The requirement that newly discovered evidence “speaks to” the petitioner’s actual innocence “ensures that relief under [the statute] is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, ‘meaning he or she did not

commit the crime.” *Faulkner v. State*, 468 Md. 418, 459-60 (2020) (quoting *Smallwood*, 451 Md. at 323).

Here, Mr. Brightwell did not cite any newly discovered evidence indicative of his actual innocence. Rather, he—a self-described black Muslim—claimed that there was “a conspiracy by” people of the Jewish faith within the “Judicial System to convict [him] by any means necessary[.]” He failed, however, to support that allegation with any evidence. He did point out that the two victims of the gas station robbery did not identify him to the police and their description of the assailants did not match his description in terms of height and weight. Nor did the victims notice anything unusual about the robbers’ voices, and he claimed that, due to a gunshot wound he had incurred five months before the robbery, his voice has a distinctive sound. Those facts, however, were elicited at trial. *Brightwell v. State*, No. 502, September Term, 1998, slip op. at 3, 10. Accordingly, we hold that the circuit court did not err in denying and dismissing Mr. Brightwell’s petition without a hearing.

On appeal, Mr. Brightwell also asserts that the circuit court erred when it failed to forward a copy of his petition to the Collateral Review Division of the Office of the Public Defender and relies on Rule 4-332(e)(3), which provides that, “If the petitioner has requested an attorney and has alleged inability to employ one, the court shall send a copy of the petition and attachments to the Collateral Review Division of the Office of the Public Defender.” The State responds that the right to counsel does not extend to petitions for writs of actual innocence and, moreover, “Rule 4-332 does not provide for any consequence for the court’s failure to comply” with the provision directing that the court

send the petition to Collateral Review. In addition, the State relies on Rule 4-332(i)(1) which permits a court to dismiss a petition “if it finds as a matter of law that the petition fails to comply substantially with the requirements” of the Rule regarding the contents of a petition “or otherwise fails to assert grounds on which relief may be granted[.]” The State maintains that Mr. Brightwell’s petition both failed to comply with the Rule’s requirements regarding the contents of the petition and failed to assert grounds on which relief may be granted. The State, therefore, asserts that the court’s failure to send a copy of Mr. Brightwell’s petition to Collateral Review “did not affect the propriety of the court’s ruling, as a matter of law, on the adequacy of the petition.” In this instance, we agree with the State. Mr. Brightwell’s petition was patently deficient and any error by the court in failing to forward it to Collateral Review was harmless.

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