Circuit Court for Baltimore City
Case No. 206010010

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 271

September Term, 2016

BRIAN JOHNSON

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 8, 2018

In January 2007, Brian Johnson, appellant, pleaded guilty in the Circuit Court for Baltimore City to possession of heroin with intent to distribute. The court sentenced appellant to a term of fifteen years' imprisonment, all but four years suspended, to be followed by three years' supervised probation. Appellant subsequently violated the terms of his probation, and the court ordered that he serve two additional years of imprisonment.

In 2014, appellant filed a petition for writ of error coram nobis, alleging that his 2007 guilty plea had not been entered knowingly and voluntarily because he had not been advised of the nature of the charge to which he was pleading. He later supplemented that petition, adding allegations that: (1) the judge had coerced him into accepting the State's plea offer; and (2) the State had committed a *Brady*[1] violation by withholding impeachment evidence relating to the misconduct of a police officer who had been involved in appellant's case. The circuit court denied his petition without a hearing.

On appeal, appellant contends that the court erred in denying his petition without a hearing. For the reasons that follow, we shall vacate the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

The State's factual proffer at appellant's plea colloquy established that, on November 13, 2005, Officer Joseph Brown, a member of the Baltimore City Police Department, was on foot patrol "in a covert position observing the 2900 block of Ridgewood Avenue" in Baltimore City. He observed appellant walking down the street

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

holding a brown paper bag. Appellant then "removed a clear plastic bag from that brown bag" and "look[ed] at the items in the clear bag." Officer Brown was only five or six feet away from where appellant was standing, and he "observed several small items in the clear plastic bag consistent with the size and shape of narcotics."

Officer Brown left his position, approached appellant, identified himself as a police officer, and ordered appellant to the ground. Appellant fled instead, and Officer Brown gave chase. As appellant fled, he "attempted to throw the brown paper bag onto the roof" of a nearby church. Officer Brown ultimately apprehended appellant. When he and other police officers went back to the area where appellant had thrown the paper bag, they "found a brown bag on the ground near the wall of the church." Inside the bag, they recovered a clear plastic bag with six individual bundles, each of which was wrapped with a black rubber band and contained ten clear top vials of suspected heroin, a suspicion that was confirmed by a subsequent forensic analysis.

Appellant pleaded guilty to possession of heroin with intent to distribute. The court sentenced appellant to fifteen years' imprisonment, all but four years suspended, to be followed by three years' supervised probation.

On March 20, 2012, appellant pleaded guilty to a violation of probation. On July 16, 2012, the court imposed a sentence of two years. On July 15, 2014, appellant, filed a *pro se* petition for writ of error coram nobis, seeking to vacate the 2007 conviction. Appellant raised a single claim, i.e., his 2007 guilty plea had not been "knowingly and voluntarily entered" because he had not been "told the nature of the charge and the elements

in open court." The State filed a request for additional time to respond to appellant's petition, citing, among other things, the absence of a transcript from the 2007 proceedings.

Appellant subsequently filed a supplemental petition raising two additional claims. First, appellant asserted that his 2007 guilty plea had not been knowing and voluntary for the additional reason that the hearing judge was biased and prejudiced. He alleged that the judge refused appellant's request to recuse himself, threatening that, if he were to recuse himself, he would send the case "to the hanging judge."[2] Second, appellant alleged a *Brady* violation based upon the State's failure to disclose that Officer Daniel Redd, the officer who recovered the heroin, previously had been fired from the Baltimore City Police Department for misconduct and then reinstated. Appellant alleged that, had he been properly informed of Officer Redd's pre-2005 dismissal from the police force, he "could have cast doubt on the integrity of Ofc. Redd."

A series of State's responses and appellant's rebuttals ensued. In one of appellant's subsequent pleadings, he attached a copy of a newspaper article, dated September 23, 2012, which stated, among other things, that: (1) Officer Redd had been sentenced to a 20-year term in a federal prison, after pleading guilty to conspiracy to distribute heroin and use of a firearm in a drug crime; and (2) Officer Redd had been fired, in 2000, from the Baltimore

[2] The grounds asserted by appellant to support his allegation of judicial bias were that the judge had previously represented a co-defendant in a 1992 murder case, in which appellant had been found in violation of parole because of a 2005 drug arrest, and because, at the outset of the 2007 plea proceeding, the judge denied appellant's request to be granted commitment for drug treatment, under Health-General Article, § 8-507, citing appellant's parole violation.

City Police Department, after being "found crashed out on the clock while he was supposed to be on anti-terrorist duty," but he successfully appealed from that dismissal and was reinstated. Another supplement filed by appellant on October 19, 2015, included a copy of the transcript of the 2007 plea hearing. In response to the October 19, 2015 supplement, the State filed a motion to dismiss, alleging that appellant failed to attach all relevant parts of the 2007 plea hearing transcript in violation of Maryland Rule 15-1202(c).[3]

On February 25, 2016, the circuit court issued a memorandum opinion and order denying appellant's coram nobis petition. The court noted that it had discretion to hold a hearing, but it was issuing its order without a hearing because it was "unable to find any merit to the allegations made." The court then addressed the specific allegations.

The court first addressed appellant's claim that his guilty plea was not knowing and voluntary because "he was not informed of the nature and elements of the charges and that the [c]ourt threatened to 'send him to the hanging judge' if he pushed for the trial court's refusal." In that regard, the court found:

> A presumption of regularity attaches to a criminal case, and the burden of proof is on the petitioner to prove an error occurred. *Skok v. State*, 361 Md. 52 (2000). In accordance with Maryland Rule § 15-1202(c), Petitioner must include "all relevant portions of the transcript or explain why the petitioner is unable to do so." [] Here, Petitioner has produced only the odd numbered pages of the transcript of the January 19, 2007 proceedings. From this incomplete record, the [c]ourt is unable to review the proceedings. In the absence of evidence to support his allegations, Petitioner has failed to meet the burden of proof necessary to overcome the presumption of regularity which attaches to criminal proceedings.

[3] Maryland Rule 15-1202(c) provides: "The petitioner shall attach to the petition all relevant portions of the transcript or explain why the petitioner is unable to do so."

With respect to appellant's claim that the State committed a *Brady* violation in failing to disclose Officer Redd's prior firing, and subsequent reinstatement, five years prior to his arrest, the court stated, as follows:

> Petitioner's motion fails to state the basis for Officer Redd's firing and reinstatement. Without this information, the [c]ourt is unable to determine whether the evidence would have been material to Petitioner's case. In the absence of the evidence to support his allegations, Petitioner has failed to establish the basis of *Brady* violation.

The court concluded:

> Petitioner's allegations of error for coram nobis relief fail because Petitioner did not rebut the presumption of regularity in his criminal proceedings, did not offer sufficient proof that his guilty plea was not knowingly and voluntarily entered, and failed to establish the alleged *Brady* violation. Petitioner is NOT entitled to coram nobis relief.

DISCUSSION

Appellant contends that the circuit court erred in denying his petition for coram nobis relief without a hearing. He asserts that the court erroneously determined that he failed to present a sufficient record to address the merits of his contentions. With respect to the claim that his guilty plea was not entered knowingly and voluntarily, the court found that appellant "produced only the odd numbered pages of the transcript of the January 19, 2007 proceedings," and "[f]rom this incomplete record," it was "unable to review the proceedings." Appellant contends that this finding was clearly erroneous, asserting that, in a supplement to his original coram nobis petition, he "*did* provide a complete transcript" of his January 2007 plea hearing.

With respect to the *Brady* claim, appellant states:

> [T]he court implicitly acknowledged that [appellant] presented a reasonable basis for concluding that Officer Redd had engaged in misconduct. Instead of denying the *Brady* claim outright, the court should have at least ordered a hearing on the issue. Accordingly, a limited remand also is in order regarding the *Brady* issue too.

The State contends that "[t]he circuit court did not abuse its discretion in declining to grant the extraordinary remedy of writ of coram nobis under the circumstances of [appellant's] case." It asserts that, given appellant's failure to provide a complete transcript of the guilty plea proceeding, and "given that a circuit court need not hold a hearing in a coram nobis case, it cannot be said that the coram nobis court erred or abused its discretion in denying [appellant's] petition under the circumstances of his case."

"A writ of error coram nobis is a civil action in Maryland, independent of the underlying action from which it arose, in which 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, [can] . . . challenge the conviction on constitutional or fundamental grounds." *State v. Jones*, 220 Md. App. 238, 247 (2014) (citations and quotations omitted), *aff'd*, 445 Md. 324 (2015). It "is an 'extraordinary remedy' justified 'only under circumstances *compelling such action to achieve justice*,'" *State v. Rich*, 454 Md. 448, 461 (2017) (quoting *State v. Smith*, 443 Md. 572, 597 (2015)), and the petitioner in such a proceeding bears the burden of proof. *Skok v. State*, 361 Md. 52, 79 (2000). Coram nobis is "designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation where no other remedy exists." *State v. Sanmartin Prado*, 448 Md. 664, 680 (2016) (quoting *Smith*, 443 Md. at 623-24), *cert. denied*, 137 S.Ct. 1590 (2017).

We review the circuit court's decision to grant or deny a petition for coram nobis relief for an abuse of discretion. *Rich*, 454 Md. at 471. Similarly, the decision whether to hold a hearing is within the court's discretion. *See* Md. Rule 15-1206(a) ("The court, in its discretion, may hold a hearing on the petition. The court may deny the petition without a hearing but may grant the petition only if a hearing is held.").

A circuit court abuses its discretion when it acts in a manner that was "'manifestly unreasonable,'" or exercises its discretion on "'untenable grounds, or for untenable reasons,' or when 'no reasonable person would take the view adopted by the [trial] court.'" *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 677 (quoting *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006)), *cert. denied*, 555 U.S. 849 (2008). An abuse of discretion may be found, however, if it is based upon a clearly erroneous factual finding. *State v. Dopkowski*, 325 Md. 671, 678 (1992).

I.

Knowing and Voluntary Guilty Plea

As indicated, the circuit court found that the appellant failed to show that his guilty plea was not knowing and voluntary because he provided an incomplete record, i.e., only producing the odd pages of the guilty plea transcript.[4] Our review of the record reveals that a copy of the complete transcript of the guilty plea proceeding was attached to appellant's October 2015 supplemental motion. Accordingly, we conclude that the circuit

[4] The State indicated in its brief that the copy of the motion served on the State contained only the odd-numbered pages.

court was clearly erroneous in finding that appellant filed a transcript containing only the odd-numbered pages.

Because the circuit court's ruling, that appellant was not entitled to relief on his claim that his guilty plea was not knowing and voluntary, was based on a clearly erroneous factual finding, the court abused its discretion. Accordingly, we vacate the court's ruling in this regard and remand for further proceedings.[5]

II.

Brady Claim

Appellant contends that the circuit court erred in determining that he failed to present a sufficient record to evaluate the *Brady* claim. He asserts that, based on the evidence he presented, "the court should have at least ordered a hearing on the issue."

The State does not directly address this claim. It merely states that the court correctly denied the petition, and it suggests that appellant can file another petition for writ of coram nobis.

In denying the *Brady* claim, the court stated that appellant failed "to state the basis for Officer Redd's firing and reinstatement," and therefore, it could not determine if the evidence was material to appellant's case. This finding was clearly erroneous given that

[5] The Court of Appeals recently made clear that, when challenging a guilty plea in a petition for writ of coram nobis, the defendant is entitled to relief upon showing that he or she did not plead voluntarily, with understanding the nature of the charges. *State v. Rich*, 454 Md. 448, 463 (2017). The reviewing court is not limited to the record of the plea hearing, but rather, it may "consider additional evidence, such as the trial lawyer's testimony regarding his or her conversations with the defendant explaining the terms of the plea." *Id*. at 464.

appellant had included a newspaper article stating that the officer was fired when he was "found crashed out on the clock while he was supposed to be on anti-terrorist duty." Accordingly, we must remand for further proceedings on this count, as well.[6]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED AND REMANDED FOR FURTHER PROCEEDINGS. COSTS ASSESSED TO THE MAYOR AND CITY COUNCIL OF BALTIMORE.

[6] On remand, the parties can address whether the entry of a guilty plea prevents a defendant from asserting a *Brady* violation on collateral review. *See United States v. Ruiz*, 536 U.S. 622, 628 (2002) (A defendant, in pleading guilty, "forgoes not only a fair trial, but also other accompanying constitutional guarantees."