UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0293

September Term, 2015

WAYNE NIGEL MENDOZA

v.

STATE OF MARYLAND

Wright,
Graeff,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: December 17, 2015

*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 June 2, 2006, appellant, Wayne Mendoza,[1] pled guilty in the Circuit Court for Montgomery County, pursuant to the terms of a plea agreement, to one count of conspiracy to commit robbery and one count of robbery. Appellant was sentenced pursuant to the terms of the plea agreement. Accordingly, appellant was sentenced to thirteen years of incarceration for robbery, with all of the sentence suspended except for eight years, followed by two years of supervised probation and one year for conspiracy to commit robbery. The effective date for both sentences was October 9, 2003, and appellant is no longer serving a sentence in this case.

On January 31, 2014, appellant, a citizen of Trinidad and Tobago, was detained by the United States Immigration and Customs Enforcement Agency ("ICE"). Appellant asserts that he faces permanent deportation from the United States as a result of his plea. On May 21, 2014, he filed a Petition for Writ of Error *coram nobis* in the Circuit Court for Montgomery County, while still detained by ICE. Appellant was subsequently released from detention in October 2014 as a protectee under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "(Convention Against Torture")[2], a temporary form

[1] There is a discrepancy between appellant's and appellee's spelling of appellant's first name. According to appellee's brief, appellee followed the spelling on the Court's docketing letter which lists Mendoza's first name spelled as "Wayne," but appellee's counsel stated at the *coram nobis* hearing that the correct spelling of Mendoza's first name is "Wane."

[2] *Conclusion date* Oct. 12, 1984, 1465 U.N.T.S. 112 (entered into force June 26, 1987). The United States signed April 18, 1988; ratified October 21, 1994.

of relief.[3] Appellant was required to report to the United States Citizenship and Immigration Services ("USCIS"), a branch of the Department of Homeland Security, every other month. Appellant is subject to detention and removal, if and when, the United States determines that he no longer faces torture in his home country of Trinidad and Tobago.

An evidentiary hearing was held on January 8, 2015 and appellant's petition was denied in a written Memorandum and Order on March 30, 2015 by the Circuit Court. On April 7, 2015, appellant filed the instant appeal, in which he raises the following questions:

> 1. Was [appellant's] guilty plea entered into knowingly and voluntarily when the convicting court failed to apprise him of the nature of the charges and the elements of the offenses to which he was pleading guilty?
>
> 2. Did the Circuit Court err in denying the petition for writ of error *coram nobis* on the ground that he was not facing a "significant collateral consequence?"

FACTS AND LEGAL PROCEEDINGS

A. Background

On October 7, 2003, appellant and two accomplices robbed an employee at a Papa John's Pizza establishment in Chevy Chase, Maryland by entering through a rear door and pointing what appeared to be a handgun**,** later determined to be a BB gun**,** at the employee.

[3] *See infra*, Discussion A.1. *See also* U.S. Department of Justice, Executive Office for Immigration, "*Asylum and Withholding of Removal Relief Convention Against Torture Protections*," Fact Sheet (Jan. 15, 2009). Since appellant alleges he would face torture in his home country because of his sexual orientation, he is ineligible to file for U.S. asylum or withholding or removal under the Immigration and Nationality Act because sexual orientation is not one of the five recognized protected grounds, *i.e.* race, religion, nationality, membership in a particular social group, or political opinion.

The amount of money stolen was $959. On July 5, 2003, appellant and another individual robbed an employee of Sarku Japan, a restaurant in the food court of the Montgomery Mall in Bethesda, Maryland**,** as she was waiting in line to make a night deposit at a bank drop box in the mall. The amount of money stolen was $3,900.

Appellant was indicted on April 27, 2006 in the Circuit Court for Montgomery County on four charges: conspiracy to commit robbery, robbery and two counts of conspiracy to commit armed robbery. The State proffered a proposed plea agreement at a hearing on May 31, 2006.

Appellant has a prior conviction from 2003 in the District of Columbia, when he was 20 years old. He indicated that, due to his convictions, he was ineligible to apply for a green card. With respect to his conviction in the District of Columbia, appellant indicated that he was sentenced under the Youth Rehabilitation Act and was eligible to have his record expunged. There is no indication that this has been accomplished.

B. The June 2, 2006 Circuit Court Guilty Plea Colloquy

On June 2, 2006, appellant entered a guilty plea in the Circuit Court for Montgomery County to one count of conspiracy to commit robbery and one count of robbery. At the plea hearing, the court advised appellant of his right to a jury trial, the possibility of serious consequences to his immigration status should he plead guilty, the surrender of the majority of his appellate rights and the possibility that the plea could violate any probation he was serving. The court did not expressly ask appellant whether he knew or understood the

elements of robbery or conspiracy to commit robbery, nor did the court expressly ask appellant's counsel or appellant whether appellant had been advised of the elements of the offenses. Appellant read the charging documents, he reviewed the discovery in his case and he affirmed that he discussed the plea agreement with his counsel. The pertinent exchanges between the parties are as follows:

> THE COURT: Do you understand what you're doing here today?
>
> [APPELLANT]: Yes, ma'am.
>
> THE COURT: Tell me what you're doing.
>
> [APPELLANT]: Pleading guilty to two counts; one count of conspiracy to robbery, and another count of robbery.
>
> THE COURT: Okay. Have you seen and read the charging document, that indictment in this case, the indictment?
>
> [APPELLANT]: Yes, ma'am.
>
> THE COURT: All right. You understand that that document, that indictment is not evidence against you? It' s simply the document that brings the case into court.
>
> [APPELLANT'S COUNSEL]: Thank you, Your Honor.
>
> THE COURT: Your request for a postponement is denied.
>
> * * *
>
> THE COURT: You also give up most, not all but most appeal rights. There's a few — couple of technical things that you could appeal. For instance, if you were really 17 now, and you should be in juvenile court and not her [sic] that would be something that you could raise after a plea. But that's why I asked how old you are.
>
> [APPELLANT]: Right.

THE COURT: If I took this plea wrong in a very improper manner then you might be able to appeal that. But for the most part you give up your appeal rights when you plead guilty. Do you understand that?

[APPELLANT]: Yes, I do.

THE COURT: If you are not a U.S. citizen, if you are not a U.S. citizen pleading guilty may have some serious consequences for your immigration status. Did you discuss that with your attorney?

[APPELLANT]: Yes, I did.

THE COURT: Okay. Are you satisfied that you know where you stand in that respect?

[APPELLANT]: Yes, I am.

THE COURT: Okay. Do you have any questions about anything I've said so far or asked you?

[APPELLANT]: No.

THE COURT: And don't be afraid to have a question.

[APPELLANT]: No, I don't, no.

THE COURT: Do you want any further conference with your attorney?

[APPELLANT]: No.

The court accepted appellant's plea based on the following relevant facts proffered by the State:

[State]: Thank you. Your Honor, I'm going to start with count one, which is a guilty plea to conspiracy to commit robbery. If the State had proceeded with a trial in this matter the State would have proven the following information through witnesses and evidence that would have been presented at trial. Back on the 7th of October of 2003, Papa Johns Pizza, which is just by Wisconsin Avenue, just south of East-West Highway several block [sic]. Papa Johns Pizza was the victim of a robbery.

Specifically — excuse me, Your Honor, one moment. Papa Johns is located at 7204 47th Street in Chevy Chase, which is in Montgomery County, Maryland. Just after midnight on October 7, Jamal Shabazz, who was a Papa Johns' employee, was in the rear office counting the day's proceeds. At that time, three unknown suspects entered the establishment through a rear door, which had been left propped open earlier by other employees who had the trash detail. The suspects were described by height, weight, and some of their clothing, and they all three were African-American. One of them had what was thought to be a handgun, but was later determined to be a BB gun. And they initiated the robbery by putting the gun — pointing the gun towards Mr. Shabazz and demanding money. Shabazz immediately relinquished custody of a cash register drawer that he'd been counting, and $959 was taken. If called to testify the State would have put on a witness that testified — would have testified that appellant and certainly they had not [sic] permission to take that $950 by force from Papa Johns Pizza.

The State then read the proffer for the second count:

[State]: As to count two, the robbery of Sarku Japan, if the State had proceeded with the trial, the State would have proven that, back on July 5th, 2003 [. . .] Sarku Japan, which is located inside — it's a restaurant in the food court of Montgomery mall, which is on Democracy Boulevard in Bethesda here in our county, Montgomery County, Sarku Japan was the victim of a robbery. At 9:50 [P.M.] an employee named Ms. Que of Sarku Japan was standing in line waiting to make the night deposit drop in the Chevy Chase night deposit box that's located inside the mall. While in line she observed suspects sitting on a bench near the ATM where she was doing the night drop. If called to testify, one of those suspects would have testified that he, along with appellant, were present and they took a cash bag that was going to be deposited with a total of $3900 in United States currency and they ran away. If called to testify, the victim would have testified that the other person there fits the description of the [appellant] in this case . . . . The defendant for both counts would be identified as a young man seated to the right of his attorney at defense trial table wearing the green jumpsuit. That case occurred in Montgomery County, Maryland as well. And certainly, the defendant had no permission to take anything by force or without force from the victim, Ms. Que who worked for Sarku Japan.

The court subsequently accepted appellant's guilty plea.

C. The January 8, 2015 Coram Nobis Hearing

Appellant filed a *coram nobis* petition in the Montgomery County Circuit Court on May 21, 2014. A hearing was held on January 8, 2015. Appellant testified at the evidentiary hearing that he was in the custody of ICE from January 31, 2014 to October 8, 2014. He testified that he was born in Trinidad and Tobago and came to the United States when he was five years old. Although he was a permanent resident of the United States at one time, his current status, for immigration purposes, is as a protectee under the Convention Against Torture. Due to his sexual orientation, appellant had reason to fear torture upon his return to the country of his birth. Appellant testified that he had to report to the USCIS officer every other month and, if that officer determined that it was safe to return to Trinidad and Tobago, then he would be placed back into removal proceedings and removed.

On cross-examination, he testified that he was with friends on the night of the alleged crimes and his attorney suggested that the plea would be safer than going to trial. Although appellant testified that he did not know what the nature and elements of the crimes were when he pleaded guilty in 2006, when asked what he thought he was pleading to, appellant responded, "robbing someone." With respect to the conspiracy, he thought that was robbing someone "while being accompanied with others" or "being involved in the robbery that took place that involved other people." Additionally, when asked what he thought robbery was, he replied, "[t]aking something from somebody." When the prosecutor added, "by force,"

appellant agreed. He was also aware that, initially, the charges against him involved allegations that a weapon was used.

The court issued a written order on March 30, 2015 denying appellant's petition. The court initially found that appellant was not suffering or facing a significant collateral consequence from the conviction entitling him to *coram nobis* relief. Next, the court found that appellant was not entitled to *coram nobis* relief because his plea was knowing and voluntary. The court noted that appellant was twenty-three years old, could read, write and understand English and had obtained his GED. The court also found that the State's proffers for both offenses were sufficient to inform him of the elements, highlighting that the robberies occurred at gunpoint and that the State would have called witnesses who would have testified that appellant was involved. The court also noted appellant's apology and his acknowledgment that his actions were frightening. Further, the court opined that appellant was "well aware" of the elements due to the fact that he was serving a sentence for armed robbery and possession of a firearm in the District of Columbia. Finally**,** the court cited appellant's answers to the questions posed by the State regarding what he thought were the crimes he committed to support the denial of his petition.

STANDARD OF REVIEW

A writ of error *coram nobis* is an equitable action originating in common law," *Coleman v. State*, 219 Md. App. 339, 354 (2014) (quoting *Moguel v. State*, 184 Md. App. 465, 471 (2009)), and constitutes an "extraordinary remedy" that "should be employed only

upon 'compelling' circumstances." *Id.* at 353 (quoting *Skok v. State*, 361 Md. 52, 72 (2000)). Therefore, we review a trial court's ultimate grant, *vel non*, of a writ of error *coram nobis* under an abuse of discretion standard. *See Coleman v. State*, 219 Md. App. 339, 354 (2014) (quoting *United States v. Denedo*, 556 U.S. 904, 916 (2009) (noting that "judgment finality is not to be lightly cast aside; and courts must be cautious so that the extraordinary remedy of *coram nobis* issues only in extreme cases").

This Court conducts "review of a constitutional challenge to a guilty plea" by engaging "in an independent review of the record." *Miller v. State,* 185 Md. App. 293, 300 (2009) (quoting *Hudson v. State*, 286 Md. 569, 595 (1979)). "We will accept the findings of fact of the trial court, unless they are clearly erroneous." *Id.* (quoting *Harris v. State,* 303 Md. 685, 698 (1985)). "'Generally, we review the validity of the guilty plea as a whole under the 'totality of the circumstances' test.'" *Id.* (quoting *Metheny v. State*, 359 Md. 576, 604 n.18 (2000)).

DISCUSSION

Appellant contends that his guilty plea was made without his understanding and is**,** therefore**,** invalid, because the court failed to adequately inform him of the nature and elements of the charges to which he was pleading guilty. According to appellant, there was no reference made to the elements of robbery or conspiracy to commit robbery, on the record, by the court or appellant's counsel. Appellant also contends that, as a result of his guilty plea

and subsequent conviction, as a citizen of Trinidad and Tobago, he is facing the significant collateral consequence of removal from the United States.

According to the State, appellant's guilty plea was both voluntary and knowing, in view of the totality of the circumstances, including that appellant affirmed, on the record, that he discussed the plea agreement with his counsel, read the charging document, pled guilty to a prior identical charge of conspiracy to commit robbery, and that appellant was twenty-three years old and had obtained his GED. The State also cites the "long-standing" practice in Maryland trial courts (with the approval of the Court of Appeals and the United States Supreme Court) that, when a defendant is represented by counsel and enters into a negotiated plea agreement, there is a limited presumption that he or she has been informed of the nature of the charges.

The State also argues that appellant is not facing a significant collateral consequence for two main reasons. First, appellant obtained protected status under the Convention Against Torture and any assertion that his immigration status would be affected is "speculative and potential only." The State further argues that appellant has multiple convictions in multiple jurisdictions. Therefore, any relief granted under *coram nobis* for the 2006 convictions would not prevent appellant's removal from the United States.

For the following reasons, we are persuaded that appellant's petition for writ of error *coram nobis* was properly denied by the trial court because: (1) his is not facing a significant collateral consequence; and (2) his guilty plea was made knowingly and voluntarily.

A. Coram Nobis Petition

In *Smith v. State*, 219 Md. App. 289, 292 (2014) this Court noted:

> A petition for writ of error *coram nobis* is an independent, civil action that a convicted individual, who is neither serving a sentence nor on probation or parole, may bring to collaterally challenge a criminal conviction. *Coram nobis* relief is however, extraordinary, and therefore limited to compelling circumstances rebutting the presumption of regularity that ordinarily attaches to the criminal case. The burden of demonstrating such circumstances is on the *coram nobis* petitioner.

Id. (citations and quotations omitted) (Emphasis added).

Although it expanded the scope of *coram nobis* relief in *Skok v. State*,[4] the Court of Appeals emphasized that such relief is "subject to several important qualifications." *Skok,* 361 Md. at 78. To successfully obtain *coram nobis* relief, a petitioner must allege:

> (1) "[T]he grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character . . .
>
> (2) [A] presumption of regularity attaches to the criminal case, and the burden of proof is on the *coram nobis* petitioner . . .
>
> (3) [T]he *coram nobis* petitioner must be suffering or facing significant collateral consequences from the conviction . . .
>
> (4) [T]he issue raised in a *coram nobis* action must not be waived or finally litigated . . .
>
> (5) [T]here must not be another statutory or common law remedy available."

[4] The Court of Appeals broadened the scope of a *coram nobis* proceeding by applying the holding in *United States v. Morgan*, 346 U.S. 502 (1954), citing public policy reasons and the trend of more frequent serious collateral consequences of criminal convictions.

State v. Smith, 443 Md. 572, 623–24 (2015) (quoting *Skok*, 361 Md. at 78–80). In a *coram nobis* analysis, all prongs must be met, but as appellant raised the issue of significant collateral consequence on appeal, we are concerned with the third prong in the case *sub judice*.

1. Significant Collateral Consequences

Appellant argues that the Circuit Court erred in denying his petition for writ of error *coram nobis* on the ground that he was not facing a "significant collateral consequence" because he is facing the possibility of removal from the United States as a result of the 2006 Montgomery County conviction. Appellant further argues that the *Coram Nobis* court placed an undue burden on him to prove "automatic deportation" in order to satisfy the significant collateral consequence element of a *coram nobis* petition.

Article III of the U.S. Constitution[5] requires that the "[e]xercise of judicial power . . . depends on the existence of a case or controversy." *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). A federal court's "judgments must resolve a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (citations and quotations omitted). Maryland State courts also follow this requirement. "The purpose of ripeness is to ensure that adjudication will dispose of an actual controversy in a conclusive and binding manner, where

[5] U.S. CONST. Art. III § 2, cl. 1.

an issue is not ripe, the issue is not justiciable, and thus, a court will not entertain the claim." *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451 (2014) (citations and quotations omitted). Requiring significant collateral consequences in a *coram nobis* analysis ensures compliance that the petition presents an active controversy.

Although significant collateral consequences do not have to be dire, *see Bereano v. United States,* 706 F.3d 568 (4th Cir. 2013) (holding that a *coram nobis* petitioner who had been disbarred from the practice of law, because of prior convictions, "suffered a substantial adverse consequence[]"), they must be actual. *See Graves v. State*, 215 Md. App. 339, 353 (2013) ("The collateral consequences must be actual, not merely theoretical.") (citing *Parker v. State*, 160 Md. App. 672, 687–89 (2005)).

Deportation proceedings have been deemed a significant collateral consequence in *coram nobis* proceedings. *See Rivera v. State*, 409 Md. 176, 192–193 (2009) ("In *Skok,* we determined that deportation proceedings are a significant collateral consequence of a criminal conviction.") (citing *Skok v. State,* 361 Md. 72, 77 (2000)). The *possibility* of deportation, however, has not been determined to satisfy the constitutional threshold.

In the *case sub judice*, appellant argues that he faces a significant collateral consequence from the conviction, *i.e.* possible removal from the United States as a protectee under the Convention Against Torture. According to the U.S. Department of Justice, Executive Office for Immigration, "*Asylum and Withholding of Removal Relief Convention Against Torture Protections*," Fact Sheet 8 (Jan. 15, 2009), there are two types of protection

under the Convention Against Torture: (1) Withholding Removal and (2) Deferral of Removal. The latter:

> [A]lso prohibits returning [individuals] to a specific country where they would face torture. However, deferral of removal is granted to [those] who would likely face torture, but who are ineligible for withholding of removal (under CAT), for example, certain criminals and persecutors.

Id. It is a more temporary form of protection, *i.e.*, it can be terminated once a determination is made that the individual no longer faces torture in his home country. Under the treaty and administrative purview of the Department of Homeland Security, appellant would not be deported or removed from the United States, as a protectee under the Convention Against Torture, until and unless the USCIS determines that he no longer faces torture in Trinidad and Tobago, or USCIS determines he can be removed to a third country where he would not face torture for his sexual orientation.

Since appellant is not currently facing removal from the United States and cannot point to a specific time when he will be, he is not facing an actual controversy. Therefore, appellant's removal and his significant collateral consequence is theoretical, not actual.

Appellant further argues that the *coram nobis* court placed an undue burden on him to prove "automatic deportation" in order to satisfy the significant collateral consequence element of a *coram nobis* petition. In reviewing the *coram nobis* court's April 2015 Statement of Reasons and Order, it is apparent that the court was not placing an unfair injury threshold upon appellant. Rather, the court was articulating the requirement of an actual

collateral consequence, stating that appellant would "not be automatically deported" unless USCIS made a safety determination regarding his status as a protectee and was, therefore, not "suffering or facing significant collateral consequences from the conviction" as required in *Skok*.

Assuming, *arguendo*, that the *possibility* of deportation could satisfy the actual controversy requirement and constitute a significant collateral consequence, which we emphasize it does not, the *coram nobis* court found "[appellant] has failed to show . . . that *the Montgomery County conviction is going to lead,*" independently, to his potential removal from the United States. (Emphasis added). The court notes that appellant has "multiple convictions in multiple jurisdictions," specifically the 2006 Montgomery County convictions and the 2003 convictions in the District of Columbia. The court further notes that, although "[appellant] was 'pursuing' expungement of that charge in the District of Columbia, . . . it had yet to be granted . . . [and] [t]here is no evidence in the record that this has occurred." Therefore, granting appellant's petition for writ of error *coram nobis* may not prevent his removal from the United States. On the contrary, appellant testified that his conviction in the District of Columbia has already affected his immigration status, *i.e.*, prohibiting him from applying for a green card. Therefore, the trial court did not abuse its discretion in denying appellant's petition for writ of error *coram nobis*.

B. Guilty Plea - Voluntary and Knowing

The Court of Appeals specifically recognized that "the scope of a *coram nobis* proceeding encompasses issues concerning the voluntariness of a guilty or *nolo contendere* plea, and whether the record shows that such a plea was understandingly and voluntarily made under the principles of *Boykin v. Alabama* [395 U.S. 238 (1960)]." *Skok v. State*, 361 Md. 52, 80-81 (2000). The Supreme Court, in *Boykin*, held that the same intelligent and understanding standard used in assessing the waiver of the Sixth Amendment right to counsel "must be applied to determining whether a guilty plea is voluntarily made." 395 U.S. at 242. This standard requires that the defendant possess a "sufficient awareness of the relevant circumstances and likely consequences." *Smith v, State,* 443 Md. 572, 615 (2015) (citing *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005).

Maryland Rule 4-242 determines the requirements of a guilty plea and states in pertinent part:

> (c) **Plea of Guilty**. The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule . . . .
>
> (f) **Collateral Consequences of a Plea of Guilty, Conditional Plea of Guilty, or Plea of *Nolo Contendere*.** Before the court accepts a plea of guilty, a conditional plea of guilty, or a plea of *nolo contendere*, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may

> face additional consequences of deportation, detention, or ineligibility for citizenship . . . and (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate the plea be declared invalid.

Convictions have been reversed if the guilty plea is entered based on a record that does not illustrate sufficient advisement of the elements of the crime. In *Miller v. State*, we reversed the defendant's conviction because the plea hearing failed to indicate that the court, defense counsel or the prosecutor had advised the defendant of the elements of the offense. As this Court reasoned:

> [T]he elements of the crime never were stated. There was no representation by the appellant that he knew the nature and elements of the crime or that his lawyer had at some time told him the nature and elements of the crime. There was no representation by the appellant that he and his lawyer had discussed the "charges," the underlying facts, and/or his possible defenses. There was no evidence that the appellant had been given a form or document setting forth the nature and elements of first-degree burglary. There was no finding on the record of the plea hearing that appellant knew the nature of first-degree burglary.

185 Md. App. 293, 314 (2009).

Moreover, the Court of Appeals held, in *State v. Daughtry,* 419 Md. 35 (2011), that a plea colloquy must show that a defendant understands the elements of the offense to which he is pleading. The Supreme Court has also required affirmative demonstration of a defendant's "understanding," *i.e.* real notice giving the defendant "an understanding of the law in relation to the facts" as they pertain to that specific case. *McCarthy v. United States,* 394 U.S. 459, 466 (1969). The defendant must understand both "the nature of the charges,

but also that his conduct actually falls within the charge." *Id.* at 467. A failure to provide the defendant with "real notice of the true nature of the charge against him," violates the "first and most universally recognized requirement of due process." *Henderson v. Morgan*, 426 U.S. 637, 645 (1976) (quoting *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)).

The aforegoing should not imply, however, that only a technical litany of the criminal elements will satisfy the requirement. Rather, "a basic understanding of [the crime's] essential substance, rather than of the specific legal components of the offense to which the plea is tendered" will suffice. *State v. Priet*, 289 Md. 267, 288 (1981). The Court of Appeals has noted:

> Maryland Rule 4-242(c)'s predecessor 'does not require that the precise legal elements comprising the offense be communicated to the defendant' but instead requires simply that a guilty plea not be accepted until the trial court determines 'that the accused understands the nature of the charge.' We stated that the Rule 'contemplates that the court will explain to the accused, in understandable terms, the nature of the offense to afford him *a basic understanding of its essential substance, rather than of the specific legal components of the offense to which the plea is tendered*.

Smith v. State, 443 Md. 572, 649–50 (2015) (quoting *Priet*, 289 Md. at 288) (Emphasis added).

Appellant posits that *Daughtry* is particularly instructive and relevant to the instant case because the Court of Appeals specifically addressed the offenses of conspiracy and robbery and that they were "laborious" and "multi-element" complex crimes:

> Except as provided otherwise in Maryland Code (2002), Criminal Law Article, §3-40l(e), robbery retains its judicially determined meaning, *i.e.*, "the felonious taking

> and carrying away of the personal property of another, from his person or in his presence, by violence, or by putting him in fear." (internal citations omitted). We count at least six elements to this judicially-determined definition of robbery (and a seventh under Crim. Law §3-403, which requires a "dangerous weapon . . .").

Daughtry, 419 Md. at 57, n. 10. The elements of conspiracy are defined as:

> [T]he combination of two or more people to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The gist of conspiracy is the unlawful agreement, which need not be spoken or formal so long as there is a meeting of the minds reflecting a unity of purpose and design. The crime is complete when the unlawful agreement is made; no overt act in furtherance of the agreement is necessary.

White v. State, 363 Md. 150, 167 (2001) (citations and quotations omitted). Furthermore, the Court of Appeals has suggested that conspiracy may not be self-explanatory:

> Courts have also taken into account whether or not the charge is a self-explanatory legal term or so simple in meaning that it can be expected or assumed that a lay person understands it. On this basis, it has been held, for example, that the elements of a conspiracy charge should be explained by the judge to the defendant. By contrast such offenses as escape and altering a check have been deemed sufficiently straight-forward that an element-by-element parsing is unnecessary.

Daughtry, 419 Md. at 72 n. 19 (citation and quotation omitted).

There is, however, a limited presumption that, "in most cases[,] defense counsel routinely explain[s] the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit. *Henderson v. Morgan*, 426 U.S. 637, 647 (1976). Despite the Supreme Court's ruling in *Bradshaw v. Stumpf,* 545 U.S. 175 (2005) (holding that where "the record contains either an explanation of the charge by the trial judge or, at least a representation by defense counsel that the nature of the offense has been explained," a guilty

plea will be found voluntary and knowing) the Court of Appeals has held that "the limited viability of the presumption as set forth originally in *dicta* in *Henderson*" remains intact. *State v. Daughtry,* 419 Md. 35, 68 (2011). "*Bradshaw* does not address *Henderson's* holding, and . . . courts have applied the presumption without questioning its post-*Bradshaw* validity." *Id.* at 69 (quoting *Castellon-Guitierrez v. United States*, 754 F. Supp.2d 774, 780 (D. Md. Dec. 6, 2010)). Although the Court, in *Daughtry*, stated that the presumption alone "runs contrary to Rule 4-242's requirement that there be an adequate examination on the record in open court[,]" 419 Md. at 42, the Court also stated "to the extent that a presumption was identified in *Henderson*, it remains unaffected by *Bradshaw*." *Id.* at 69.

Determining the validity of a guilty plea, however, does not solely rest upon a defendant's understanding of the nature of the crime. The Court of Appeals explained that, although the "nature of some crimes is readily understandable from the crime itself," a broader determination is necessary. *Priet*, 289 Md. at 288.

> Necessarily, the required determination can only be made on a case-by-case basis, taking into account the *relevant circumstances in their totality* as disclosed by the record, including, among other factors, the complexity of the charge, the personal characteristics of the accused, and the factual basis proffered to support the court's acceptance of the plea.

Id. (Emphasis added). Therefore, the test for determining whether a plea of guilty is voluntarily and knowingly entered is examining the totality of the circumstances based on the trial record. *See id.* at 291 (stating that test "is whether, considering the record as a whole, the trial judge could fairly determine the defendant understood the nature of the charge to

which he pleaded guilty); *Smith v. State*, 443 Md. 572, 651 (2015) (quoting *State v. Daughtry*, 419 Md. 35, 71 (2011)) ("Our jurisprudence, in determining the validity of a guilty plea, has focused always on whether the defendant, *based on the totality of the circumstances*, entered the plea knowingly and voluntarily.").

In the case *sub judice*, appellant made a voluntary and knowing guilty plea. The record reflects that he was sufficiently aware regarding the nature of the crimes. As noted, *supra*, all that is required is that someone "explain to the accused, in understandable terms, the nature of the offense to afford him a basic understanding of its essential substance, rather than of the specific legal components . . . ." *Smith*, 443 Md. at 649–50. Both the trial judge and State prosecutor discussed the elements of the case in understandable terms—appellant understood that the robbery offense constituted taking something from someone by force and that conspiracy to commit robbery entailed robbery in concert with another person or accomplices.

Furthermore, in the case *sub judice*, appellant was questioned at the plea hearing and confirmed that he had discussed the plea agreement with his counsel. The guilty plea was accepted only after appellant listened to and agreed with the recited facts. Significantly, at the *coram nobis* hearing, appellant admitted that he understood the charges that he had pled guilty to based on discussions with his counsel, observing the discovery in the case first-hand and reading the charging document.

Examination of the totality of the circumstances supports the validity of appellant's guilty plea. Although the concepts of robbery and conspiracy are more complex than some offenses, appellant's responses to the litany, when he was examined prior to the entry of his guilty plea, established that his plea was made knowingly and voluntarily. Appellant was twenty-three years old, he indicated that he could read and understand English, he had obtained his GED and he affirmed that his plea was entered knowingly and voluntarily.

CONCLUSION

In conclusion, based on our independent review of the record, we are persuaded that the trial court did not abuse its discretion in denying appellant's petition for writ of error *coram nobis*, and the lower court's determination that appellant entered a knowing and voluntary guilty plea was not clearly erroneous.

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