

Circuit Court for Baltimore City
Case No.: 112067011

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 336

September Term, 2021

RUSSELL CARRINGTON

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: November 22, 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.

The Circuit Court for Baltimore City denied a petition for writ of error coram nobis filed by appellant Russell Carrington. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Based on an incident that occurred on April 13, 2011, Carrington was charged in the District Court of Maryland for Baltimore City (case no. 1B02114743) for what he describes as “misdemeanor” CDS offenses, including attempted distribution of CDS. After he prayed a jury trial, the case was transferred to the Circuit Court for Baltimore City and designated as case no. 811227004. Thereafter, on March 7, 2012, an indictment was filed in the circuit court charging him with distribution of heroin, distribution of cocaine, possession of heroin, and possession of cocaine—based on the same April 13, 2011 incident—with that case designated as case no. 112067011. The State then nol prossed case no. 811227004.¹

On September 13, 2013, Carrington pleaded guilty in case no. 112067011 to possession with intent to distribute cocaine and possession with intent to distribute heroin. The court sentenced him to two concurrently run terms of nine years’ imprisonment, suspending all but four years, to be followed by a three-year term of supervised probation.

¹ The records in case no. 1B02114743 and 811227004 are not before us and, as will be discussed, the latter case has been expunged. The facts we set forth related to those cases are taken from Carrington’s pleadings in this case. The State, however, does not dispute them.

It appears that Carrington sought and obtained, in 2016, an expungement of case no. 811227004—the case involving the misdemeanor charges that had been nol prossed.² In March 2020, he filed a motion seeking expungement of his criminal record in case no. 112067011. The circuit court denied relief. In short, the court found that the “felony conviction” was not eligible for expungement” and the expungement of case no. 811227004 had been granted in error.³

In July 2020, the self-represented Carrington filed a petition for writ of coram nobis with the circuit court, again seeking expungement of case no. 112067011. He claimed that, because the facts giving rise to the convictions in case no. 112067011 were the same as in case no. 811227004, the records related to his convictions in case no. 112067011 should also have been expunged. In short, he appeared to argue that the expungement he obtained

² Carrington’s request for the expungement is not in the record before us. The record does include, however, a copy of the court’s January 7, 2016 Order For Expungement Of Records, which includes a reference to case no. 811227004. There is no mention of case no. 112067011 in the Order.

³ The court found that the criminal matter filed in the District Court (criminal complaint no. 113D06069 / case no. 1B02114743 and later case no. 811227004 when transferred to the circuit court) involved misdemeanor charges and the State’s nol pros was proper upon the subsequent indictment of the felony charges in case no. 112067011. The court further found that:

a clerical error was made when the criminal complaint was indicted. Normally, the tracking number for the misdemeanor and the tracking number for the newly created felony remain the same. That was not done in this case. The felony received a new tracking number[.]

The court further found that, if the clerical mistake had not been made, the State would have objected to the expungement of the misdemeanor case “since the misdemeanor charges arose out of the same incident as the newly charged felony[.]”

in 2016 pertained to the April 13, 2011 arrest and, therefore, to all matters stemming therefrom, including his convictions in case no. 112067011. He also claimed that his convictions in case no. 112067011 served as “a predicate offense for career offender enhancement purposes” when he was sentenced in 2015 for criminal charges in a “federal” case and, therefore, he was suffering a significant collateral consequence. The State filed an opposition to the petition and, by order dated December 7, 2020, the circuit court summarily denied relief.

Carrington then filed another petition for writ of error coram nobis, which is date stamped March 10, 2021. In the second petition, the denial of which is the subject of this appeal, Carrington asserted that case no. 112067011 was “improperly created” because the indictment was based on the same incident that led to the charges in case no. 811227004, which was later nol prossed. He, therefore, maintained that he was “convicted and sentenced unlawfully” in case no. 112067011 because the court “only had subject matter jurisdiction over case no. 811227004 and ... it did [not] have subject matter jurisdiction over case no. 112067011.” He relied, in part, on the fact that the “tracking number . . . which was linked to the alleged evidence and official documents, was also assigned only to case no. 811227004.” He also asserted that, because of the above, his plea agreement in case no. 112067011 “was founded upon fraudulent information” and, therefore, his guilty plea to distribution of cocaine and distribution of heroin should be vacated. Finally, he once again asserted that the convictions in this case increased his career offender score,

which resulted in a harsher sentence in his federal case.⁴ By order dated April 6, 2021, the circuit court summarily denied relief.

DISCUSSION

On appeal, Carrington asserts that when case no. 811227004 was nol prossed, the nol pros “included the arrest and criminal complaint numbers” and, therefore, he seems to maintain that the indictment in case no. 112067011 “utilizing the arrest and criminal numbers” was improper and “constituted [] prosecutorial misconduct in the charging process[.]” And he claims that this “prosecutorial misconduct” violated his Due Process Rights under the 14th Amendment to the U.S. Constitution, and caused his guilty pleas to the distribution counts to be unknowing, involuntary, unlawful, and fraudulent. This “error of fact,” he states, “led into a cruel sentence” in his federal case.⁵

The State urges this Court to affirm the judgment denying coram nobis relief because “Carrington’s petition . . . failed to state a basis for relief, as Carrington failed to

⁴ Following a jury trial in the U.S. District Court for the District of Maryland, Carrington was convicted of racketeering and conspiracy to distribute drugs while incarcerated and was sentenced on March 27, 2015 to 210 months’ imprisonment. The Fourth Circuit affirmed the convictions and sentence. *United States v. Carrington, et al.*, 700 Fed. Appx. 224 (4th Cir. 2017).

⁵ In the “Questions Presented” section of his brief, Carrington asks: “Whether the Circuit Court for Baltimore City Honorable Judge Jeannie J. Hong has its jurisdiction over Case No.: 112067011 or not? since she is not and was not the Honorable Judge who conducted the sentencing process due to a subject-matter jurisdiction defect, but she denied the defendant’s petition for a Writ of Error Coram Nobis Relief under that case number.” He does not otherwise address this issue and, therefore, we need not consider it. But in any event, assuming he is contending that Judge Hong was not authorized to rule on the request for coram nobis relief because she was not the sentencing judge in the case, the argument is meritless.

allege sufficient grounds for challenging his conviction or rebut the presumption of regularity with respect to his claims.” The State maintains that Carrington’s allegation that the State improperly filed two charging documents stemming from the same incident is meritless. The State points out that case no. 811227004 involved misdemeanor drug offenses and, therefore, was appropriately filed in the District Court. *See* Md. Code, Courts & Judicial Proceedings, § 4-301(b)(4) (giving the District Court “exclusive original jurisdiction” where the defendant is charged with criminal violations that are “not a felony”). And the State asserts that the indictment filed in the circuit court involved felony drug offenses, and, therefore, “was, of necessity, filed in the circuit court.” The State cites *State v. Ferguson*, 218 Md. App. 670, 685 (2014) for the proposition that “[t]he State has broad discretion to file a superseding indictment at any time before jeopardy attaches[.]”

The State further asserts that its *nol pros* of case no. 811227004 did not preclude the prosecution of the felony case, and cites again this Court’s decision in *Ferguson* where we reiterated:

All that a *nol pros* does . . . is carry out the prosecutor’s desire not to proceed against the accused on the basis of that particular charging document. A *nol pros* does not allay the possibility of a future charge for the same offense. Subject to dismissal on other grounds, the entry of a *nol pros* causes the matter to lie dormant until and unless the prosecutor elects to proceed on a new indictment, information or other charging document.

218 Md. App. at 680-81 (citation omitted).

The State also maintains that the expungement of the *nol pros*ed misdemeanor case (case no. 811227004) did not invalidate Carrington’s felony convictions (case no. 112067011) because the expungement was “case specific” to case no. 811227004. The

State notes that the only court proceeding or case number identified in the 2016 Order of Expungement was case no. 811227004.

We agree with the State. Nothing in the record before us persuades us that the indictment in case no. 112067011 was improperly filed, or that the 2016 Order of Expungement had any effect whatsoever on Carrington’s convictions in that case. Accordingly, we hold that the circuit court did not err in denying relief.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**