

Circuit Court for Washington County
Case No. 21-K-03-031979

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 433

September Term, 2018

JOSEPH WAYNE MASON

v.

STATE OF MARYLAND

Fader, C.J.,
Meredith,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: June 28, 2019

*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.

Appellant Joseph Wayne Mason pled guilty on October 7, 2003 in the Circuit Court for Washington County to conspiracy to distribute cocaine. In June 2015, a federal grand jury indicted him for the crime of being a felon in possession of a firearm. Appellant filed a petition for writ of error *coram nobis* in the Circuit Court for Washington County, seeking to vacate his 2003 conviction on the ground that his guilty plea was involuntary. While the petition was pending, he pled guilty to a federal firearm charge. The circuit court denied his petition on the ground of laches. Appellant timely appealed, presenting the following questions for our review:

1. Was appellant's guilty plea involuntary because the convicting court failed to apprise him of the nature of the charge to which he was pleading?
2. Did the circuit court err in its application of laches by finding appellant (1) unreasonably delayed seeking *coram nobis* relief, and (2) thereby prejudiced the State?

Finding no error, we shall affirm.

I.

In June 2003, appellant was charged by criminal information in the Circuit Court for Washington County with four drug-related offenses, including conspiracy to distribute cocaine. In October 2003, he pled guilty to conspiracy to distribute a controlled dangerous substance. At the plea hearing, appellant told the court that he had spoken with his attorney, understood the plea, and understood that he waived certain rights by pleading guilty. The court found that appellant entered the plea freely and voluntarily and that the facts were

sufficient to support the plea. But the court did not explain the nature of the conspiracy charge, *i.e.*, the elements the State would have to prove at trial, and the judge did not ask if appellant's attorney had done so. The court accepted the guilty plea and sentenced appellant to a term of incarceration of nine years, all but four years suspended. He did not appeal. On September 6, 2005, he was charged with violation of probation, and the court imposed the four years previously suspended.

In June 2015, twelve years after his plea, a federal grand jury indicted appellant with one count of being a felon in possession of a firearm pursuant to 18 U.S.C. § 922(g)(1). The federal prosecutor represented that because appellant had three prior convictions (including the conspiracy to distribute conviction) that were either violent felonies or serious drug offenses, he was subject to a fifteen-year mandatory minimum sentence under the federal Armed Career Criminal Act, 18 U.S.C. § 924(e). If he did not trigger the Act, the statutory maximum sentence for his possession of a firearm was ten years.

Seeking to avoid the higher sentence, appellant filed in December 2015 a petition for writ of error *coram nobis* in the Circuit Court for Washington County. He sought to vacate his 2003 conviction for conspiracy to distribute on the ground that he did not “knowingly and voluntarily” plead guilty and that the conviction subjected him to a longer federal sentence. His negotiations with federal prosecutors continued while he awaited a *coram nobis* hearing.

Following negotiations with prosecutors, in January 2016, he pled guilty in his federal case to possessing a stolen firearm rather than being a felon in possession of a

firearm. His incentive for doing so was that possession of a stolen firearm has a maximum sentence of ten years of incarceration, regardless of his prior offenses. The plea eliminated his risk of facing a fifteen-year mandatory minimum sentence for being a felon in possession of a firearm with prior convictions. Nevertheless, his prior convictions increased the range of sentences to which he was subject under the United States Federal Sentencing Guidelines. Pursuant to the plea agreement, the federal court sentenced him to a term of incarceration of five years and six months.

The Circuit Court for Washington County held an evidentiary hearing on the *coram nobis* petition in January 2017. Appellant informed the court at that time that he had pled guilty in his federal case.

The State called two witnesses at the hearing. The first, the police officer who arrested appellant for conspiracy to distribute a controlled dangerous substance, testified that he remembered the arrest but had difficulty recalling some of the relevant details, including appellant's appearance. He testified that the other two officers who participated in the arrest no longer worked for the police department—one was retired, and the other was working in a different state. Additionally, the chemist who tested the drugs no longer worked for the state laboratory, and pursuant to standard procedure, the police destroyed the drugs in 2004. The police officer acknowledged that he reviewed another officer's arrest report (provided the State before the hearing) and that it refreshed some of his recollection of the case.

The second witness was appellant's trial counsel, an assigned public defender.

Unsurprisingly, he did not remember appellant’s case, having been assigned thousands of cases since then. He testified, however, that he “would like to think” that he followed his usual practice when he met with a defendant. He testified as follows:

“I would certainly, every time I meet with somebody, I have the same procedure . . . if I had my notes, I would be able to verify it, but I always do it the same way. I get background information, I then go over the charges. I then tell the . . . person I’m representing what the pretrial procedure and trial procedure will be.”

Because of the passage of time, he no longer had his notes from appellant’s case.

The circuit court denied appellant’s petition on the ground of laches on April 11, 2018, ruling that appellant was unreasonable in waiting twelve years to remedy the allegedly defective plea. The court found prejudice to the State in that the drugs had been destroyed and the State’s witnesses were either unavailable or had diminished memories. Appellant filed this timely appeal.

II.

Appellant argues that the circuit court erred in finding that the doctrine of laches barred his petition. He contests both elements of the doctrine: unreasonable delay and prejudice to the opposing party. Regarding unreasonable delay, appellant emphasizes that a reviewing court must perform a fact-intensive, case-by-case analysis. He concedes that the delay time-clock began at the time of his guilty plea. But he argues that because previous case law barred a defendant’s *coram nobis* petition if he pled guilty and failed to appeal his conviction, he could not have filed his petition until July 2015, when the Court

made retroactive the statute that overruled its case on the issue. Appellant argues that because he filed his petition five months after the first date he could do so, his delay was reasonable. He acknowledges that the Court of Appeals held that laches barred a petition nearly identical to his in *Jones v. State*, 445 Md. 324 (2015). He argues, however, that we should “decline to follow” its reasonableness analysis because the *Jones* Court considered the change in case law in its analysis of the *length* of the delay, not its reasonableness.

He contests also the circuit court’s finding of prejudice to the State. He argues that the party attempting to prove laches must prove not only prejudice but *material* prejudice. He contends that the bases for the circuit court’s finding of prejudice, though “challenging” or “inconvenient” for the State, did not materially prejudice the State’s ability to prosecute his case. Specifically, he argues that the arresting officer’s memory was refreshed by the other officer’s report and that the State could prosecute the case without the drugs at issue. He argues that although it may be inconvenient for the State to subpoena two former police officers and a former lab technician, the State produced no evidence to prove that those witnesses were unavailable to testify.

The State argues that it satisfied both elements of the doctrine of laches and that we should not reach the merits of the petition. Beginning with unreasonable delay, the State argues that *Jones* controls and that appellant’s delay was unreasonable. The State relies on *Jones* to support its position that it was unreasonable for appellant to fail to raise the voluntariness of his guilty plea while incarcerated for four years and to raise it twelve years after his plea—only after committing another crime.

Turning to prejudice, the State argues that the standard is not “material” prejudice but rather *any* prejudice that places the State in a “less favorable position” to re-prosecute appellant. It argues that it established prejudice because it could produce only one of the eight witnesses subpoenaed for appellant’s 2003 prosecution, and even after refreshing the testifying police officer’s memory with an arrest report, the officer’s recollection was “very vague.” The State argues that if it were forced to prosecute appellant using another officer’s report rather than the witness’s testimony, appellant could potentially challenge the State’s evidence on the basis of the Confrontation Clause of the Sixth Amendment to the United States Constitution. Because of the lack of witnesses and the loss of the arresting officer’s independent recollection, the State argues that appellant’s delay placed it in a less favorable position to re-prosecute appellant. With both elements of laches satisfied, the State concludes that appellant’s petition is barred.¹

III.

We hold that appellant’s claim is barred by the doctrine of laches. Laches bars a claim when a party unreasonably delays in the assertion of his rights and that delay results in prejudice to the opposing party. *Jones*, 445 Md. at 339. The purpose of laches is to protect against stale claims, *id.*, and it applies to *coram nobis* relief. *Id.* at 343.

The party asserting laches must prove by a preponderance of the evidence that (1)

¹ The parties present also their arguments on the merits of the petition. Because we hold that laches barred appellant’s petition, we shall not set forth the parties’ arguments on the merits.

there was an unreasonable delay in asserting a claim, and (2) the delay prejudiced the party asserting laches. *Id.* In determining whether delay was unreasonable, we analyze when, if ever, the claim became ripe and whether the passage of time from ripeness to assertion of the claim was reasonable. *Id.* at 340. The petitioner’s reason for filing his petition affects the reasonableness determination. *Id.* at 347. Prejudice is an easier determination—it is anything that places the party asserting laches in a less favorable position, *id.* at 357, including anything that places the State “in a less favorable position for purposes of reprosecuting the petitioner.” *Id.* at 360. We review the circuit court’s determination on the issue of laches *de novo*. *Id.* at 337; *see also Liddy v. Lamone*, 398 Md. 233, 248–49 (2007).

Appellant’s claim became ripe when he was convicted in 2003. He was sentenced to a term of incarceration of nine years, all but four suspended, and he did not seek to withdraw his guilty plea, apply for leave to appeal, move to set aside an unjust or improper verdict, or petition for post-conviction relief. In 2005, the sentencing court reinstated the suspended term of five years for a violation of probation. Still, appellant took no action with respect to the underlying conviction. The reason he filed a petition over twelve years after his allegedly defective plea bargain is that he pled guilty to a federal firearm offense over a decade after his initial drug conviction. Appellant’s delay was unreasonable.

We turn next to prejudice. The State was prejudiced by the delay. By the time of appellant’s *coram nobis* hearing, the arresting officer had only a “vague” recollection of his case. Importantly, the officer’s recollection was still vague after viewing another

officer's arrest report. He remembered a few details of the arrest, but he could not recall appellant's physical appearance at the time of the arrest. At trial, the State could use a report to refresh the officer's memory. Md. Rule 5-612. But he could not testify *from* another officer's report if his recollection was not refreshed. *See Farewell v. State*, 150 Md. App. 540, 576–77 (2003). Appellant could challenge such testimony as a violation of the Confrontation Clause. *See State v. Norton*, 443 Md. 517 (2015). The State established at the *coram nobis* hearing that appellant's delay in seeking relief resulted in the loss of the memory (and therefore the testimony) of an important witness.

Jones v. State, 445 Md. at 324, was factually similar to the case at bar. Jones pled guilty to a drug offense in 1999. *Id.* at 330. He did not attempt to withdraw his guilty plea, seek leave to appeal, or petition for postconviction relief. *Id.* at 332. In 2005, he pled guilty to violating his order of probation and was sentenced to three years of incarceration. *Id.* In 2012, Jones pled guilty in federal court to being a felon in possession of a firearm. *Id.* at 333. In part because of his 1999 drug conviction, the Armed Career Criminal Act subjected him to a mandatory minimum sentence of fifteen years' incarceration rather than a maximum sentence of ten years' incarceration. *Id.* He filed in 2012 a *coram nobis* petition, asking the Circuit Court for Baltimore City to vacate his conviction on the ground that his plea was not knowing and voluntary. *Id.* The circuit court granted the petition, and the State appealed. *Id.* at 334.

On appeal, the Court of Appeals examined the State's laches argument, holding that Jones's claim became ripe on the date of the guilty plea because he knew or should have

known of the alleged error at that time. *Id.* at 345. The Court emphasized that Jones’s reason for filing a *coram nobis* petition affected the reasonableness of his delay, explaining as follows:

“It would be absurd to essentially reward Jones for committing a new crime by allowing him to now challenge his thirteen-year-old conviction, and seek to invalidate his bargained-for plea agreement, on the ground that, thirteen years later, he contends that he did not understand the elements of the offense to which he pled guilty.”

Id. at 347. The Court held that Jones’s delay was unreasonable because (1) Jones knew or should have known of the defect in 1999 and was sentenced to six years’ incarceration but did not seek to rectify the error during those six years, (2) he was sentenced in 2005 to three years’ incarceration for violating his probation but did not challenge his 1999 conviction at that time, and (3) the reason for the *coram nobis* petition was that he committed another crime in 2012, thirteen years after his drug conviction. *Id.* at 357. Appellant is correct that the Court in *Jones* did not address in the context of reasonableness the fact that case law barred his *coram nobis* petition until *Smith v. State*, 443 Md. 572 (2015). But the “delay” at issue is not merely delay in filing a *coram nobis* petition, it is delay in seeking to rectify the error. The date Jones filed his *coram nobis* petition was not the reason the Court found Jones’s delay unreasonable.

The Court held also that Jones’s delay prejudiced the State by placing it “in a less favorable position” for re-prosecuting Jones. *Id.* at 360. At the time of Jones’s *coram nobis* hearing, the police officer who observed him participating in the drug sales at issue could not remember Jones or locate his case file—even after reviewing the State’s “offense

report.” *Id.* at 360–61. The Court held that the State would be prejudiced if forced to rely on documentary evidence rather than testimony, both because documents are often less compelling evidence and because a conviction based solely on documents would give rise to challenges under the Confrontation Clause of the Sixth Amendment to the United States Constitution. *Id.* at 361–62.

Appellant’s attempts to distinguish *Jones* fail. As in *Jones*, appellant’s unreasonable delay prejudiced the State, and appellant’s petition is barred by laches.

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