

Circuit Court for Baltimore City
Case Nos. 196198025, 196198026

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 480

September Term, 2020

WAYNE CONRAD MCKENZIE

v.

STATE OF MARYLAND

Nazarian,
Wells,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: March 26, 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.

This case is an appeal from the trial court’s denial of appellant’s petition for writ of error *coram nobis* in which appellant sought leave to file a belated motion for reconsideration of his sentence. The circuit court denied his petition. He presents the following question for our review:

“Did the trial court err when, in denying *coram nobis* relief, it focused only on appellant’s guilty plea and sentencing and did not consider appellant’s post-trial right to file a motion for modification of sentence?”

Finding no error, we shall affirm.

I.

In 1996 in Baltimore, appellant Wayne Conrad Mckenzie pleaded guilty to two counts of marijuana distribution. The court sentenced him to a term of incarceration of five years on each count, concurrent and suspended, with two years probation. Before appellant left the courthouse that day, United States immigration agents placed him in custody, before transporting him to various detention centers and eventually deporting him to Jamaica. In 2019, appellant, who now resides in Canada, filed a petition for writ of error *coram nobis*, requesting leave to file a belated motion to modify sentence pursuant to Md. Rule 4-345(e). The circuit court denied his petition. Appellant asserted that he had been deported to Jamaica as a result of the 1996 convictions, and that he “now lives in Canada and has applied for Canadian citizenship. Due to these convictions, however, he is unable to obtain Canadian citizenship.” In addition, he alleged that a probation before judgment disposition would allow him to re-enter the United States, a country he had immigrated to

as a twelve-year-old. He sought the writ as a step towards a prospective change of his sentence to probation before judgment and a prospective expungement of his criminal record.

Appellant explained why no timely motion for modification of sentence was filed within ninety days of the guilty plea back in December of 1996, asserting that he was taken into custody right outside the courtroom by immigration authorities, transported to several locations around the country, and, eventually, deported to Jamaica. He asserted that he was unable to contact his trial counsel to request that he file a motion for modification of sentence, and that his counsel was unable to contact him to discuss the filing of a motion for modification of sentence. Notably, the State’s Attorney agreed not to oppose permitting appellant to file the belated motion for modification of sentence, although the State did not consent to the merits.¹

The Circuit Court for Baltimore City denied the petition, observing, “this Court does not see that the writ of error *coram nobis* is a vehicle which will provide the requested relief.” The court reasoned that to be entitled to *coram nobis* relief petitioner must establish that: (1) the grounds for challenging the criminal conviction are of a constitutional, jurisdictional, or fundamental character; (2) some error occurred despite the presumption of regularity; (3) he is suffering from or facing significant collateral consequences from a prior criminal conviction; (4) the allegation has not been waived; and (5) no other common

¹ Of course, if the court lacked jurisdiction to entertain the writ, the State’s acquiescence thereto is of no moment.

law remedy is available to petitioner. The circuit court ruled that appellant’s petition was deficient in failing to allege that the grounds for challenging the conviction are constitutional, jurisdictional or fundamental in character—and that appellant does not challenge the underlying conviction. What he seeks is a belated motion for modification, which presupposes that the sentence that was imposed is valid and not impaired by any error or irregularity of the legal proceedings which took place on December 11, 1996. The circuit court noted that appellant did not seek to withdraw his guilty plea and did not allege that he tendered the guilty plea without knowledge of the possible immigration consequences. The court concluded as follows:

“Unfortunately, the Petition as filed, though factually compelling, is without legal justification. Petitioner fails to establish that the grounds for challenging the conviction are constitutional, jurisdictional or fundamental in character. He also fails to establish that some legal error occurred despite the presumption of regularity. Despite the agreement of the State’s Attorney, this Court is not convinced that it has the legal authority to grant the requested relief. Therefore, the Petition for *coram nobis* relief is DENIED.”

Appellant noted this timely appeal.

II.

Before this Court, appellant argues that the trial court erred in denying his petition for writ of error *coram nobis*. His reasoning and the basis for his relief is somewhat difficult to discern because to get the result he is seeking he needs to, and does, scramble the law related to statutory post-conviction relief with the body of law as to *coram nobis* relief. He states that the rights and remedies granted to post-conviction petitioners apply

equally to *coram nobis* petitioners. He argues that the circuit court erred in not applying the reasoning and holdings of two post-conviction cases, *State v. Flansburg*, 345 Md. 694 (1997), and *Matthews v. State*, 161 Md. App. 248 (2005). He maintains that the circuit court erred in focusing only on the 1996 court proceedings—the guilty plea and sentencing—and did not consider impairment of appellant’s post-trial right to file a motion for sentence modification through no fault of his own.

Appellant argues that the expanded scope of Maryland *coram nobis* relief following *Skok v. State*, 361 Md. 52 (2000), supports his position in principle, and that Maryland law requires that a defendant be granted the belated right to file a motion for modification of sentence when trial counsel fails to file such motion within the ninety-day deadline through no fault of defendant. He argues that *Flansburg* (a post-conviction case alleging ineffective assistance of counsel) stands for the proposition that a defendant has a right to file a belated motion for modification of sentence where trial counsel receives a request to file a timely motion and fails to file the motion timely. In *Matthews* (a post-conviction case alleging ineffective assistance of counsel) this Court held that counsel’s failure to file a timely motion for modification after receiving a request to do so requires post-conviction relief—and requires such relief even if there was no reasonable probability that a motion to modify would have been granted had it been filed. Appellant argues that he too, like the appellants in *Flansburg* and *Matthews*, lost the opportunity to file a motion for modification of sentence through no fault of his own.

In response, the State argues that the circuit court properly denied the petition for

writ of error *coram nobis* because the petition failed to state a *prima facie* case for relief under that extraordinary writ. The State’s position is that the court was without authority to grant appellant’s requested relief, notwithstanding the State’s acquiescence thereto, because appellant did not allege that any “error” (legal or factual) had in fact occurred. The State points out that appellant has not challenged the knowing and voluntary nature of the guilty plea or that trial counsel rendered ineffective assistance, either before or after the plea. The complaint was simply that appellant was whisked out of Maryland immediately after he was sentenced and that he and his trial counsel did not have a chance to discuss whether to file a motion for modification of sentence within ninety days of his plea in December 1996; and he would like the opportunity to file such a motion now. The State argues that the writ of error *coram nobis* is not an open-ended vehicle that allows courts to grant whatever relief, at whatever time, and for whatever reason, a petitioner might like. The State’s primary argument, relying on *Skok v. State*, 361 Md. 52, 79 (2000), is that *coram nobis* relief is subject to several important qualifications, with the chief limitation that the petition must challenge the underlying conviction and the challenge must be of a constitutional, jurisdictional or fundamental character. In other words, argues the State, in the absence of any challenge to the fundamental integrity of the judgment, there is no basis for *coram nobis* relief.²

The State maintains that we should reject appellant’s application of post-conviction

² We note that, although the State did not argue the doctrine of laches, here, where appellant has waited twenty-three years to bring this petition, and has provided no explanation for the lengthy delay, that doctrine might well apply to this case.

jurisprudence to the law of *coram nobis*, and thus *Flanburg* and *Matthews* (and any other post-conviction case) are inapposite because they arose in the context of post-conviction proceedings rather than in the context of *coram nobis* relief. Moreover, unlike in *Flanburg* and *Matthews*, appellant has asserted no basis for ineffective assistance, which was key in those two cases.

III.

We review a denial of a petition for writ of error *coram nobis* for abuse of discretion. *State v. Rich*, 454 Md. 448, 471 (2017). “In determining abuse of discretion, however, an appellate court ‘should not disturb the *coram nobis* court’s factual findings unless they are clearly erroneous, while legal determinations shall be reviewed de novo.’” *Byrd v. State*, 471 Md. 359, 370 (2020) (quoting *Rich v. State*, 454 Md. 448, 471 (2017)).

A writ of error *coram nobis* is extraordinary relief, designed to relieve a petitioner of substantial collateral consequences where that person is not serving a criminal sentence or is on probation. *State v. Smith*, 443 Md. 572, 654 (2015). It is an independent, civil action. *Smith v. State*, 219 Md. App. 289, 292 (2014), *aff’d* 443 Md. at 572.

These writs, in England, were limited originally to remedy errors of fact affecting the validity and regularity of the judgment. *See Madison v. State*, 205 Md. 425, 432 (1954); *Skok v. State*, 361 Md. 52, 67 (2000) (quoting *Madison* at length). The writ could issue upon a challenge to an error of fact outside the record that could not have been raised earlier, provided that the error would affect the validity and regularity of the judgment itself

and would have precluded the rendering of the judgment. Maryland and some federal and state cases in the twentieth and twenty-first centuries, mindful of policy considerations, have broadened the scope of *coram nobis* relief to include errors of law. For example, the Supreme Court of the United States established that a writ of error *coram nobis* may issue in response to a fundamental *legal* error under circumstances where no other remedy is presently available. *United States v. Morgan*, 346 U.S. 502 (1954). *But see People v. Kim*, 202 P.3d 436, 456 (Cal. 2009) (declining to follow *Morgan* and *Skok* and continuing to limit the writ of error *coram nobis* to traditional common law errors of fact only). Maryland recognizes the right of a convicted person who is not incarcerated and not on parole or probation, and who faces a significant collateral consequence of his or her conviction unknown at the time of the original proceedings, to seek a writ of error *coram nobis* for errors of law as well as fact, with certain limitations. *Skok*, 361 Md. at 78.

A *coram nobis* petitioner must allege: (1) grounds that are of a constitutional, jurisdictional or fundamental character; (2) rebuttal of the presumption of regularity that attaches to the judgment; (3) significant collateral consequences from the conviction; (4) grounds for challenging the criminal conviction were not waived or finally litigated in a prior proceeding; and (5) there is no other statutory or common law remedy. *Skok v. State*, 361 Md. 52, 78–80 (2000); *Rich v. State*, 230 Md. App. 537, 547 (2016) (citing *Jones v. State*, 445 Md. 324, 338 (2015)), *aff'd*, 454 Md. 448 (2017).

In *Skok*, Judge John C. Eldridge, writing for the unanimous Court of Appeals, discussed the expanded scope of the writ of error *coram nobis* in Maryland. What is clear

is that *Skok* did not create a generalized common law post-conviction, post-custody remedy. See *People v. Kim*, 202 P.3d 436, 456 (Cal. 2009). *Skok* set forth as follows:

“In light of these serious collateral consequences, there should be a remedy for 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, and who can legitimately challenge the conviction on constitutional or fundamental grounds. Such person should be able to file a motion for *coram nobis* relief regardless of whether the alleged infirmity in the conviction is considered an error of fact or an error of law.

This expanded scope of *coram nobis* to challenge criminal convictions is, however, subject to several important qualifications which are set forth in *United States v. Morgan* and the cases applying *Morgan*. Thus, the grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character. *United States v. Morgan*, 346 U.S. at 512[.]”

Skok, 361 Md. at 78. The Court then laid out the important qualifications that we have summarized above. Significantly, *coram nobis* relief still presupposes a qualifying *challenge to the underlying conviction* by a person who is no longer serving a sentence but who is nonetheless facing serious consequences from that conviction.

We hold that the circuit court did not err or abuse its discretion in denying appellant *coram nobis* relief because appellant has not established any factual or legal error of constitutional, jurisdictional or fundamental character. Clearly, the circuit court in 1996 had jurisdiction to enter the judgment of conviction following appellant’s guilty plea. Appellant has not directed us to any constitutional error. And appellant has directed us to no error whatsoever in appellant’s conviction, much less one “of the most fundamental character” so as to render the conviction “invalid.” See *United States v. Delhorno*, 915

F.3d 449, 453 (7th Cir. 2019) (quoting *United States v. Wilkozek*, 822 F.3d 364, 368 (7th Cir. 2016)). “A fundamental error that invalidates a criminal proceeding is one that undermines our confidence that the defendant is actually guilty.” *Wilkozek*, 822 F. 3d at 368.

Contrary to appellant’s argument, *State v. Flansburg* and *Matthews v. State* are not apposite or applicable to *coram nobis* jurisprudence. *Flansburg* was a case brought pursuant to the Maryland Uniform Post-Conviction Procedure Act, Md. Code Ann., Crim. Pro. § 7-102 *et seq.* *Flansburg* presented two issues: whether he had a right to the effective assistance of counsel with regard to a motion under Rule 4-345(b) for modification of the sentence re-imposed at a probation revocation proceeding; and whether his claim that he had a right to effective assistance of counsel is cognizable under the Post-Conviction Procedure Act. *Id.* at 697. Appellant relies on *Flansburg* apparently for the proposition that the Post-Conviction Procedure Act encompasses proceedings occurring after the criminal trial and initial imposition of sentence. The short answer is that Maryland’s Post-conviction Procedure Act jurisprudence and remedies are separate from common law *coram nobis* jurisprudence. Similarly, in *Matthews v. State*, appellant filed a petition for post-conviction relief, requesting leave to file a belated motion for modification of sentence on the grounds that his counsel was ineffective for failing to file such motion. *Id.* at 250. Matthews had asked his counsel to file the motion for reconsideration, counsel failed to file that motion, and Matthews was deprived of the reconsideration of sentence due to no fault of his own. McKenzie draws analogy to *Matthews*, claiming that his denial of

sentence reconsideration was due to no fault of his own. The short answer is that *coram nobis* is not a substitute for post-conviction actions. Moreover, our jurisprudence between the two remedies is not interchangeable.

In the instant case, there is no information that would support an allegation of factual or legal error in the judgment—let alone one of constitutional, jurisdictional, or fundamental error. No evidence exists that appellant asked his lawyer to move for modification of sentence or attempted to contact his former attorney. No evidence exists that appellant sought to contact the court himself. We note that no evidence exists that appellant attempted to contact either his lawyer or the court after the detention ended, either from Jamaica or from Canada, to seek modification of his sentence.

The circuit court denied correctly appellant’s petition for writ of error *coram nobis*.

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