Circuit Court for Wicomico County
Case No: 0K000501

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 494

September Term, 2020

BRIAN KEITH WATERS

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 30, 2021

Brian Waters appeals from the denial of a petition for writ of error coram nobis, which he had filed in the Circuit Court for Wicomico County. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

In 2000, Mr. Waters appeared in the circuit court with counsel and pleaded guilty to third-degree sex offense and was sentenced to four years' imprisonment, all suspended, and placed on supervised probation for a two-year period. Other charges (including second-degree rape and first-degree assault) were nol prossed. The charges in the case arose after Mr. Waters, at 17 years of age, engaged in sexual intercourse with a 12-year old child– a third-degree sexual offense based on the fact that the child was under the age of 14 and Mr. Waters was at least four years older than her. *See* Article 27, § 464B(a)(3) of the Maryland Code (1996 Repl. Vol.) (now codified as Criminal Law § 3-307(a)(3) of the Maryland Code (2012 Repl. Vol., 2020 Supp.). He was 18 years old when he entered his guilty plea, and he did not seek leave to appeal following conviction and sentencing.

In 2012, Mr. Waters was convicted of first-degree burglary and other offenses. At sentencing, the court pointed out that Mr. Waters' criminal history included "a conviction for burglary in 2007; possession with intent to distribute CDS, 2006; first-degree burglary in 2006; giving a false name in 2002; theft and rogue and vagabond in 2001; in 2000 a third-degree sex offense; and a violation of probation in 2011, both in 2011." The State informed the court that Mr. Waters' "guidelines based upon his record invite the Court to impose a sentence of 15 to 20 years . . . in this case." The State further discussed the "completely egregious conduct" committed by Mr. Waters and his co-defendants in the

burglary case, and the crime victim advised the court that the home invasion had "substantially affected" her life and that of her five-year old daughter. The court noted that the "evidence [of guilt] was overwhelming"; this "was a serious offense"; and, based on his criminal history, Mr. Waters was "not learning [his] lesson to justify keeping [him] out in society." The court sentenced him to 20 years' imprisonment, the statutory maximum penalty for first-degree burglary. *See* Criminal Law § 6-202 (b).

In April 2020, Mr. Waters, representing himself, filed a petition for writ of error coram nobis in the 2000 third-degree sex offense case. He asserted that his guilty plea was not entered knowingly and voluntarily because he had not been informed on the record that, by pleading guilty and foregoing a trial, he was waiving his right to call and examine witnesses to testify under oath on his behalf.[1] (He acknowledged that he had been advised that he was waiving his right to "confront and cross-examine the witnesses against you.") Mr. Waters also maintained that he was suffering a significant collateral consequence as a result of the 2000 sex offense conviction because, he claimed, it was used "as aggravating circumstantial evidence" at his 2012 burglary trial to increase his punishment in that case.

The State opposed the petition. The State asserted that, even without the 2000 third-degree sexual offense, Mr. Waters' criminal record would have been deemed a "Major

[1] Mr. Waters relied on the Sixth Amendment to the United States Constitution, which provides, in relevant part, that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor[,]" and on Article 21 in the Maryland Declaration of Rights which similarly provides that "in all criminal prosecutions, every man hath a right . . . to have process for his witnesses" and "to examine the witnesses for and against him on oath[.]"

criminal record" for sentencing guidelines purposes in 2012, and that he had "fail[ed] to establish a direct connection between this challenged conviction and him having suffered significant collateral consequences as a result thereof." The State also maintained that the transcript from the 2000 guilty plea hearing reflected that Mr. Waters "was explained all the rights he was waiving by entering into the plea agreement."

The coram nobis court denied the petition for coram nobis relief, without a hearing. In its Statement in support of its decision, the court cited excerpts from the 2000 plea hearing showing that Mr. Waters was advised of the maximum penalty for third-degree sexual offense, and that he had confirmed that he understood the nature of a third-degree sexual offense and what the State would have to prove to establish his guilt. The court also cited the following exchange:

> THE COURT: And do you understand when you plead guilty since there is no trial, there won't be any witnesses here, and you will be waiving your Constitutional right to confront and cross examine the witnesses against you. Do you understand that?
>
> WATERS: Yes, sir.

Citing *Boykin v. Alabama*, 395 U.S. 238 (1969) and *Davis v. State*, 278 Md. 103 (1976), the coram nobis court determined that there are "only three specific constitutional rights" which a defendant must knowingly waive before a court may find that his or her plea has been entered knowingly and voluntarily: the privilege against compulsory self-incrimination; the right to trial by jury; and the right to confront one's accusers. The coram nobis court concluded that the "plea colloquy included all three constitutional rights and [Mr. Waters] acknowledged that he knowingly and voluntarily waived such rights." And

the coram nobis court determined that "[a]ny defect in the plea litany is not of constitutional, jurisdictional or fundamental character." Given its disposition, the court determined that it need not address the other factors, set forth in *Skok v. State*, 361 Md. 52 (2000), which a petitioner must satisfy before coram nobis relief may be granted.

STANDARD OF REVIEW

"Because of the extraordinary nature of a coram nobis remedy, we review a court's decision to grant or deny such a petition for abuse of discretion." *Byrd v. State*, 471 Md. 359, 370 (2020) (quotation marks and citations omitted). "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*." *Id*. (quotation marks and citation omitted).

DISCUSSION

Mr. Waters asserts that the coram nobis court (1) erred by failing to address and rule on all the factors for coram nobis relief set forth in *Skok*; (2) erred in ruling on his petition without a hearing; and (3) erred in rejecting his contention that the plea court's failure to advise him of his right to call and examine witnesses on his behalf rendered his plea invalid. We shall begin with the third contention.

Mr. Waters points to no case law supporting his claim that failing to be advised on the record in open court of his right to compulsory process for obtaining witnesses in his favor and to examine those witness under oath if he had gone to trial meant that his guilty plea was not entered knowingly and voluntarily and, therefore, was constitutionally defective or fundamentally flawed. His reliance on *Boykin, supra* does not support his

contention. In *Boykin*, the United States Supreme Court reversed a guilty plea where the record was devoid of any indication that defendant had been examined by the trial court concerning his plea before the plea was accepted. 395 U.S. at 242. The Supreme Court pointed out that "[s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial[,]" and specifically referred to "the privilege against compulsory self-incrimination"; "the right to trial by jury"; and "the right to confront one's accusers." *Id.* at 243. Given that Mr. Boykin was not examined on the record regarding *any* of the rights he was waiving by pleading guilty nor asked *any* questions concerning his plea, the Court reversed the judgment because the silent record could not establish that Mr. Boykin's entry of his guilty plea was intelligent and voluntary. *Id.* at 244.

The Court in *Boykin* did not specify, however, what the record must show to establish that a guilty plea was entered voluntarily. And in *Davis, supra*, our Court of Appeals observed that *Boykin* "was rendered in the context of a trial record totally silent with respect to whether the guilty plea was voluntary and intelligent," and concluded that *Boykin* "does not stand for the proposition that the due process clause requires state trial courts to specifically enumerate certain rights, or go through any particular litany, before accepting a defendant's guilty plea." 278 Md. at 114. As such, the Court of Appeals rejected Mr. Davis' claim that his guilty plea was defective because he was not advised on the record of his constitutional privilege against compulsory self-incrimination. *Id.* at 104. The Court concluded that Mr. Davis' "guilty plea was properly entered because . . . the record taken as a whole affirmatively discloses that [his] plea was, as found by the trial

judge, voluntary and intelligent." *Id*. at 118. *See also Gross v. State*, 186 Md. App. 320, 351-53 (2009) (rejecting the defendant's claim that the trial court's failure to advise him of his privilege against compulsory self-incrimination rendered the entry of his guilty plea unknowing or involuntary).

Here, the trial court examined Mr. Waters before accepting his plea. The transcript establishes that the court ensured, among other things, that Mr. Waters understood that he had "the absolute right to be tried by a jury"; that he understood the composition of a jury and that the jury "would all have to agree upon their verdict" and "be convinced beyond a reasonable doubt of [his] guilt"; that by pleading guilty he would be waiving his right to a jury trial; that if he chose to be tried by jury, he had the right to remain silent and his decision not to testify could not be held against him; that he could not "be compelled to incriminate [him]self"; and that by pleading guilty he was waiving "any and all defenses" he might have to the charges. The trial court also ensured that Mr. Waters understood what a third-degree sexual offense was and what the State needed to prove in order to obtain a conviction, as well as the maximum penalty for that offense. And the court informed Mr. Waters that, by pleading guilty, there would not be "any witnesses here, and you will be waiving your Constitutional right to confront and cross examine the witnesses against you." Mr. Waters responded that he understood. Mr. Waters also assured the court that his desire to plead guilty was not based on any threats by anyone or promises made in exchange for the plea, and he admitted that he was pleading guilty because he "did commit a third degree

sex offense" as charged. The court then accepted the plea, having concluded that "it's voluntary."[2]

Given this record, we cannot conclude that the trial court's failure to inform Mr. Waters of his right to compulsory process for obtaining witnesses in his favor and to examine those witness under oath resulted in a constitutionally defective or fundamentally flawed guilty plea. As the Court of Appeals in *Davis* stated, there is no fixed litany a court must engage in with a defendant before accepting a guilty plea. Based on the open court examination of Mr. Waters in this case, we are not persuaded that his guilty plea was entered unknowingly or involuntarily. For that reason, the coram nobis court did not err in denying his petition for coram nobis relief.

As for the remaining issues Mr. Waters raises on appeal, we find no error. In *Jones v. State*, 445 Md. 324, 338 (2015), the Court of Appeals reiterated that a coram nobis petitioner "is entitled to relief . . . if and only if" the petitioner challenges a conviction based on constitutional, jurisdictional, or fundamental grounds; the petitioner rebuts the presumption of regularity that attaches to criminal cases; the petitioner is facing a significant collateral consequence as a result of the challenged conviction; the alleged issue has not been waived or finally litigated; *and* another statutory or common law remedy is not available. In other words, a petitioner must satisfy all five criteria. Hence, given that

[2] In our view, the trial court's use of the term "voluntary" encompassed "knowing and voluntary." *See Byrd v. State*, 471 Md. 359, 364 n. 1 (2020) ("As the Supreme Court has done, for the purposes of a guilty plea we will use the term voluntary as meaning intelligent, knowing, sufficiently aware, and free from coercion.") (citing *United States v. Ruiz*, 536 U.S. 622, 629 (2002)).

the coram nobis court rejected Mr. Waters' claim that his guilty plea was defective, we find no reversible error in its decision not to consider the remaining criteria for coram nobis relief. *See Byrd*, 471 Md. at 371 n. 9. ("Given our holding that Petitioner has not satisfied the burden as to the constitutional or fundamental character of his grounds for challenge, we need not engage in an independent analysis of any of the other necessary conditions for the issuance of a writ of error coram nobis.")

Finally, the court was not required to hold a hearing on Mr. Waters' petition. *See* 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."). Because the coram nobis court could address Mr. Waters' allegation that his guilty plea was defective based on the record before it, we hold that the court did not abuse its discretion in denying Mr. Waters' petition without a hearing.

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