

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0503

September Term, 2015

TONY COLLINS

v.

STATE OF MARYLAND

Arthur,
Reed,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: January 4, 2017

*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 October 29, 2013, the appellant, Tony Collins, filed a petition for writ of error *coram nobis* in the Circuit Court for Baltimore City, alleging that his status as a career criminal offender for purposes of the federal sentencing guidelines is a significant collateral consequence of his 2004 narcotics convictions, and that the record is insufficient to ascertain that he understood the nature of the charges included in his plea. After the circuit court denied his *coram nobis* petition, the appellant appealed.

The appellant’s brief, which was submitted *pro se*, does not contain “[a] statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue[.]” Md. Rule 8-504 (a)(3). Nevertheless, it is clear to us that the appellant has implicitly raised¹ the following issue in such a way that he has properly preserved it for our review:

1. Did the circuit court err in denying the appellant’s petition for writ of error *coram nobis*?

For the following reasons, we answer this question in the negative. Therefore, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 21, 2004, the appellant pled guilty in the Circuit Court for Baltimore City to two counts of possession with intent to distribute cocaine. For each count, the circuit court sentenced the appellant to ten years of imprisonment, with all but five years suspended, and three years of supervised probation. Just over eight years after pleading

¹ See *Janelins v. Button*, 102 Md. App. 30, 35 (1994) (holding that certain issues had been preserved under Md. Rule 8-504(a)(3) where they appeared in the argument section of the appellant’s brief and were raised at trial).

guilty in state court, on February 2, 2012, the appellant pled guilty in the United States District Court for the District of Maryland to one count of conspiracy to distribute cocaine in violation of U.S.C. §§ 846 and 860. The presentence investigation report made it clear that the appellant was considered a career criminal and was, therefore, eligible for an increased sentence because of the 2004 narcotics convictions and a separate 1999 robbery conviction in the Circuit Court for Baltimore City. The federal sentencing guidelines stated the sentencing range for career criminals was 262 to 327 months. However, pursuant to his plea agreement, the federal court only sentenced the appellant to 160 months in federal prison.

On May 8, 2013, the appellant, *pro se*, filed a petition for writ of error *coram nobis* in the Circuit Court for Baltimore City. He was subsequently appointed counsel, who amended the petition on October 29, 2013. The State filed a response on January 8, 2014, and a *coram nobis* hearing was held on December 9, 2014, before the Honorable Emanuel Brown. By Memorandum Opinion and Order dated March 17, 2015, the court denied the amended petition for writ of error *coram nobis*. The court found that the appellant failed to demonstrate that he was suffering from any significant collateral consequences as a result of his 2004 guilty pleas in state court. Specifically, the court found that the appellant only received a sentence of 160 months, despite being eligible to receive a sentence of 262 to 327 months under the federal sentencing guidelines. Additionally, the court determined that the appellant had waived his right to challenge his state conviction when he entered into his federal guilty plea.

The appellant filed a timely notice of appeal on April 4, 2015. He remains confined at the Federal Correctional Institution–Schuylkill in Minersville, Pennsylvania.

DISCUSSION

A. Parties’ Contentions

First, the appellant argues that the circuit court erred in denying his *coram nobis* petition because he is suffering significant collateral consequences as a result of his two 2004 guilty pleas. The appellant argues that the circuit court supported its finding that he failed to demonstrate he is facing significant collateral consequences as a result of his 2004 guilty pleas on clearly erroneous facts. The circuit court found that, because of his prior convictions, the appellant was eligible to receive a federal sentence of at least 262 months. However, the federal court only sentenced him to 160 months, *i.e.*, significantly less than what he would have received had he been sentenced as a career offender, pursuant to a plea agreement under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. The appellant contends that, although the federal court accepted the plea agreement and sentenced him in accordance with the stipulated 160-month term, the fact that the 160-month term was a result of his career offender status remains unchanged. Therefore, he argues that contrary to the trial court’s finding, disturbing his state convictions would indeed have an impact on his federal sentence.

Second, the appellant asserts that he did not waive his right to collaterally attack his federal sentence pursuant to 28 U.S.C. § 2255. Specifically, he contends that the circuit

court incorrectly determined that he knowingly and voluntarily waived his right to appeal his federal sentence based on his prior state convictions.

The State responds that the circuit court correctly denied the appellant’s petition for writ of error *coram nobis*. The State cites *Skok v. State*, 361 Md. 52 (2000), as the seminal case dealing with the procedural criteria and qualifications necessary in order to receive *coram nobis* relief. Under these criteria, the State asserts the circuit court correctly found that the appellant did not meet the requirements for an action of *coram nobis*. Specifically, because the appellant was not sentenced as a career offender and received a sentence of 102 months less than the low end of the federal guidelines, the State argues that the court correctly found that the appellant failed to demonstrate that he is facing significant collateral consequences from his state convictions. Therefore, according to the State, disturbing the appellant’s prior state convictions would have no effect on his federal sentence.

The State acknowledges that *United States v. Booker*, 543 U.S. 220, 260–62 (2005), and *Parker v. State*, 160 Md. App. 672, 687 (2005), recognize that sentencing factors may constitute grounds for *coram nobis* relief in some circumstances. However, the State contends that, because the federal sentencing guidelines were merely advisory in this case, the reasoning in *Parker* is inapplicable. *See Parker*, 160 Md. App. at 687 (“[A]lthough the term [of imprisonment] has been served, the results of the conviction may persist. *Subsequent convictions may carry heavier penalties*, [and] civil rights may be affected.”

(quoting *United States v. Morgan*, 346 U.S. 502, 512–13 (1954)) (second emphasis added)).

The State also contends that, as an alternative basis for denying *coram nobis* relief, the circuit court properly determined that the appellant knowingly and voluntarily waived any right to challenge his federal sentence and prior convictions.

Finally, the State asserts that, even if the appellant had met the requirements for maintaining an action for *coram nobis* relief, the record does not support his claim that he did not understand the nature of the drug offenses to which he was pleading. In support of this argument, the State cites *State v. Daughtry*, 419 Md. 35, 53–54 (2011) and *State v. Smith*, 443 Md. 572, 649 (2015), to demonstrate that the plea agreement in this case was in compliance with Maryland Rule 4-242.

B. Standard of Review

On appeal, the standard of review applicable to a circuit court’s decision to grant or deny a petition for writ of error *coram nobis* is the same as the standard of review used for proceedings under the Maryland Post Conviction Procedure Act. “The purpose of the Post Conviction Procedure Act was to create a simple statutory procedure, in place of the common law *habeas corpus* and *coram nobis* remedies, for collateral attacks upon criminal convictions and sentences.” *Gluckstern v. Sutton*, 319 Md. 634, 658 (1990) (internal citations omitted). The applicable standard is as follows:

We “will not disturb the factual findings of the post-conviction court unless they are clearly erroneous.” *Wilson v. State*, 363 Md. 333, 348, 768 A.2d 675, 683 (2001). “Although reviewing factual determinations of the post-conviction court under a

clearly erroneous standard, we make an independent determination of relevant law and its application to the facts.” *State v. Adams*, 406 Md. 240, 255, 958 A.2d 295, 305 (2008), *cert. denied*, [556] U.S. [1133], 129 S.Ct. 1624, 173 L.Ed.2d 1005 (2009).

Arrington v. State, 411 Md. 524, 551–52 (2009).

C. Analysis

i. Significant Collateral Consequences

We shall hold that the circuit court was correct in its finding that the appellant is not entitled to *coram nobis* relief because he failed to show he was facing any significant collateral consequences as a result of his 2004 guilty pleas. We do so for the following reasons.

In *Skok*, 361 Md. at 78, the Court of Appeals expanded the scope of *coram nobis* relief from criminal convictions, but held that such relief is subject to the three elements laid out in *United States v. Morgan*, 346 U.S. 502, 512 (1974). The Court explained that “[t]here 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.” *Id.* at 78. Additionally, “[a] presumption of regularity attaches to the criminal case, and the burden of proof is on the *coram nobis* petitioner.” *Id.* (citing *Morgan*, 346 U.S. at 512).

“[T]he *coram nobis* petitioner must be suffering or facing significant collateral consequences from the conviction.” *Skok*, 361 Md. at 79. The petitioner must show he is

actually facing significant collateral consequences; he cannot be seeking to prevent consequences that are merely possible. *See Smith v. State*, 219 Md. App. 289, 292–93 (2014). Moreover, an increased federal sentence due to prior state convictions can satisfy the significant collateral consequences element. *See Parker* 160 Md. App. at 687.

The appellant satisfies the first element for *coram nobis* relief because he is no longer incarcerated for his 2004 state convictions of possession with the intent to distribute cocaine.² As to the second element, the appellant argues that his status as a career offender, as well as the possibility of his sentence being increased as a result of his 2004 state convictions, amount to significant collateral consequences. However, based on the federal sentencing guidelines, the appellant was eligible to receive a sentence of at least 262 months for his federal conviction. Because he only received a sentence of 160 months, which is significantly less than the sentence he would have received had he been sentenced as a career offender, we shall hold that this significant collateral consequence element is not satisfied.

The mere possibility that the appellant *could* have been sentenced as a career offender does not constitute a significant collateral consequence. In support of his argument, the appellant cites *State v. Hicks*, 139 Md. App. 1 (2001). In that case, although the federal sentence had yet to be decided, the fact that the petitioner was facing potential federal sentence enhancements was enough to entitle him to *coram nobis* relief. *Id.* at 3–4.

² This element only relates to incarceration, parole, or probation that is part of the sentence for the conviction being challenged. Therefore, the fact that the appellant is currently incarcerated for his 2012 federal conviction of conspiracy to distribute cocaine does not affect whether he is entitled to *coram nobis* relief from his state convictions.

The appellant relies on the fact that, in the present case, the judge had discretion to give him a higher sentence despite choosing to follow the 160-month term stipulated in the plea agreement. The appellant argues that this discretion was enough, by itself, to constitute a significant collateral consequence. We disagree. The appellant’s sentence was still 102 months less than the minimum sentence he would have received had he been sentenced as a career offender or after a trial.

In denying the appellant’s *coram nobis* petition, circuit court stated that

any challenge to the state convictions as they relate to the federal conviction would be an exercise in futility as the end result would remain unchanged. In short Mr. Collins cannot prevail on his request for *coram nobis* relief unless disturbing the state convictions would make a difference which it would not.

Cir. Ct. Mem. Op. at 4. As the circuit court correctly reasoned, because the appellant received a sentence lower than the federal sentencing guidelines range, he did not suffer any collateral consequences as a result of his status as a career offender. Accordingly, we hold that the circuit court did not err in denying the appellant’s petition for writ of error *coram nobis*.

ii. Constitutionality of State Convictions

Having determined that the appellant did not satisfy the second element for *coram nobis* relief, the circuit court did not address whether his 2004 convictions “can legitimately [be] challenge[d] . . . on constitutional or fundamental grounds.” *Skok*, 361 Md. at 78. The circuit court was not required to address this third element once it determined that the second element could not be satisfied. Nevertheless, in an effort to address all of the

appellant’s appellate arguments, we will now briefly address the constitutionality of his 2004 state convictions. We agree with the State’s argument that, even if the appellant had satisfied the significant collateral consequences element for maintaining an action for *coram nobis* relief, which he did not do, the record does not support his contention that he was not aware of the nature of the drug offenses to which he was pleading guilty.

“[C]ourts have consistently held 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 plea was understandingly and voluntarily made” *Parker*, 160 Md. App. at 678 (quoting *Pitt v. State*, 144 Md. App. 49, 62 (2002)).

In Maryland, guilty pleas are governed by Rule 4-242, which provides, in pertinent part:

(c) Plea of guilty. The court may accept a plea of guilty only after it determines, upon an examination of the defendant on the record and in open court . . . 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. . . .

While discussing the predecessor to Rule 4-242, the Court of Appeals explained that

the rule does not require that the precise legal elements comprising the offense be communicated to the defendant as a prerequisite to the valid acceptance of his guilty plea. Rather, by its express terms, the rule mandates that a guilty plea not be accepted unless it is determined by the court, after questioning of the defendant on the record, that the accused understands the ‘nature’ of the charge.

Daughtry, 419 Md. at 53 (quoting *State v. Priet*, 289 Md. 267, 288 (1981)).

The appellant did not provide us with a copy of the plea hearing transcript as required by Md. Rule 8-411. However, according to the State, the prosecutor specified, at the beginning of the plea hearing, that the offer required the appellant to plead guilty to two charges of possession with intent to distribute cocaine. Then, when the court discussed the agreement with the appellant, he affirmed that he understood what was taking place in the guilty plea proceeding and that the crimes to which he was pleading guilty occurred on July 17, 2003, and May 27, 2004. The prosecutor also presented the factual basis for the appellant's pleas with respect to the two dates.

Moreover, the facts established that, on May 27, 2004, the appellant was seen by an undercover police officer distributing CDS to several buyers in exchange for money. The facts also show that, when he was arrested, the appellant was found to be in possession of 67 vials of cocaine, a rock of cocaine, and drug paraphernalia with cocaine residue. Furthermore, on July 17, 2003, the appellant was observed taking money from buyers and directing them to his co-defendant, Debbie Johnson. The appellant would yell to Ms. Johnson, who, in turn, would exit a house at 1607 Bruce Court and give CDS to the appellant's buyers. When searching this address, police recovered 12.8 grams of cocaine, 11 vials of cocaine, and drug paraphernalia. Since the prosecutor explained all of these facts in detail at the plea hearing and clearly explained the offenses to the appellant, we agree with the State that the appellant understood the nature of the drug offenses to which he pled guilty.

iii. Waiver

In its Memorandum Opinion and Order, dated March 17, 2015, the circuit court found the following as an alternative basis for denying the appellant’s petition for writ of error *coram nobis*:

Pursuant to paragraph 13(b) of the signed [federal] plea agreement, Mr. Collins knowingly waived all rights to appeal the federal sentence, including “the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant’s criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment”

Cir. Ct. Mem. Op. at 4. Because the appellant so clearly fails to satisfy the second and third elements for *coram nobis* relief, we need not address this alternative ground indicated by the lower court.

CONCLUSION

For the reasons stated above, we hold that the circuit court was correct in finding that the appellant failed to show that he was suffering significant collateral consequences as a result of the contested convictions. In addition, we hold that the appellant has failed to satisfy the third element for *coram nobis* relief: that his 2004 state convictions can legitimately be challenged on constitutional or jurisdictional grounds. Accordingly, the judgment of the circuit court is affirmed.

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