

Circuit Court for Montgomery County
Case No.: 117811C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 482 & 723
September Term, 2021

JAMES HOUCK

v.

STATE OF MARYLAND

Graeff,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 28, 2022

*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.

In 2011, James Houck appeared with counsel in the Circuit Court for Montgomery County and entered a plea of guilty to first-degree sex offense.¹ He was ultimately sentenced, in 2013, to life imprisonment.² The docket entries reflecting the sentencing disposition stated that the court “recommends protective custody.”

In the years following his sentencing, Mr. Houck filed numerous papers attacking his conviction and sentence.³ In 2021, the self-represented Mr. Houck filed a petition for writ of actual innocence. The circuit court dismissed the petition “for failure to substantially comply with the requirements of Maryland Rule 4-332.”⁴ Mr. Houck appeals that ruling. In addition, he appeals the denial of his separately filed requests for protective custody, a modification of sentence, and drug and alcohol evaluation and treatment. The appeals have been consolidated.

For the reasons to be discussed, we shall affirm the judgment of the circuit court dismissing the petition for writ of actual innocence, affirm the judgment denying the request for protective custody, and dismiss the appeals from the rulings denying the

¹ The record before us is limited. In a prior opinion of this Court, however, we noted that the sexual assault took place in 1995 and Mr. Houck was charged years later following a “cold-case DNA match.” *Houck v. State*, No. 1401, Sept. Term, 2020 (filed September 16, 2021), *slip op.* at 1 n1.

² Upon sentencing, the State *nol prossed* remaining counts, including first-degree rape, first-degree burglary, and armed robbery.

³ In its brief, the State estimates that Mr. Houck has “filed roughly 90 letters, motions, and requests for various forms of relief[.]”

⁴ Rule 4-332 sets forth, among other things, the required content for a petition for writ of actual innocence.

requests for modification of sentence and for drug and alcohol evaluation and treatment. We shall also deny the motion Mr. Houck filed in this Court for protective custody.

Petition for Writ of Actual Innocence

Certain convicted persons may file a petition for a writ of actual innocence based on “newly discovered evidence.” *See* Md. Code Ann., Crim. Proc. § 8-301; Md. Rule 4-332(d)(6). “[A]ctual innocence” means that “the defendant did not commit the crime or offense for which he or she was convicted.” *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

(a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:

(1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]

(2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

(g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

“Thus, to prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial.” *Smith v. State*, 233 Md. App. 372, 410 (2017). Moreover, “[t]o qualify as ‘newly

discovered,’ evidence must not have been discovered, or been discoverable by the exercise of due diligence,” in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnote omitted); *see also* Rule 4-332(d)(6).

“Evidence” in the context of an actual innocence petition means “testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial.” *Hawes v. State*, 216 Md. App. 105, 134 (2014). The requirement that newly discovered evidence “speaks to” the petitioner’s actual innocence “ensures that relief under [Crim. Proc.] § 8-301 is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, ‘meaning he or she did not commit the crime.’” *Faulkner v. State*, 468 Md. 418, 459-60 (2020) (quoting *Smallwood*, 451 Md. at 323).

A court may dismiss a petition for actual innocence without a hearing “if the court concludes that the allegations, if proven, could not entitle a petitioner to relief.” *State v. Hunt*, 443 Md. 238, 252 (2015) (quotation marks and citation omitted). *See also* Crim. Proc. § 8-301(e)(2). “[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*.” *Smallwood*, 451 Md. at 308.

Rule 4-332 sets forth, among other things, the required content for a petition for writ of actual innocence. A petition must include:

(7) a description of the newly discovered evidence, how and when it was discovered, why it could not have been discovered earlier, and, if the issue of whether the evidence could have been discovered in time to move for a new trial pursuant to Rule 4-331 was raised or decided in any earlier appeal

or postjudgment proceeding, the identity of the appeal or proceeding and the decision on that issue;

(8) that the newly discovered evidence creates a substantial or significant possibility, as that standard has been judicially determined, that the result may have been different, and the basis for that statement[.]

Rule 4-332(d).

Here, as far as we can discern, Mr. Houck’s petition failed to allege *any* newly discovered evidence, much less any evidence that speaks to his actual innocence. Accordingly, the circuit court did not err in dismissing his petition.

Other Circuit Court Rulings

Mr. Houck had filed a request for an evaluation for drug and alcohol treatment pursuant to Health General §§ 8-505 and 8-507, a motion for modification of sentence, and a request that the court order that he be “house[d] alone on protective custody[.]” The court denied the Health-General request “due to severity of conviction and underlying facts.” The court denied the motion to modify the sentence, noting that the request had been previously denied.⁵ And the court denied the motion for protective custody “because to the extent that Defendant’s motion may be considered a ‘grievance,’ Defendant has not demonstrated exhaustion of remedies available to him under Subtitle 2, Title 10, Correctional Services Article, or any other basis for relief.”

⁵ It also appears that the court was without authority to modify the sentence. Rule 4-345(e) provides that “the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant[.]” The docket entries reflect that Mr. Houck was sentenced on November 20, 2013. Thus, the five-year time period for modification of sentence had expired when Mr. Houck filed his request.

On appeal, the State maintains that Mr. Houck has failed to “articulate any reason why he is entitled to the relief he is seeking.” Moreover, the State, relying on *Fuller v. State*, 397 Md. 372, 395 (2007), points out that the denial of a request under Health General §§ 8-505 and 8-507 is not an appealable order, and neither is the denial of a motion to modify a sentence. *Hoile v. State*, 404 Md. 591, 615 (2008). Finally, the State asserts that Mr. Houck “offers no cogent argument in support of his proposition” that the denial of his request for protective custody is an appealable order. Rather, the State maintains that “an inmate’s grievances against a correctional institution are addressed administratively” through the inmate grievance process. We agree with the State.

Motion for Protective Custody

Finally, we deny Mr. Houck’s motion for protective custody which he filed in this Court. Although the docket entry from Mr. Houck’s sentencing date reflects that the court “recommends protective custody,” there is nothing in the record before us that establishes that the court failed to make the recommendation. And in any event, we are not persuaded that the Division of Correction would be obligated to follow any “recommendation” of the Court with respect to Mr. Houck’s housing situation.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY DISMISSING
PETITION FOR WRIT OF ACTUAL
INNOCENCE AFFIRMED.**

**JUDGMENT DENYING REQUEST FOR
PROTECTIVE CUSTODY AFFIRMED.**

**APPEALS OF DENIAL OF REQUEST FOR
EVALUATION UNDER HEALTH GENERAL
§§ 8-505 & 8-507 AND OF MOTION FOR**

**MODIFICATION OF SENTENCE DISMISSED
AS NOT ALLOWED BY LAW.**

**MOTION FOR PROTECTIVE CUSTODY
DENIED.**

COSTS TO BE PAID BY APPELLANT.