Circuit Court for Montgomery County
Case No. 80248-C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 796

September Term, 2021

RUTHANN ARON GREEN

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Battaglia, Lynne A.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Friedman, J.

Filed: June 22, 2022

In 2016, Appellant, Ruthann Aron Green,[1] filed a petition for writ of error *coram nobis* in the Circuit Court for Montgomery County and later withdrew that petition with prejudice. In 2021, Green filed a second petition for writ of error *coram nobis*. The circuit court denied Green's second petition because the first petition had been dismissed with prejudice. For the reasons that follow, we affirm the judgment of the circuit court.

FACTUAL BACKGROUND

In February and March of 1998, Green went to trial on charges of solicitation to commit murder, resulting in a hung jury. In July 1998, Green was retried on the same charges, but on the day closing arguments were set to begin, she entered a plea of *nolo contendere* to two counts of solicitation to commit murder. The court accepted her plea and she was later sentenced to a term of ten years, with all but thirty-five months suspended, and a consecutive term of five years, all but eighteen months suspended, with credit for time served and supervised probation upon release.

On March 8, 2016, Green, through counsel, filed a petition for writ of error *coram nobis* asserting that her plea was not knowingly and intelligently entered and that she had

[1] In the circuit court proceedings, Green's name is listed alternately as Ruthann Aron or Ruthann Aron Brooks. As petitioner in this case, she uses the name Ruthann Aron Green, and we abide by her current preference.

received ineffective assistance of counsel.[2] The State thereafter filed an answer. A hearing was scheduled for August 26, 2016. Days before the hearing, Green's attorney withdrew and Green, appearing as a self-represented litigant, filed a Motion for 60-Day Continuance or in the Alternative Dismissal without Prejudice. The Assistant State's Attorney filed an opposition urging the circuit court to move the case along. Green and the Assistant State's Attorney then appeared for a hearing on the motion. At the hearing, Green voluntarily withdrew her petition for writ of error *coram nobis* with prejudice:

> [The State]: Your Honor, it's my understanding having chatted briefly with Ms. Aron[3] this afternoon that she wishes to withdraw this matter *with prejudice*.
>
> [The Court]: Is that your intent?
>
> [Aron]: Yes. Yes, Your Honor.
>
> [The Court]: And do you understand that by withdrawing it *with prejudice*, you can't bring it back again?
>
> [Aron]: Yes, I do.
>
> [The Court]: Okay, the petition is dismissed *with prejudice*, thank you.

(emphasis added).

[2] To be eligible for coram nobis relief, a petitioner must be: (1) "a convicted person who is not incarcerated and not on parole or probation" as a "result of the challenged conviction"; (2) "who is suddenly faced with a significant collateral consequence of his or her conviction"; and (3) "who can legitimately challenge the conviction on constitutional or fundamental grounds." *Skok v. State*, 361 Md. 52, 78-80 (2000). In addition, there are two procedural rules that are often treated as additional elements: (1) "a presumption of regularity attaches to the criminal case, and the burden of proof is on the coram nobis petitioner;" and (2) "basic principles of waiver are applicable to issues raised in coram nobis proceedings." *State v. Rich*, 454 Md. 448, 462 (2017) (cleaned up).

[3] *See supra* n.1

After obtaining new counsel, in June 2021, Green filed a second petition for writ of error *coram nobis*. The circuit court denied Green's second petition, finding that it was barred by the dismissal of her first petition. This timely appeal followed.

DISCUSSION

The doctrine of *res judicata* bars the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same occurrence and issues that could have been raised in the first suit but were not. *Lizzi v. Washington Metro. Area Transit Auth.*, 384 Md. 199, 206-07 (2004). Under Maryland law, the elements of *res judicata* are: (1) that the parties in the present litigation are the same or are in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and (3) that there has been a final judgment on the merits. *Colandrea v. Wilde Lake Comm. Ass'n.*, 361 Md. 371, 392 (2000).

Each of the elements are met in this case. *First*, the parties involved—Green and the State—are the same. *Second*, the claims she raises—that her guilty plea was not knowing and voluntary and that her trial counsel provided constitutionally deficient assistance—are the same. And *third*, there was a final judgment in the first action.[4] Thus, all three elements of *res judicata* are satisfied.

[4] A judgment is defined as "any order of court final in its nature entered pursuant to [the Maryland Rules]." MD. RULE 1-202(o). For a judgment to be entered pursuant to the Maryland Rules, the judgment must (1) "be set forth on a separate document"; (2) "be signed by either the judge or the clerk"; and (3) be "in accordance with the requirements of Rule 2-601(a) and properly entered under Rule 2-601(b)." *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 479 (2014).

Green does not dispute any of this, nor could she. Rather, she argues that the circuit court erred by determining that her 2016 withdrawal of her first petition was *with prejudice*. According to Green, the circuit court erred in doing so because it failed to assess on the record the factors required to distinguish a dismissal *with prejudice* from a dismissal *without prejudice*. She relies for this proposition on *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405 (2007) (listing factors to aid the circuit court in determining whether to dismiss a cause of action with or without prejudice). We do not reach that question, however. Although her written motion sought either a postponement or a dismissal without prejudice, at the time of the motion's hearing, as is clear from the hearing transcript quoted above, Green knowingly and intelligently dismissed her petition *with prejudice*. Moreover, the court specifically confirmed that Green understood that her dismissal *with prejudice* meant that she "couldn't bring it back again," to which Green responded, "Yes."

We will give full effect to Green's request to dismiss her first petition *with prejudice* and, therefore, hold that she has waived the argument that her dismissal should have been

without prejudice. Moreover, having concluded that her second petition was barred by *res judicata*, we further hold that the circuit court did not err by dismissing it.[5]

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

[5] We also find no merit in Green's argument that the circuit court judge was required to recuse herself from consideration of the 2021 petition because the same judge had presided over the 2016 petition and it created the "appearance of impropriety" for the judge to review her own ruling. Contrary to Green's assertion, "[p]articipation in prior legal proceedings involving related parties or issues is simply not grounds for a judge to recuse [herself]." *Boyd v. State*, 321 Md. 69, 79 (1990) (quoting *Carey v. State*, 43 Md. App. 246, 249 (1979)). Green raises nothing that would overcome the "strong presumption that judges are impartial participants in the legal process." *Jefferson-El v. State*, 330 Md. 99, 107 (1993) (internal citations omitted). Thus, the circuit court did not abuse its discretion in denying Green's motion for recusal.