

Circuit Court for Prince George's County
Case No. CT120892A

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 943

September Term, 2021

CURT S. MOHAMMED

v.

STATE OF MARYLAND

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

JJ.

Opinion by Arthur, J.

Filed: August 11, 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.

Appellant Curt S. Mohammed filed a petition for a writ of error coram nobis in the Circuit Court for Prince George’s County, seeking to set aside a conviction that resulted from an unknowing and involuntary guilty plea. To satisfy a necessary condition for the issuance of the writ, Mohammed alleged that he was facing significant collateral consequences as a result of the conviction, because he could not renew his status as a permanent resident alien and could not apply for United States citizenship. The State agreed that the plea was unknowing and involuntary, but asserted that Mohammed was not facing significant collateral consequences because he had not yet been detained by the federal immigration authorities or subjected to a deportation proceeding. The circuit court accepted the State’s argument and denied the petition.

On appeal, the State concedes that the circuit court erred. We agree. Accordingly, we shall vacate the judgment below and remand this case for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

On February 8, 2013, Mohammed pleaded guilty, in the Circuit Court for Prince George’s County, to one count of conspiracy to commit theft in an amount greater than \$500. From the materials in the record, it appears that Mohammed had operated an unlicensed “credit services business”¹ that unlawfully took up-front fees from distressed

¹ See § 14-1901(e) of the Commercial Law Article of the Maryland Code (1987, 2013 Repl. Vol.).

homeowners who were attempting to obtain forbearance from their lenders. *See* § 14-1902(1) of the Commercial Law Article of the Maryland Code (1987, 2013 Repl. Vol.).

On July 25, 2013, the court sentenced Mohammed to ten years' imprisonment, but suspended all but six months and permitted him to go on home detention after 45 days. In addition, the court ordered Mohammed to pay \$14,700 in restitution. A month later, on August 29, 2013, the court suspended the balance of Mohammed's sentence and made home detention a condition of probation for five months.

On June 7, 2021, Mohammed filed a petition for a writ of error coram nobis in the Circuit Court for Prince George's County. In support of the petition, he argued that his plea was unknowing and involuntary because:

- during the plea colloquy, the trial judge did not inquire into whether he understood the charges against him or whether he and his attorney had discussed the charges;
- the record did not establish that he understood the terms or the potential consequences of the plea; and
- the factual proffer did not show that he had committed the crime of conspiracy to commit theft in an amount of more than \$500.

Mohammed also argued that he faced significant collateral consequences as a result of the unknowing and involuntary plea. In particular, he argued that he could not renew his status as a permanent resident alien or apply for United States citizenship and that he could not obtain the professional licenses that he needed for his employment.

In its response to the petition, the State conceded that the statement of facts in support of the guilty plea was insufficient to support a plea to conspiracy to commit theft of an amount of more than \$500. The State also conceded that theft of an amount of more than \$500 is not a crime that a layperson would immediately understand. For those reasons, the State agreed that Mohammed’s plea was not knowing or voluntary.

In addition, the State conceded that the plea was unknowing and involuntary under *Padilla v. Kentucky*, 559 U.S. 356 (2010), because the trial judge had failed to inform Mohammed that the conviction might subject him to deportation and removal proceedings.

Despite those concessions, however, the State opposed the grant of the writ. As grounds for its opposition, the State argued that Mohammed was not currently suffering any significant collateral consequences as a result of the conviction that stemmed from his unknowing and involuntary plea. The State suggested that Mohammed might suffer significant collateral consequences if he were detained by Immigration and Customs Enforcement agents or if the United States took steps to deport him. In the State’s view, however, Mohammed’s inability to renew his status as a permanent resident alien or to apply for citizenship were not significant collateral consequences entitling him to coram nobis relief.

On August 16, 2021, the circuit court issued an opinion and order in which it denied Mohammed’s petition. The court agreed that Mohammed had satisfied all but one of the necessary conditions for a writ of coram nobis. The court specifically agreed that

Mohammed’s guilty plea was unknowing and involuntary because the statement of facts was insufficient to inform a layperson of the elements of the crime to which he, she, or they were pleading guilty. The court reasoned, however, that Mohammed’s inability to apply for citizenship or to renew his permanent residence status “is not a recognized significant collateral consequence.” For that reason, the court denied the petition.

Mohammed noted a timely appeal. He raises one question: “Did the Circuit Court err in denying the petition for coram nobis relief on the ground that [Mohammed] was not facing a ‘significant collateral consequence?’”

We answer that question in the affirmative.

DISCUSSION

A writ of error coram nobis is “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.” *Skok v. State*, 361 Md. 52, 78 (2000).

As a writ of error coram nobis is an extraordinary equitable remedy, appellate courts generally review the lower court’s decision for abuse of discretion. *Reyes v. State*, 253 Md. App. 476, 493 (2022). If, however, a legal determination is embedded in the lower court’s discretionary decision, the appellate court reviews that determination without deference. *See id.* at 494.

A convicted petitioner is entitled to relief through the common law writ of error coram nobis if and only if:

(1) the petitioner challenges a conviction based on “constitutional, jurisdictional[,] or fundamental” grounds, whether factual or legal; (2) the petitioner rebuts the “presumption of regularity [that] attaches to the criminal case”; (3) the petitioner “fac[es] significant collateral consequences from the conviction”; (4) the issue as to the alleged error has not been waived or “finally litigated in a prior proceeding, [absent] intervening changes in the applicable law”; and (5) the petitioner is not entitled to “another statutory or common law remedy” (for example, the petitioner cannot be incarcerated in a State prison or on parole or probation, as the petitioner likely could then petition for post-conviction relief).

Jones v. State, 445 Md. 324, 338 (2015) (quoting *Rivera v. State*, 409 Md. 176, 191 n.6 (2009)).

Even if the petitioner satisfies these five requirements for coram nobis relief, the doctrine of laches may bar the right to relief if the petitioner’s unreasonable delay in pursuing the writ has caused the State to sustain prejudice. *Id.* at 339; *id.* at 343.

In this case, the State agreed that Mohammed’s guilty plea was unknowing and involuntary for several reasons. Thus, the State agreed that Mohammed met the first and second requirements for coram nobis relief. The State did not contend that Mohammed had waived the error or that the issue had been finally litigated in the earlier proceeding. Nor did the State contend that Mohammed had a common-law or statutory remedy other than coram nobis. Finally, the State did not contend that laches barred Mohammed’s right to coram nobis. Therefore, the only requirement at issue was whether Mohammed faced a significant collateral consequence as a result of the conviction that resulted from his unknowing and involuntary plea.

Although the State persuaded the lower court that Mohammed did not yet face a significant collateral consequence as a result of the conviction, it concedes on appeal that the lower court erred in accepting the State’s earlier argument.² We are not required to accept the State’s concession,³ but we agree that the lower court erred.

As the State observes, the federal Immigration and Nationality Act empowers the Attorney General of the United States to deport an “alien” who has been convicted of an “aggravated felony.” 8 U.S.C. § 1227(a)(2)(A)(iii). The term “aggravated felony” includes “a theft offense . . . for which the term of imprisonment [is] at least one year.” 8 U.S.C. § 1101(a)(43)(G). The “term of imprisonment” for an offense, including an “aggravated felony,” “is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.” 8 U.S.C. § 1101(a)(48)(B); *accord Duncan v. State*, 236 Md. App. 510, 516 (2018). Therefore, in pleading guilty to conspiracy to commit a theft offense, Mohammed pleaded guilty, unknowingly and involuntarily, to an “aggravated felony.”

² To be precise, the State does not agree that every and any change in a person’s immigration status is automatically a significant collateral consequence for purposes of coram nobis relief. The State does, however, agree that “Mohammed’s mandatory deportation status and permanent ineligibility to re-enter this country are cognizable consequences for purposes of coram nobis relief.” Consequently, the State agrees that Mohammed is “entitled to appropriate appellate relief.”

³ *See, e.g., Coley v. State*, 215 Md. App. 570, 572 & n.2 (2013).

Pursuant to 8 U.S.C. § 1226(c)(1)(B), the Attorney General “shall take into custody” any alien who has been convicted of an aggravated felony. In general, if an alien’s “life or freedom would be threatened” by being deported to a particular country because of the alien’s “race, religion, nationality, membership in a particular social group, or political opinion,” the Attorney General “may not remove” the alien from this country. 8 U.S.C. § 1231(b)(3)(A). “However, the Attorney General lacks the authority to withhold deportation if the alien is convicted of a ‘particularly serious crime.’”

Duncan v. State, 236 Md. App. at 516 (citing 8 U.S.C. § 1231(b)(3)(B)(iv)). An alien “who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.” 8 U.S.C. § 1231(b)(3)(B)(iv). Mohammed pleaded guilty, unknowingly and involuntarily, to a “particularly serious crime.”

“Thus,” an alien, like Mohammed, who is convicted of an “aggravated offense” and receives a sentence in excess of one year’s imprisonment “is subject to removal from this country regardless of how much of that sentence is suspended.” *See Duncan v. State*, 236 Md. App. at 517. “Moreover,” if, like Mohammed, the alien was sentenced to more than five years’ imprisonment for an “aggravated offense,” then “the Attorney General lacks the authority to withhold deportation,” “regardless of how much of that sentence is suspended.” *See id.*

The State’s brief succinctly enumerates the collateral consequences that Mohammed has incurred as a result of his unknowing and involuntary plea:

[H]e is no longer a lawful permanent resident; he is ineligible for citizenship; he could not leave and re-enter the country; and the Attorney General must now arrest and deport him without exception.

The State asserts, and we agree, that “even if Mohammed is not subject an active deportation proceeding, he is [currently] suffering under or facing significant collateral consequences because of his conviction and sentence.”

In holding that Mohammed did not currently face significant collateral consequences, the circuit court cited *Griffin v. State*, 242 Md. App. 432 (2019). *Griffin* does not support the conclusion that the circuit court reached.

In *Griffin* the petitioner claimed to have discovered that in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), the Baltimore City Police Department had withheld exculpatory information at the 1982 trial at which he was convicted of first-degree murder. *Griffin v. State*, 242 Md. App. at 435. After he moved for leave to reopen his postconviction case and filed a petition for a writ of actual innocence, he and the State “reached an agreement whereby [he] would withdraw his claims in consideration for a time-served sentence.” *Id.* at 435-36. As a result, he obtained his freedom, but his convictions remained intact. *Id.* at 436.

Eighteen months later, the petitioner filed a federal civil rights claim under 42 U.S.C. § 1983, apparently asserting that the alleged *Brady* violations had led to his criminal conviction. The federal courts dismissed his claim because his conviction had

not been “‘declared invalid by a [Maryland] state tribunal.’” *Id.* at 437 (quoting *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)).

In response to the dismissal of his civil rights claim, the petitioner filed a petition for a writ of error coram nobis to set aside the criminal conviction that interfered with his ability to pursue the civil rights claim. *Id.* This Court affirmed the denial of his petition on the ground that the inability to initiate a civil suit is not a significant collateral consequence. *Id.* at 448.

In reaching that decision, we reasoned that the “§ 1983 claim for damages is far less compelling than the request for reimbursement of a criminal fine or the reinstatement of lost pension rights,” both of which had been held (by federal courts) not to be significant collateral consequences sufficient to warrant the issuance of a writ of coram nobis. *Id.* at 447. We agreed with a federal decision that had held that “financial losses alone are insufficient to justify *coram nobis* relief.” *Id.* (citing *United States v. Keane*, 852 F.2d 199 (7th Cir. 1988)). We added that the petitioner’s “federal civil claim for unliquidated damages is far too speculative to warrant the ‘extraordinary remedy’ contemplated by *coram nobis* law.” *Id.* at 447-48. *Griffin* does not address whether non-citizens face significant collateral consequences, for purposes of coram nobis, if, like Mohammed, they have been divested of their status as lawful permanent residents, they have become ineligible for citizenship, they cannot leave and re-enter the country, and the Attorney General must arrest them and has no discretion not to deport them.

In a passage earlier in the opinion in *Griffin*, this Court explained that because of “the dearth of authority in Maryland,” we would look to federal decisions on the issues pertinent to that case. *Id.* at 440. In that passage, we observed that, “[i]n Maryland, appellate courts have only explicitly acknowledged that subsequent enhanced sentences and deportation proceedings may constitute ‘significant collateral consequences’” for purposes of *coram nobis*. *Id.* (footnotes omitted). In its brief the State suggests that the circuit court may have interpreted that observation to mean that a petitioner faces significant collateral consequences only if the petitioner may receive an enhanced sentence or is a party in an actual deportation proceeding. If so, the court misinterpreted the opinion. The *Griffin* Court was describing what Maryland courts had previously characterized as significant collateral consequences; it was not limiting what Maryland courts might find to be significant collateral consequences in the future.

In any event, this Court has subsequently said that the risk of deportation and the inability to become a United States citizen are significant collateral consequences for purposes of *coram nobis* relief. In *Reyes v. State*, 253 Md. App. 476 (2022), the petitioner, a permanent resident alien, had pleaded guilty to possession with intent to distribute a controlled dangerous substance. *Id.* at 479. Her offense, like Mohammed’s, was an “aggravated felony” under federal immigration law. *Id.* at 487. Thus, like Mohammed, she was “permanently ineligible for citizenship” and “subject to deportation with no possibility of discretionary relief.” *Id.* at 480. In reversing the denial of her petition for a writ of error *coram nobis*, this Court held that her plea was unknowing and

involuntary because she had been misinformed about the maximum sentence that she faced. *Id.* at 506. As guidance to the circuit court on remand, we “observe[d] that [her] conviction makes her deportable and ineligible for citizenship, which,” we said, “*certainly constitutes significant collateral consequences.*” *Id.* (emphasis added). In fact, in the proceedings in the trial court in that case, the State had stipulated that the changes in her immigration status qualified as significant collateral consequences. *Id.* at 495.⁴

In view of our decision in *Reyes*, we conclude that Mohammed, too, is “certainly” (*id.* at 506) facing significant collateral consequences as a result of the unknowing and involuntary plea that had made him “permanently ineligible for citizenship” and “subject to deportation with no possibility of discretionary relief.” *Id.* at 480. For that reason, we vacate the circuit court’s decision and remand this case for further consideration of the merits of Mohammed’s petition.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
VACATED; CASE REMANDED TO THAT
COURT FOR FURTHER PROCEEDINGS**

⁴ *Reyes* is not the only case to recognize that non-citizens may suffer significant collateral consequences, for purposes of coram nobis, if a conviction prevents them from becoming lawful permanent residents and subjects them to deportation. *See, e.g., Williams v. United States*, 858 F.3d 708, 715 (1st Cir. 2017); *see also Kovacs v. United States*, 744 F.3d 44, 49 (2d Cir. 2014) (stating that petitioner’s “likely ineligibility to reenter the United States constitutes a continuing consequence of his conviction”); *Gudiel-Soto v. United States*, 761 F. Supp. 2d 234, 238 (D.N.J. 2011) (finding that petitioner faced “continuing adverse consequences as a result of his conviction” because he was either “facing deportation proceedings” or was prohibited from reentering the United States).

**CONSISTENT WITH THIS OPINION.
APPELLEE TO PAY ALL COSTS.**