Circuit Court for Prince George's County
Case No: CT920951C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 982

September Term, 2020

WILLIAM PRUITT

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 12, 2021

*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 1992, a jury sitting in the Circuit Court for Prince George's County convicted William Pruitt, appellant, of first-degree murder, use of a handgun in the commission of a crime of violence, and conspiracy to commit murder. The court sentenced him to life imprisonment for murder, a consecutive term of five years for the handgun offense, and a consecutive term of life for conspiracy to commit murder. This Court affirmed the judgments. *Pruitt and Seymour v. State*, No. 1861, September Term, 1992 (filed November 5, 1993).

The victim, Robert York, was discovered deceased about 7:00AM on January 20, 1991 on the ground outside the Three Roads Tavern in Brandywine. He had been shot twice in the head. Two live .380 cartridges and two empty .380 shell casings were recovered from the scene. Two .380 caliber projectiles were removed from Mr. York's body during an autopsy. According to the firearm's examiner, both projectiles were fired from the same gun. The murder weapon, however, was never recovered. At trial, the State's theory was that Mr. Pruitt—the president of a local motorcycle club—ordered the death of Mr. York, a member of the club whom he suspected of being a police informant.[1] The State's theory was that Clarence Seymour, Mr. Pruitt's co-defendant and also a member of the motorcycle club, shot the victim. Witnesses placed the victim, Mr. Pruitt,

[1] At trial, evidence was produced that Mr. York in fact had worked as a confidential informant for the Bureau of Alcohol, Tobacco, and Firearms. The State also produced a member of the motorcycle club who testified that, in the fall of 1990, Mr. Pruitt told him that "somebody came back from Baltimore City and had seen a stack of indictments in Baltimore that had our names on them, and [Pruitt] said he knew Bobby York was going to testify against us."

Mr. Seymour, and other members of the motorcycle club at the Three Roads Tavern the night previous to the discovery of the body.

In 2020, about 28 years after his conviction, the self-represented Mr. Pruitt filed a petition for writ of actual innocence. The circuit court denied relief, without a hearing. For the reasons to be discussed, we shall affirm the judgment.

DISCUSSION

A 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. "Actual 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:
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> (1) 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). As this Court explained in *Smith*, the

> requirement, that the evidence could not with due diligence, have been discovered in time to move for a new trial, is a "threshold question." *Argyrou*, 349 Md. at 604. *Accord Jackson v. State*, 216 Md. App. 347, 364, *cert. denied*, 438 Md. 740 (2014). "[U]ntil there is a finding of newly discovered evidence that could not have been discovered by due diligence, no relief is available, 'no matter how compelling the cry of outraged justice may be.'" *Argyrou*, 349 Md. at 602 (quoting *Love v. State*, 95 Md. App. 420, 432 (1993)).

233 Md. App. at 416.

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 & citation omitted). *See also* Crim. Proc. § 8-301(e)(2).

Standard of Review

"Generally, the 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. "Courts reviewing actions taken by a circuit court after a hearing on a petition for writ of actual innocence limit their review, however, to whether the trial court abused its

discretion." *Id.* at 308-09. *See also Jackson v. State*, 164 Md. App. 679, 712-13 (2005). Here, because the court denied Mr. Pruitt's petition without a hearing based on its conclusion that the petition was legally insufficient, we utilize the *de novo* standard of review.

Mr. Pruitt's Petition for Writ of Actual Innocence

A. The Firearms Report

In his petition, Mr. Pruitt alleged that in August 2019 he had obtained, through a Freedom of Information Act request, a copy of a firearms report from the Federal Bureau of Investigation related to its examination of the ballistic evidence recovered from the crime scene and the victim's body. As noted, a gun was never recovered. Mr. Pruitt alleged that the FBI report had not been provided in discovery and claimed that the report contradicted some of the trial testimony.

FBI Special Agent Margerite Warner, accepted as an expert in firearms identification, testified at trial regarding the ballistic evidence. She testified that she examined the evidence and had concluded that the two bullets were "both .380 auto-caliber bullets" which had been fired "from the same barrel." When asked what "kind of gun would have fired" those bullets, she replied that a "listing of possible firearms that have those rifling characteristics includes Browning, Tanfoglio, . . . Titan, … as well as Beretta and others." All of the possible weapons, she testified, were "semi-automatic pistols." She further testified that the cartridges recovered from the crime scene were ".380 auto cartridges manufactured by Remington Peters."

On cross-examination, Ms. Warner was asked whether "another type of handgun other than that .380 [could] fire those projectiles," to which she replied: "There were no indications . . . that they were not fired in a .380 auto caliber firearm because there would be markings if they had been fired in some other firearm." As a follow up to that answer, defense counsel again asked whether "another handgun [could] fire these other than a .380[,]" to which Ms. Warner replied: "Not aware of any." Defense counsel continued along this line of questioning, stating: "So that [the lack of any markings indicating that they were fired in anything other than a .380 auto] just tells me it's possible they could be fired from another weapon, that's all I am asking." Ms. Warner's answered: "I am not sure."

In his actual innocence petition, Mr. Pruitt alleged that Ms. Warner "knowingly presented false testimony when she stated she was not aware of any other gun that would fire a .380 auto" because the FBI report included a list of "21 different handgun manufacturers that would fire a .380 auto cartridge including a (9mm Browning short.)" He also alleged that Ms. Warner "presented false testimony when she stated 'there would be some markings on the bullets and cartridge cases if they were fired from anything else'" because notes in the FBI report referred to "'possible' ejector marks" and also noted that the "mechanism mark 'unable to determine' source without firearm[.]"

The circuit court concluded that Mr. Pruitt had failed to demonstrate that the FBI laboratory results could not have been discovered by due diligence in time to move for a new trial, as required by Crim. Proc. § 8-301(a)(2). Moreover, the court noted that "defense counsel cross-examined Ms. Warner on whether another weapon could have fired the

projectiles other than a .380 auto caliber firearm." And the court concluded that Mr. Pruitt had "failed to meet his burden of proof regarding the claim that there is a substantial or significant possibility that the result would have been different at trial had his counsel had the benefit of the allegedly newly discovered evidence."

We agree with the circuit court's conclusion. Even assuming that the report in question was not turned over to the defense, as Mr. Pruitt baldly alleges, the report could have been discovered in the exercise of due diligence in time to move for a new trial. It was clear at trial that Ms. Warner had examined the ballistics evidence and one would readily deduce that a report of her results would have been generated. Moreover, given that the murder weapon was never recovered, we fail to perceive how the report speaks to Mr. Pruitt's innocence.

B. Impeachment Evidence

In his petition, Mr. Pruitt also alleged that the State had failed to disclose "impeachment evidence" related to State's witness Norman Slone.

Mr. Slone testified that he was a member of the same motorcycle club as Mr. Pruitt and had been told by Mr. Pruitt to kill Robert York. He claimed, however, that he had no intention of killing the man and that he was in Kentucky when the murder took place. He testified that sometime prior to the murder of Mr. York, he was given a loaded sawed-off shotgun by Mr. Pruitt's co-defendant outside the Lone Star Bar. He claimed, however, that he informed someone in an adjacent business that there was "a guy who had a sawed off pump shotgun over there in a black Monte Carlo" and to call the police. He then waited for the police to arrive and when they did, the police seized the weapon but did not place

him under arrest. Mr. Slone testified that the officer told him to "go back home" because they knew where he lived. Mr. Slone testified that he then went to his hometown of Kentucky, traveling by Greyhound bus. While in Kentucky, Mr. Slone claimed that Mr. Pruitt sent him $200. Thereafter, in accordance with Mr. Pruitt's instructions, Mr. Slone testified that he went to Florida where, of his own accord, he eventually "turned himself in." Mr. Slone testified that he had no knowledge of who killed Mr. York.

Mr. Slone admitted that, at the time of trial, he was serving a federal sentence for illegal possession of a firearm—apparently based on the sawed-off shotgun incident outside the Lone Star Bar. It was also elicited that Mr. Slone had prior convictions—for threatening the President-Elect in 1981 and for third-degree rape in 1986 or 1987.

In his petition, Mr. Pruitt asserted that the State "knowingly failed to disclose" that Mr. Slone had been arrested by "U.S. Marshalls in an unrelated ATF sweep on March 1, 1991" and at that time "there were warrants out on Mr. Slone for charges related to the incident in the parking lot of the Lone Star Bar, where police found Slone with a loaded shotgun in his car." Mr. Pruitt maintained that the State "never disclosed the true nature of Mr. Slone's arrest to the defense" and let stand Mr. Slone's trial testimony that he had turned himself in to the police.

He also alleged that the State "knowingly failed to disclose a F.B.I. report that contained evidence that the State's key witness Norman Slone presented 'false testimony during trial that Mr. Pruitt sent him $200.00 by Western Union at Kroger in Bellevue, Kentucky on January 20, 1991.'" He attached to his petition the copy of a document which purports to be notes of an FBI agent's August 29, 1991 interview of Mr. Slone's brother

Charles. The notes related that Charles Slone informed the agent that, on January 20, 1991, while witness Norman Slone was in Kentucky, Mr. Pruitt had sent Norman $200 via Western Union, and that the money was wired to a Kroger's in Bellevue. The report also stated that the assistant manager of Kroger's "made available the records of Western Union on January 20, 1991 [and a] review of those records failed to show that $200.00 was received and picked up by anyone."

The circuit court found no merit to Mr. Pruitt's allegations regarding the "impeachment evidence." Neither do we. Even if it is true that Mr. Slone had not "turned himself in" but rather had been arrested in Florida on an outstanding warrant related to the sawed-off shotgun incident outside the Lone Star Bar, that is of no moment and certainly not "evidence" that could not have been discovered in an exercise of due diligence at the time of trial. Mr. Slone was thoroughly cross-examined at trial by Mr. Pruitt's counsel, as well as by counsel for Mr. Pruitt's co-defendant, regarding his statements to the police both in Florida and in Maryland.

As for the FBI report related to the interview of Charles Slone, nothing in that report speaks to Mr. Pruitt's actual innocence. Based on the record before us, Charles Slone did not testify at Mr. Pruitt's trial. Although Norman Slone testified that Mr. Pruitt had sent him $200 when he was in Kentucky to "a grocery store in Bellview, Kentucky," he did not name the store or testify as to the date the money was sent. Nor did he testify that the money was wired via Western Union.

In sum, we hold that the circuit court did not err in denying Mr. Pruitt's petition for writ of actual innocence without a hearing because he failed to present any evidence that

could not have been discovered in an exercise of due diligence in time to move for a new trial. Moreover, none of the "evidence" he alleged was newly discovered speaks to Mr. Pruitt's actual innocence.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.