

Circuit Court for Frederick County
Case No.: 10-K-05-38591

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 989

September Term, 2020

PRESTON SEAN GREEN

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 5, 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.

Following a bench trial in 2007, Preston Sean Green, appellant, was convicted of possession of a firearm by a person with a prior felony drug conviction; wearing, carrying, or transporting a handgun; possession of crack cocaine; and possession of marijuana. The court sentenced him to a total term of 15 years’ imprisonment (which was later reduced by three years), with a start date of May 4, 2006 and credit for 300 days’ time served. On direct appeal, Mr. Green challenged the sufficiency of the evidence to support the court’s finding that he had possessed a handgun. This Court affirmed the judgment. *Green v. State*, No. 179, September Term, 2007 (filed January 7, 2009).

In 2020, after his sentence had been fully served, the self-represented Mr. Green filed a “motion” and “supplemental motion” seeking *coram nobis* relief. The circuit court noted that Mr. Green had failed to allege that he is suffering from any significant collateral consequence as a result of the convictions and had failed to produce the trial transcripts, which Mr. Green claimed were unnecessary. The court, nonetheless, addressed Mr. Green’s claims and concluded that they were waived, meritless, or both. Accordingly, the court denied relief and dismissed the “claims” with prejudice. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND¹

Trial

On direct appeal, this Court summarized the facts of the case as follows:

On the evening of September 16, 2005, Officer James Martin of the Drug Enforcement Unit was on duty in the area of the Country Hill Apartment complex when he observed Green. Being familiar with Green

¹ The only transcript in the record before us is from the suppression hearing.

from prior encounters, Officer Martin contacted dispatch to ascertain whether Green had any open warrants. Officer Martin was advised that, indeed, Green had an outstanding warrant and, subsequently, Green was arrested pursuant to that warrant. [A footnote indicated that the “record does not indicate the nature of the open warrant.”] Upon arrest, Green admitted to Officer Martin that he was in possession of marijuana and a handgun, which were seized by the police. The handgun was a Colt .45 Mark 4 semi-automatic. It contained one round of ammunition in the chamber and six rounds in the magazine. Green also had on his person an additional magazine containing ten rounds of ammunition and a white tube sock containing thirty rounds of ammunition. Green was taken to the Frederick County Police Headquarters for processing, where crack cocaine was discovered on his person. A criminal records check revealed that Green had a prior conviction for possession of cocaine with intent to distribute.

Slip op. at 1-2.

Post-Conviction

In 2011, the circuit court convened a hearing on Mr. Green’s petition for post-conviction relief. The court granted relief related to Mr. Green’s claim that the sentencing court had erred in imposing an enhanced term of imprisonment for possession of a firearm after a felony conviction because the State had not informed him of its intent to seek an enhanced sentence for that offense, but otherwise denied relief.

Relevant to this appeal, the post-conviction court rejected Mr. Green’s allegation that he had “paid the fines he received from a previous conviction and he cannot get more information on the warrant.” In its Statement of Reasons supporting its decision, the post-conviction court stated:

At the post-conviction hearing, Petitioner testified that he cannot get more information on the outstanding warrant pursuant to which he was arrested. Petitioner claimed that he paid the fines he received from a previous conviction so there should not have been an outstanding warrant for his arrest.

Relief on this allegation is denied because the facts and the record reveal that Petitioner has not paid fines relating to previous traffic convictions. At the post conviction hearing, Petitioner himself entered into evidence summaries of district court citations and a Motor Vehicle Administration status notice which show that the fines imposed on Petitioner for these offenses are still unpaid. Furthermore, Petitioner has not offered any other evidence, other than a bald assertion that he cannot obtain any other information about the warrant, to show how the warrant pursuant to which he was arrested should not have issued or is otherwise invalid.

Motion for *Coram Nobis* Relief

In his motion and supplemental motion for *coram nobis* relief (together “the motion”), Mr. Green asserted that (1) there was not a “valid warrant in this case in accord with constitutional standards to support the probable cause requirement for arrest” and there was a “lack of probable cause in an [sic] search and seizure warrantless arrest”; (2) trial counsel had rendered ineffective assistance “by not making the warrant be presented as that was the basis of probable cause”; and (3) the handgun sentences (which were run concurrently) should have merged. In a concluding paragraph captioned “demand for relief,” Mr. Green also mentioned “prosecutorial misconduct” for pursuing charges which the “prosecutor knows is not supported by probable cause.” He did not attach any documents nor make any factual assertions to support his bald allegation that the warrant was invalid.

Coram Nobis Court’s Decision

The *coram nobis* court first noted that Mr. Green had failed to allege any significant collateral consequence he was suffering as a result of the 2007 convictions, a requirement for relief. And, contrary to Md. Rule 15-1202(b)(2)(c), he had failed to attach all relevant portions of any necessary transcripts. But rather than dismiss the petition without

prejudice, the court addressed the merits. The court denied relief, with prejudice, after concluding that: (1) Mr. Green had waived his allegation that his Fourth Amendment rights were violated because he could have raised that claim before or during trial or on post-conviction but had failed to do so; (2) Mr. Green had waived the issue regarding trial counsel’s failure to challenge the arrest warrant at trial because that issue could have been litigated in his post-conviction proceeding; and (3) the merger of the handgun sentences was not properly before it because it could be raised in a Rule 4-345(a) motion to correct an illegal sentence, but in any event, the handgun offenses did not merge.

DISCUSSION

“Coram nobis is extraordinary relief designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation where no other remedy exists.” *State v. Smith*, 443 Md. 572, 623 (2015). Relief is “justified ‘only under circumstances *compelling such action to achieve justice.*’” *State v. Rich*, 454 Md. 448, 461 (2017) (quoting *Smith*, 443 Md. at 597) (further quotation omitted). To be eligible for the writ, a petitioner must meet certain requirements, including that the petitioner is “‘suffering or facing significant collateral consequences’” because of a conviction which can be “‘legitimately’” challenged “‘on constitutional or fundamental grounds.’” *Smith*, 443 Md. at 623-24 (quoting *Skok v. State*, 361 Md. 52, 78-79 (2000)). The writ is intended to provide a means to overturn an otherwise final and unchallengeable conviction “‘in order to remove these consequences.’” *Skok*, 361 Md. at 76 (quoting 3 *Wright, Federal Practice and Procedure Criminal 2d.* § 592, at 429-32 (1982)).

Moreover, to be considered for *coram nobis* relief, the petitioner must rebut the presumption of regularity that attaches to a criminal case. *Skok*, 361 Md. at 78. And the alleged error must not have been waived or finally litigated in prior proceedings, absent intervening changes in the applicable law. *Hyman v. State*, 463 Md. 656, 672 (2019).

We review the circuit court’s ultimate decision to grant or deny a petition for *coram nobis* relief for an abuse of discretion. *Rich*, 454 Md. at 471. In doing so, we will not “disturb the *coram nobis* court’s factual findings unless they are clearly erroneous[.]” *Id.* “[L]egal determinations,” however, are “reviewed de novo.” *Id.*

On appeal, Mr. Green does not address why the *coram nobis* court erred in denying relief. Rather, as he did in his motion below, he asserts that his Fourth Amendment rights were violated and that he had received ineffective assistance of counsel because of counsel’s failure to challenge the arrest warrant at trial. He does state that his request for relief “was dismissed with prejudice wrongly[.]” but he does not support his position with any reasons. And, while acknowledging that the State had argued in the circuit court that his petition was deficient for failing to allege any significant collateral consequence, on appeal he still does not assert that he is suffering any collateral consequence as a result of his 2007 convictions.

We are not persuaded that the *coram nobis* court erred in denying relief and dismissing the claims raised in Mr. Green’s motion with prejudice. First, as to the validity of the arrest warrant, Mr. Green had the burden of rebutting the presumption of regularity that attaches to a criminal case, which he failed to do. Moreover, Mr. Green

unsuccessfully challenged the validity of the warrant on post-conviction and, thus, the issue is waived or finally litigated.

We also agree with the *coram nobis* court that Mr. Green waived the ineffective assistance of counsel claim based on trial counsel’s failure to challenge the warrant at trial because he could have raised that issue in his post-conviction proceeding. *See Hyman*, 463 Md. at 673-74 (“if a petitioner advances even a fundamental constitutional claim, but fail[s] to assert all grounds upon which that claim is made, [the petitioner has] waived any allegation upon which the ineffective assistance of counsel claim could have been made but was not.” (quotation omitted)). Finally, we perceive no error in the *coram nobis* court’s rejection of Mr. Green’s claim that his handgun convictions should have merged for sentencing purposes. Mr. Green failed to establish that merger was required, and, in any event, he has served those sentences.²

**APPELLEE’S MOTION TO DISMISS
APPEAL DENIED.**

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY AFFIRMED.**

COSTS TO BE PAID BY APPELLANT.

² In its brief, the State moves to dismiss the appeal because Mr. Green failed to respond to this Court’s show cause order as to why the appeal should not be dismissed for lack of transcripts. This Court in fact had dismissed the appeal for that reason, but then granted Mr. Green’s motion for reconsideration and reinstated the appeal. The State also moves to dismiss the appeal “[t]o the extent that Green is attempting to appeal directly from the circuit court’s 2006 denial of his pretrial motion to suppress [his statement to the police] and his 2007 conviction[.]” We shall deny the motion to dismiss.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0989s20cn.pdf>