

Circuit Court for Prince George's County  
Case No. CT080695X

UNREPORTED\*

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1047

September Term, 2018

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JUANITA QUINTILLA GALLARDO

v.

STATE OF MARYLAND

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Leahy,  
Gould,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Gould, J.

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Filed: July 8, 2019

\*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.

Juanita Quintilla Gallardo appeals from the judgment of the Circuit Court for Prince George’s County denying her petition for writ of actual innocence under § 8-301 of the Criminal Procedure Article of the Maryland Annotated Code. Ms. Gallardo argues that the circuit court erred because it relied on a case that has since been superseded by statute and because there was fraud surrounding her guilty plea. The State contends that because the statute was not in effect when the circuit court rendered its decision, it is irrelevant here. Both sides are at least partially correct. While the circuit court’s ruling was correct because the statute was not in effect at the time, it is in effect now and should be applied retroactively. We therefore reverse.

### **FACTS AND LEGAL PROCEEDINGS**

On January 20, 2009, Ms. Gallardo pled guilty in the Circuit Court for Prince George’s County to one count of theft over \$500, and as a result has served her prison term and paid restitution.

On March 9, 2016, Ms. Gallardo filed a petition for writ of actual innocence pursuant to § 8-301 of the Criminal Procedure Article of the Maryland Annotated Code (“CP”), alleging the discovery of new evidence. The State opposed the petition. On April 13, 2017, the court, relying on Yonga v. State, 446 Md. 183 (2016), held that Ms. Gallardo was not entitled to a petition for writ of actual innocence under CP § 8-301 because she had pled guilty, and therefore dismissed the petition. Later that month, Ms. Gallardo filed a motion for a new hearing on her petition, which the court also dismissed for the same reason. Ms. Gallardo noted a timely appeal.

## **DISCUSSION**

### *I. Standard of Review*

The standard of review for the “legal sufficiency of a petition for writ of actual innocence is *de novo*.” State v. Hunt, 443 Md. 238, 247 (2015). “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 247-48.<sup>1</sup> Under an abuse of discretion standard, an appellate court will not disturb the trial court’s ruling “unless it is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.’” Patterson v. State, 229 Md. App. 630, 639 (2016) (quoting McGhie v. State, 224 Md. App. 286, 298 (2015)).

### *II. CP § 8-301 Should be Applied Retroactively*

CP § 8-301 permits a petition for writ of actual innocence to be filed based on newly discovered evidence. When the statute was first enacted in 2009, its language did not specifically state whether a defendant whose conviction resulted from a guilty plea was entitled to petition for writ of actual innocence. See CP § 8-301 (2001, 2008 Repl. Vol.).

In 2016, a defendant whose conviction resulted from a guilty plea filed a petition for writ of actual innocence under CP § 8-301, and the Court of Appeals held that he was

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<sup>1</sup> Ms. Gallardo urges this Court to instead “take whatever action is deemed necessary to correct a fraud upon the Court itself, particularly where constitutional due process is implicated.” Ms. Gallardo provides no legal support for abandoning the standard of review articulated above, or for supplanting the circuit court as the fact finder. We will decline Ms. Gallardo’s requests to venture outside the confines of our limited role.

not entitled to the writ. Yonga, 446 Md. at 216-17. As stated by the Court:

The acid test is to ask whether, if that jury had had the benefit of the newly discovered evidence as well as the evidence that was before them, would there be “a substantial or significant possibility that the result would have been different?” There is no way that such a test can be applied, however, to a conviction based on a guilty plea rather than upon a trial. The minimalist statement of facts offered in factual support of a guilty plea is no equivalent of or substitute for an actual trial. It was never intended to be.

Id. at 211 (quotation omitted).

CP § 8-301 was subsequently amended, effective October 1, 2018. Unlike the original statute, the amended statute specifically permits a writ of actual innocence to be issued even when the conviction resulted from a guilty plea. See CP § 8-301 (2001, Repl. Vol. 2018).<sup>2</sup> The issue here, therefore, is whether this amended statute applies retroactively to Ms. Gallardo.

Ms. Gallardo argues that this case should be decided based on the new version of the statute. The State, while acknowledging that the statute was amended, nonetheless contends that because “[a]t the time Judge Whalen ruled below . . . a person who pled guilty was simply not entitled to the granting of a petition for a writ of actual innocence,” the decision should be affirmed.

As a general proposition, “[s]tatutes are presumed to operate prospectively; consequently, absent manifest legislative intent to the contrary, statutes may not be given

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<sup>2</sup> Specifically, the statute, as amended in 2018, provides that a petition for a writ of actual innocence may be filed if “the conviction resulted from a guilty plea, an Alford plea, or a plea of nolo contendere.” CP § 8-301.

retrospective or retroactive application.” Gregg v. State, 409 Md. 698, 714 (2009). Four principles guide the analysis:

(1) statutes are presumed to operate prospectively unless a contrary intent appears; (2) a statute governing procedure or remedy will be applied to cases pending in court when the statute becomes effective; (3) a statute will be given retroactive effect if that is the legislative intent; but (4) even if intended to apply retroactively, a statute will not be given that effect if it would impair vested rights, deny due process, or violate the prohibition against *ex post facto* laws.

Allstate Ins. Co. v. Kim, 376 Md. 276, 289 (2003).

In Gregg, the defendant filed a petition for postconviction relief under CP § 8-201, the DNA Postconviction Statute. 409 Md. at 704. While the case was pending, the statute was amended, and the Court had to decide which version of the statute applied. Id. at 708. The Court analyzed § 8-201 and determined that the statute was both procedural and remedial.<sup>3</sup> Id. at 715. As a result, and in the absence of evidence of any legislative intent to the contrary, the Court held that the amendment to CP § 8-201 should be given retroactive effect and that the defendant was “entitled to have his petition considered by reference” to the most recent amendment. Id. at 715-16.

CP § 8-301 has also been applied retroactively to a case pending at the time it went into effect. In State v. Matthews, 415 Md. 286, 288 (2010), the defendant filed a motion for a new trial under Md. Rule 4-331, based on newly discovered evidence. The motion, however, was untimely under that rule, because it was filed more than one year after he

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<sup>3</sup> Remedial means to “provide a remedy, or improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries.” Id. at 715 (quoting Langston v. Riffe, 359 Md. 396, 408 (2000)).

had been sentenced. Id. at 289. The trial court denied the motion without a hearing, and the defendant appealed to the Court of Special Appeals. Id. at 288.

This Court vacated the decision, finding that the circuit court should have held a hearing. Id. The State filed a petition for certiorari—which was granted—presenting two questions: (1) whether the trial court properly denied the motion for a new trial, given that it was not timely filed; and (2) whether the failure to hold a hearing on the untimely motion was harmless error, given that the court did not have jurisdiction to grant the motion. Id. at 289.

While the case was pending, CP § 8-301 went into effect. This new statute conferred the right to file a petition for writ of actual innocence based on newly discovered evidence. As a result, the discovery of new evidence provided the basis for seeking a new trial under two independent authorities, Rule 4-331 and CP § 8-301. Unlike a motion for a new trial under Rule 4-331, however, § 8-301 imposed no deadline for filing the petition. Id. at 289-90. Had § 8-301 been in effect at the time Matthews had filed his petition, it would have been timely.

As a result, the threshold question for the Court of Appeals in Matthews was whether § 8-301 could be retroactively applied to save Matthews’ motion for a new trial. Relying on Gregg, the Court of Appeals found that § 8-301 was both procedural and remedial, and held that the statute should be applied retroactively. Id. at 297. The Court of Appeals remanded the case with instructions to the trial court to treat Matthews’ motion for a new trial as a petition for writ of actual innocence pursuant to CP § 8-301. Id. at 313.

The reasoning and holdings in Gregg and Matthews apply with equal force here. Because the Court of Appeals has determined that § 8-301 is both procedural and remedial, so too is the amendment to § 8-301 that broadened the scope of permitted petitioners to include those who pled guilty to the underlying crimes. Accordingly, here, even though the circuit court ruled correctly based on the law as it then existed, the subsequent amendment to § 8-301 compels us to remand this case to allow Ms. Gallardo to proceed with her petition. We decline Ms. Gallardo’s request that we address the merits of her petition.

### CONCLUSION

Because Ms. Gallardo is entitled to file a petition for writ of actual innocence under the current version of § 8-301, we reverse the judgment of the circuit court and remand this case for a determination on the merits.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
REVERSED. CASE REMANDED. COSTS  
TO BE PAID BY APPELLEE.**