Circuit Court for Baltimore City
Case No. 112241001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1094

September Term, 2019

REGINALD BELLAMY

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 4, 2020

*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 jury trial in the Circuit Court for Baltimore City, Reginald Bellamy, appellant, was convicted of first-degree rape, first-degree sex offense, attempted first-degree sex offense, second-degree assault, and false imprisonment. This Court affirmed his convictions on direct appeal. *Bellamy v. State*, No. 2765, Sept. Term 2014 (filed Jan. 12, 2016).

At trial, the State introduced evidence that officers had obtained a DNA sample from Mr. Bellamy after executing a search warrant, and that Mr. Bellamy's DNA matched DNA that was found on the victim's thigh. In June 2019, Mr. Bellamy filed a petition for writ of actual innocence, identifying as newly discovered evidence the "original search warrant" for his DNA that contained the judge's signature. Mr. Bellamy acknowledged that he had received an unsigned copy of the search warrant in pre-trial discovery but claimed that the original search warrant had been "withheld" by the State. With respect to that warrant, Mr. Bellamy asserted that it would establish his actual innocence because "a conviction cannot be sustained where [the original] search warrant under which the evidence has been obtained is not introduced in evidence." He further contended that, had he possessed the original search warrant at trial, he could have challenged the testimony of the officer who seized his DNA and therefore, prevented his DNA from being admitted into evidence.

The court dismissed Mr. Bellamy's petition without a hearing, finding that it failed to identify any newly discovered evidence and that the identified evidence did not create a significant possibility that the result might have been different as the unsigned search warrant and signed search warrant were "identical with the exception of the signatures and written entries on the original search warrant." On appeal, Mr. Bellamy raises three issues,

which reduce to one: whether the court erred in dismissing his petition for writ of actual innocence. For the reasons that follow, we shall affirm.

Certain convicted persons may file a petition for 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). "[T]o 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). The burden of proof on a writ for actual innocence is on petitioner. Crim. Pro. § 8-301(g); Md. Rule 4-332(k). A court "may dismiss a petition [for writ of actual innocence] without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted." Crim. Proc. § 8-301(e)(2). *See also* Rule 4-332(i)(1). "The standard of review is *de novo* when appellate courts consider the legal sufficiency of a petition for writ of actual innocence that was denied without a hearing." *State v. Ebb*, 452 Md. 634, 643 (2017).

Mr. Bellamy concedes that he received an unsigned copy of the search warrant prior to trial. And, pursuant to Maryland Rule 4-601(i) he could have filed a motion for the release of the original warrant and other associated documents if he so desired.[1] Yet, Mr. Bellamy did not file such a motion prior to trial or offer an adequate explanation for why he or his defense counsel could not do so. Therefore, we agree with the circuit court that

[1] In fact, Mr. Bellamy filed a motion to obtain the original warrant in April 2018, which was granted.

the original search warrant was not "newly discovered" evidence for the purposes of Rule 4-332. *See Jackson v. State*, 164 Md. App. 679, 690 (2005) (explaining that the test for whether newly discovered evidence could have been found using due diligence is "whether the evidence was, in fact, discoverable and not whether the appellant or appellant's counsel was at fault for not discovering it").

Moreover, even if the original search warrant were newly discovered, it does not show that Mr. Bellamy was actually innocent of the charged crimes. Mr. Bellamy contends that he could have used the original warrant to cross-examine the officer who obtained his DNA swab and to prevent his DNA from being admitted into evidence. However, to grant a writ of actual innocence it is not "enough that the newly discovered evidence expose procedural flaws in the trial that denied the petitioner due process of law." *Yonga v. State*, 221 Md. App. 45, 57 (2015). Rather, it must demonstrate that the petitioner is "factually innocent." *Id*. And, in *Yonga*, we noted that "to have one's convictions reversed because of . . . an unreasonable search and seizure does not thereby make one actually innocent." *Id*. Consequently, the court did not err in dismissing Mr. Bellamy's petition for writ of actual innocence without a hearing.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.