

Circuit Court for Prince George's County
Case No: CT932138X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1123

September Term, 2018

STACEY JONES

v.

STATE OF MARYLAND

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 1, 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.

In 1994, a jury in the Circuit Court for Prince George’s County convicted Stacey Jones, appellant, of first-degree murder and the use of a handgun in the commission of a crime of violence. The court sentenced him to life imprisonment for the murder and to a consecutive 10-year term for the handgun offense. This Court affirmed the judgments. *Jones v. State*, No. 1672, September Term, 1994 (filed July 10, 1995). Mr. Jones’s numerous requests for relief, post-conviction, have been unsuccessful.

In 2018, Mr. Jones filed a petition for writ of actual innocence in which he alleged that in 2011 he had received the police department’s investigative file, which he claimed contained notes that cast doubt on the veracity of a State witness’s identification of him at trial. The circuit court denied relief. We shall affirm because we agree with the circuit court that (1) Mr. Jones did not establish why the notes could not have been discovered prior to trial or in time to move for a new trial, and (2) the investigative notes do not create a substantial or significant possibility that the results of his trial would have been different.

BACKGROUND

At trial, the State presented evidence that Mr. Jones shot and killed the victim (Terrence Gilliespie), a friend, after suspecting that the victim had stolen a VCR and a few other items from the home of Mr. Jones’s mother. Kelvin Best testified that the day before the murder, he drove the victim to a pawn shop and assisted him in pawning a VCR.

Ulysses Francis West, a friend of both Mr. Jones and the victim, testified that, prior to the murder, Mr. Jones told him that the victim had stolen the VCR and other items from his mother’s house. He testified that Mr. Jones was “mad” about the theft and “said he was going to kill him.” Mr. West related that about 4:00AM on July 7, 1993, Mr. Jones

appeared at his house, crying and very upset, and confessed that he had just killed the victim. Mr. West testified that Mr. Jones informed him that he had shot the victim on the grounds of the vacant Glenn Dale Hospital (where the body was found) and that he had placed a condom on the victim to make it look like he was killed in response to a sexual attack. (A condom was on the body of the dead victim.)

Casey Gerald, also a friend of Mr. Jones, testified that he had given Mr. Jones a handgun before the murder and he was present with Mr. West when Mr. Jones confessed to shooting the victim to death. The gun used to shoot the victim was the same type given to Mr. Jones by Mr. Gerald.

Sherina Wade testified that the victim and a man named “Stacey” had visited her at her apartment about 1:00AM on July 7, 1993, a few hours before the murder. Ms. Wade was a friend of the victim, but she had not previously met Mr. Jones. Mr. Jones and the victim spent about an hour with her in her apartment and she shook Mr. Jones’s hand when introduced to him and viewed him during the visit in ample light. Ms. Wade identified Mr. Jones at trial as the man, introduced to her as “Stacey,” who had accompanied the victim to her apartment.¹

¹ Ms. Wade had also identified Mr. Jones in a photograph of him shown to her by the police during their investigation, and she inadvertently saw him in a hallway outside the courtroom just prior to a suppression hearing. On direct appeal, this Court held that the trial court did not err in declining to exclude Ms. Wade’s in-court identification of Mr. Jones, rejecting the contention that it was based on two allegedly suggestive extra-judicial identifications. *Jones v. State*, No. 1672, September Term, 1994 (filed July 10, 1995), *slip op.* at 3-5.

In 2011, in response to his Maryland Public Information Act request, Mr. Jones received documents from the Prince George’s County Police Department’s investigative file. Based on certain notes in that file, in 2018, Mr. Jones filed a petition for writ of actual innocence in which he claimed that the notes were “newly discovered evidence.” One note he relied on, dated July 11, 1993 and authored by a detective investigating the homicide, stated: “Responded to 923 Cedar Hgts Dr, St Matthews C.M.E. Church for the victim’s funeral. Met with Sherina Wade to see if she would identify ‘Stacy’ if he was at the funeral. ‘Stacy’ was not there.” He also relied on police notes taken during a September 30, 1993 interview with Mr. West who, after relating details of Mr. Jones’s confession to him of the crime, said: “That was mostly everything. Then he went to the funeral. Then he said Terrence’s brother approached him at the 7-11 on [Route] 202 about his brother’s death, I was locked up then. That was it. He (Stacey) had stopped talking to me then.” Mr. Jones attached an affidavit to his petition in which he stated: “I and three individual had attended to Terrence funeral. But Ulysses F. West and K.C. had stay inside my car.”²

In his petition, Mr. Jones asserted that the police notes indicated that Ms. Wade had given “false and misleading testimony” at his trial regarding her identification of him as the “Stacey” that was present with the victim at her apartment because he had attended the victim’s funeral, but Ms. Wade could not identify him there. He maintained that, if he had been aware of the police notes at trial, “it is highly likely that a different verdict would have ensued.”

² There was no evidence presented at trial regarding the victim’s funeral.

The circuit court denied relief, without a hearing. The court concluded that the investigative notes were not “newly discovered evidence” because the petition failed to demonstrate that the notes could not have been discovered prior to trial or in time to move for a new trial. The court also found that the notes were “not material evidence” and that even if they “could have been used to impeach Wade during her testimony and undermine her credibility, Petitioner’s presence at the funeral is an inconsequential detail that does not go to the core question of Petitioner’s guilt or innocence.” The court acknowledged that Ms. Wade’s testimony placed Mr. Jones and the victim together within hours of the murder, but given the testimony of Mr. West and Mr. Gerald, concluded that “the investigation notes would not have made a significant or substantial possibility that the result in Petitioner’s trial may have been different.”

DISCUSSION

On appeal, Mr. Jones contends that the circuit court erred in denying his petition without a hearing because, he claims, the petition satisfied the pleading requirements. He insists that Ms. Wade’s testimony was “the primary evidence offered by the State to prove [his] guilt” and, therefore, the investigative notes were “material” and “directly exculpatory evidence on the merits.” He also maintains that the State improperly withheld the notes prior to trial and asserts, therefore, that they could not have been discovered “with due diligence” prior to trial or in time to move for a new trial.

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.” Md. Code Ann., Crim. Proc. § 8-301(e)(2). *See also* Rule 4-332(i)(1) (“the court may [] dismiss

the petition if it finds as a matter of law that the petition fails to comply substantially with the requirements of section (d) of this Rule or otherwise fails to assert grounds on which relief may be granted[.]”). “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).

When filing a petition for writ of actual innocence, the petitioner must, among other things, state:

- 6.) that the request for relief is based on newly discovered evidence which, with due diligence, could not have been discovered in time to move for a new trial pursuant to Rule 4-331;
- 7.) a description of the newly discovered evidence, how and when it was discovered, why it could not have been discovered earlier . . . [;]
- 8.) that the newly discovered evidence creates a substantial or significant possibility, as that standard has been judicially determined, that the result may have been different, and the basis for that statement;
- 9.) that the conviction sought to be vacated is based on an offense that the petitioner did not commit.

Rule 4-322(d).

“To 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); *see also* Rule 4-332(d)(6). As this Court explained in *Smith v. State*, 233 Md. App. 372, 416 (2017), 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.’” (quoting *Argyrou*, 349 Md. at 604). And “‘until 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.’” *Id.* (quoting *Argyrou*, 349 Md. at 602)(further quotation omitted).

In his petition, Mr. Jones merely asserted that he could not have discovered the investigative notes in a timely manner and claimed that the State had failed to disclose them in discovery. We agree with the circuit court that the petition was defective because there was no indication that he acted with “due diligence” to discover the notes.

Moreover, we agree with the circuit court that the investigative note indicating that Ms. Wade did not observe Mr. Jones’s presence at the victim’s funeral does not support his claim of innocence. Despite his assertions to the contrary, the State’s primary evidence was the testimony of Mr. West and Mr. Gerald which established Mr. Jones’s motive for the murder, his expressed intent to commit the crime, and his confession to them just after the murder was accomplished. Accordingly, we hold that the circuit court correctly concluded that the investigative notes did not create a significant or substantial possibility that the results of Mr. Jones’s trial may have been different and, therefore, the court did not err in denying the petition without a hearing.

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