

Circuit Court for Prince George's County
Case No.: CT962407X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1492

September Term, 2023

BRYANT TERRANCE COOPER

v.

STATE OF MARYLAND

Wells, C.J.,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 9, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 2023, Bryant Terrance Cooper filed a petition for writ of error coram nobis in the Circuit Court for Prince George’s County seeking to overturn his 1998 conviction for child abuse. The circuit court denied relief, a decision he appeals. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Pursuant to an indictment filed on December 18, 1996, Mr. Cooper was charged with child abuse, third-degree sex offense, fourth-degree sex offense, and second-degree assault. The indictment indicated that the female victim was less than 18 years of age and the offenses occurred in October of 1996. On March 3, 1998, Mr. Cooper entered an *Alford* plea to child abuse and the court sentenced him to five years’ imprisonment, all suspended, and placed him on a five-year term of supervised probation. The State *nol prossed* the remaining counts.

Less than two months later, Parole & Probation filed a supervision summary and request for warrant with the court based on allegations that Mr. Cooper had violated conditions of his probation. Among other things, Parole & Probation informed the court that Mr. Cooper had been arrested and charged with three counts of child abuse, three counts of sexual assault in the fourth degree, and three counts of second-degree assault. Following a hearing in December 1998, the court terminated his probation in this case. The docket entry and the hearing sheet reflect that, in addition to terminating his probation and directing Parole & Probation to “close their interest in this case,” the court also “dismissed” the violation of probation. There is no indication that the court ordered Mr. Cooper to serve any of his previously suspended sentence.

In May 1999, Mr. Cooper sent a letter to the court stating that he intended to file, as a self-represented individual, a petition for post-conviction relief in this case. He asserted that he had been wrongly accused of child abuse and was “misrepresented” by trial counsel. He asked for a copy of the statement of charges and asked how he could obtain a transcript of the March 1998 plea hearing. The court promptly responded by letter “enclosing a copy of the documents requested.” The letter also informed Mr. Cooper that he could request the transcript from the Court Reporter’s Office and provided their address. In addition, the letter provided the Baltimore address of the Office of the Public Defender.

Mr. Cooper sent a second letter to the court, also in May 1999, regarding this and other cases and noting that he wished to file an application for leave to appeal in this case, as well as a petition for post-conviction relief. The docket entries reflect that the court treated this letter as an application for leave to appeal from the entry of his *Alford* plea, which this Court subsequently dismissed as untimely.

In 2016, Mr. Cooper filed a petition for expungement, which the court denied because the conviction was not eligible for expungement. Another petition seeking the same relief was denied in 2019. In a motion for reconsideration, he stated he was seeking to expunge the *nol prossed* charges. The court denied his request for reconsideration and this Court later dismissed his appeal of that ruling for failure to file a brief.

In 2021, Mr. Cooper filed a petition for post-conviction relief and, separately, a petition for writ of error coram nobis. In the coram nobis petition, Mr. Cooper claimed his *Alford* plea was not entered knowingly and voluntarily and that he had received ineffective assistance of counsel for a variety of reasons. The court denied coram nobis relief and Mr.

Cooper filed a notice of appeal, which this Court ultimately dismissed as untimely.¹ In August 2023, Mr. Cooper filed a second petition for writ of error coram nobis, the denial of which is the subject of this appeal.

In his second petition for writ of error coram nobis, Mr. Cooper claimed that a federal sentence he is currently serving was enhanced due to the conviction for child abuse in this case. He sought to have the conviction vacated, claiming that his *Alford* plea was not entered knowingly and voluntarily for a host of reasons, including that he was not informed of the rights he was waiving or that he would have to register as a sex offender.²

¹ The docket entries reflect that the circuit court informed Mr. Cooper that it had referred his petition for post-conviction relief to the Office of the Public Defender, Post Conviction Defenders Division, and that he should expect communication from that office. The docket entries do not indicate a ruling by the court on the petition for post-conviction relief. But a letter sent to Mr. Cooper from the court on June 10, 2021 advised him that it appeared he was not then serving a sentence in this case and, under the Maryland Post Conviction Procedure Act, a person must be incarcerated or on parole or probation in order to qualify for relief.

² In his petition, Mr. Cooper specifically alleged that his plea was defective because he

did not understand the rights he was waiving by pleading guilty such as the right to a jury trial and whether the petitioner entered the guilty plea of his own free will; both the courts and his counsel failed to explain the risk and benefits of a plea offer; failure to explore plea possibilities and rushing into plea without investigation; improper pressure on petitioner to plea[d] guilty; conflict of interest affecting plea negotiations; counsel failed to investigate petitioner competency before plea and failed to notify the court when differences arise between the petitioner and counsel. Petitioner did not have pre-indictment right to counsel. Counsel failed to advise petitioner as to legal alternatives. The petitioner had limited contact with his counsel. Counsel has failed to let the petitioner know that if he takes this *Alford* plea, the petitioner would have to register as a sex offender. There is age and cultural differences between client and counsel. Counsel was ineffective in explaining the

(continued)

He also asserted that his trial counsel was ineffective generally and for filing his application for leave to appeal untimely.³ And he claimed that the factual basis was insufficient to support the plea. Mr. Cooper acknowledged that he could not support his allegations with the transcript from the 1998 plea hearing, stating that given the age of the case and the “transcript retention schedule,” transcripts are not available.

The State opposed the petition, noting that the allegations were “essentially the same allegations” Mr. Cooper raised in his first petition, other than an allegation that trial counsel failed to file a timely application for leave to appeal. The State maintained that it was Mr. Cooper’s burden to rebut the presumption of regularity in the plea proceeding and that he had failed to do so and could not do so without the transcript. Finally, the State pointed out that Mr. Cooper “has not justified why he took no action for over 20 years on his alleged appeal.”

As noted, the circuit court denied relief. The court found that Mr. Cooper raised “essentially the same allegations as [made in his] first [petition] with the additional allegation that trial counsel failed to file a timely application for leave to appeal.” Among

meaning of what an Alford plea really is and the Court has to make sure that the petitioner understands what an Alford plea is and the Courts erred in this.

³ As noted, after his probation was terminated in this case, the record indicates that Mr. Cooper, *pro se*, filed a letter with the court seeking leave to appeal from the entry of the *Alford* plea. There is no indication in the record before us that counsel filed that or any other pleadings following the conviction. Rather, post-trial, Mr. Cooper has filed papers as a self-represented litigant. He provided no evidence to indicate that he had ever requested trial counsel to file an application for leave to appeal.

other things, the court concluded that Mr. Cooper had not met his burden to establish that relief was warranted and failed to justify why he waited so long to bring his claims.

STANDARD OF REVIEW

“Because of the extraordinary nature of a coram nobis remedy, we review a court’s decision to grant or deny such a petition for abuse of discretion.” *Byrd v. State*, 471 Md. 359, 370 (2020) (quotation marks and citations omitted). “In determining abuse of discretion, however, an appellate court should not disturb the *coram nobis* court’s factual findings unless they are clearly erroneous, while legal determinations shall be reviewed *de novo*.” *Id.* (quotation marks and citation omitted).

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)). In *Jones v. State*, 445 Md. 324, 338 (2015), the Maryland Supreme Court reiterated that a coram nobis petitioner “is entitled to relief . . . if and only if” the petitioner challenges a conviction based on constitutional, jurisdictional, or fundamental grounds; the petitioner rebuts the presumption

of regularity that attaches to criminal cases; the petitioner is facing a significant collateral consequence as a result of the challenged conviction; the alleged issue has not been waived or finally litigated; *and* another statutory or common law remedy is not available. In other words, a petitioner must satisfy all five criteria. Even if the criteria is met, however, the United States Supreme Court has stated that “judgment finality is not to be lightly cast aside; and courts must be cautious so that the extraordinary remedy of *coram nobis* issues only in extreme cases[.]” *United States v. Dendo*, 556 U.S. 904, 916 (2009), a proposition recognized by this Court in *Vaughn v. State*, 232 Md. App. 421, 429 (2017) and *Coleman v. State*, 219 Md. App. 339, 353-34 (2014).

In this appeal, Mr. Cooper reiterates the claims he made in the circuit court and insists that he “meets the requirements” for *coram nobis* relief. And, as he did below, he asserts that he is unable to provide the transcript from the 1998 plea hearing because of the “transcript retention schedule.”

The State urges this Court to affirm the circuit court’s judgment because (1) the second *coram nobis* petition was barred by *res judicata* and (2) Mr. Cooper cannot rebut the presumption of regularity attached to his guilty plea.

We need not address the *res judicata* contention because we agree with the State that Mr. Cooper did not rebut the presumption of regularity that attached to his 1998 plea proceeding and cannot do so without the transcript from that proceeding. As noted, in letters he wrote to the court in 1999 following the termination of his probation in this case, Mr. Cooper mentioned his intention to file a petition for *coram nobis* relief, an application for leave to appeal, and a petition for post-conviction relief and specifically inquired as to

how to obtain the transcript from the 1998 plea hearing. In response, a court employee promptly replied by letter dated May 10, 1999 and provided him with the address of the Court Reporter’s Office and advised him to contact that office about the transcript. Thus, Mr. Cooper’s failure to obtain the requisite transcript is less the fault of the court’s “transcript retention schedule” and more with his failure to timely secure the necessary proof to corroborate the bald allegations he made in his coram nobis petition twenty-five years after he entered the *Alford* plea. Because he did not satisfy his burden to rebut the presumption of regularity that attached to his 1998 plea proceeding, he has not met the criteria for coram nobis relief. Consequently, the circuit court did not err in denying his petition.

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