

Circuit Court for Baltimore City
Case No. 17100871

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1599

September Term, 2017

VERNON COLLINS

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 22, 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 2017, the Circuit Court for Baltimore City denied the petition for writ of error coram nobis filed by appellant, Vernon A. Collins, after concluding that Collins had not established that he is suffering a significant collateral consequence caused by the challenged conviction, namely an enhanced sentence in a subsequent case, because his criminal history reflected he had other “qualifying” convictions that also could have enhanced his sentence. Collins refutes the court’s conclusion, and we agree with him that the court’s decision was not supported by the record before it. Accordingly, we shall vacate the judgment and remand for further proceedings.

BACKGROUND

In 1973, a jury sitting in the Circuit Court for Baltimore City found Collins guilty of assault. The court sentenced him to eight years’ imprisonment. This Court affirmed the judgments. *Collins v. State*, No. 260, Sept. Term, 1973 (filed Nov. 14, 1973). Collins’s subsequent petitions for post-conviction relief were unsuccessful.

In 1987, in the United States District Court for the District of Maryland, Collins was convicted of several controlled dangerous substances offenses and two counts of illegal possession of a firearm.¹ Prior to sentencing, the United States Attorney filed a “notice of enhanced penalties” for the firearm convictions pursuant to 18 U.S.C. § 924(e). The notice listed three prior State of Maryland convictions in Collins’s criminal history, including the

¹ In its decision affirming the judgment, the Fourth Circuit noted that Collins had been described by an FBI informant as a “narcotics hit man who is feared throughout the narcotics underworld in Baltimore.” *United States v. Taylor*, 857 F.2d 210, 212 (4th Cir. 1988).

1973 assault conviction, and stated that, “[b]y reason of the three prior convictions referenced” in the notice, Collins could be sentenced “to enhanced punishment pursuant to Title 18, U.S.C., § 924(e) of not less than 15 years imprisonment.” Section 924(e)(1)² provides that a person convicted of possession of a firearm under 18 U.S.C. § 922(g) who has three previous convictions for “a violent felony or a serious drug offense” shall be “imprisoned not less than fifteen years” and the court “shall not suspend the sentence of, or grant a probationary sentence, to such person[.]”³ Absent three predicate convictions,

² Unless otherwise noted, all statutes cited are the versions in effect at Collins’s sentencing.

³ The term “violent felony” is defined in 18 U.S.C. § 924(e)(2)(B), in relevant part, as “any crime punishable by imprisonment for a term exceeding one year” that

- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another[.]

The term “serious drug offense” is defined, in 18 U.S.C. § 924(e)(2)(A), as:

- (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Enforcement Act (46 U.S.S. App. 1901 et seq.) for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law[.]

the sentence for the firearm offense in 1987 was “not more than five years.” Firearms Owners’ Protection Act, Pub. L. No. 99-308, 100 Stat. 456 (codified as amended at 18 U.S.C. § 924 (1986)). Presently, the penalty is “not more than 10 years.” 18 U.S.C. § 924(a)(2) (2017).

At the sentencing hearing, the government reiterated that Collins had “the requisite convictions” to enhance his federal sentence and submitted certified copies of the three convictions listed in its previously filed notice. The court sentenced Collins to fifteen years’ imprisonment for the CDS offenses and to two terms of twenty years’ imprisonment for the firearm offenses, to run concurrently with each other but consecutively to the CDS sentences – a total term of thirty-five years. The convictions were affirmed on appeal. *United States v. Taylor*, 857 F.2d 210 (4th Cir. 1988). The court subsequently vacated one of the two firearm sentences. *See United States v. Collins*, 95 Fed. Appx. 505 (4th Cir. 2004).

After Collins was convicted and sentenced in federal court, he was tried and convicted in New Jersey for crimes committed in 1986. On May 5, 1989, the New Jersey Superior Court for Mercer County sentenced Collins to life imprisonment, “with a minimum parole ineligibility period of 25 years[,]” for possession of controlled dangerous substances with the intent to distribute and to a concurrent term of five years for unlawful possession of a weapon.⁴ The remaining convictions were merged. The New Jersey

⁴ The police searched a car in which Collins was a passenger following a traffic stop on the New Jersey Turnpike and recovered “heroin and a semi-automatic 9 millimeter

sentence was ordered to run “consecutively with any other prison terms imposed by the State of Maryland on other matters.”⁵ The “statement of reasons” in support of the New Jersey sentence, signed by the sentencing judge, stated:

The within sentence was imposed because of the nature and circumstances of the offense and the role of the actor therein including the fact that the crime was committed in an especially heinous and depraved manner. Not only did this defendant possess with intent to distribute heroin, valued at over \$250,000, but he was also reaching for a loaded 9 mm. semi-automatic handgun when a State Trooper stopped him by use of his own gun.

The risk that the defendant would commit another offense.

In addition, there was not only a risk that the defendant would commit another offense, his background indicates that it is an absolute certainty he would commit another offense. This defendant has lived a life of violence and crime. The record establishes every indication that he would continue to do so.

Furthermore, the sentence had to be imposed because of the extent of the defendant’s prior criminal record and the seriousness of the offense of which he has been convicted. He has demonstrated throughout his entire life that he is a very serious threat to the safety of mankind and to all law abiding citizens.

This was his 8th indictable conviction. He also has a terrible juvenile record. He has (2) previous convictions for Assault to Commit Murder.

Finally, there was the obvious need to deter the defendant and others from violating the law.

handgun with a magazine clip of hollow-nosed ammunition.” *See State v. Collins*, 2011 WL 691847, at *1 (N.J. Super. Ct. App. Div., Mar. 1, 2011).

⁵ Based on the limited record before us, it is not clear whether Collins was serving a State of Maryland sentence when sentenced in New Jersey. As noted, at the time he was sentenced in New Jersey, Collins was serving the thirty-five-year federal sentence imposed by the U.S. District Court for the District of Maryland.

He is presently serving a 35 year sentence in Baltimore for drug charges including the employment of persons under the age of 18 years to assist him in the distribution of CDS.

This is a man who must be removed from society for as long as the law allows.

In addition, I reviewed the mitigating circumstances as contained in [the] Code and found that absolutely none of them existed.

A term of parole ineligibility was imposed because I was clearly convinced that the aggravating circumstances substantially outweighed the non-existent mitigating circumstances.

The New Jersey judgments were affirmed on appeal. *State v. Collins*, No. A-5173-88 (N.J. Super. Ct. App. Div. July 21, 1992). It is not clear from the record before us when Collins began serving his New Jersey sentence, but it appears that he was released from federal custody in June 2005. In his brief filed in this Court, Collins maintains that he is on parole in the federal case until 2022, a fact the State does not dispute.

In July 2012, following the publication of *Unger v. State*, 427 Md. 383 (2012), Collins filed a petition for writ of error coram nobis seeking to overturn his 1973 conviction on the ground that the trial court had advised the jury that they were the judges of the facts and the law, and he requested a hearing on this petition.⁶ Numerous pleadings were then exchanged in response to the petition, in reply to the response, in answer to the reply, and so forth. The State ultimately acknowledged that the “advisory only” jury instruction was given in Collins’s trial, but asserted that he was not entitled to coram nobis relief because he had failed to establish that he was suffering a significant collateral consequence as a

⁶ A transcript of Collins’s 1973 trial confirms that the “advisory only” jury instruction was, in fact, given.

result of the 1973 conviction. In one responsive pleading, the State maintained that “this one conviction had little, if any, effect on his enhanced federal sentence.” The State acknowledged that the federal sentence could have been enhanced only if Collins had “at least three crimes of violence and/or serious drug offenses,” but asserted that Collins “had *five* qualifying convictions”; hence, “he would have had his sentence enhanced” regardless of the 1973 conviction because “he still has four qualifying convictions.” The State also maintained that the action was barred by laches. Collins disputed the State’s assertion that all his previous convictions were predicates for enhanced punishment, disputed the laches claim, and reiterated his request for a hearing.

The coram nobis court denied relief, without a hearing, five years after Collins filed his petition. The court explained its decision in a memorandum opinion, stating in part:

Petitioner had a total of five qualifying prior convictions at the time of his 1987 sentence enhancement. It appears that Petitioner would have faced similar sentence enhancements even in the absence of the 1973 common law assault conviction. Petitioner has offered no evidence of how much the contested conviction impacted his 1988 [sic] sentence. This court finds Petitioner is not currently suffering or facing significant collateral consequences from the conviction. Therefore, Petitioner fails to meet the requirements for relief by writ of error coram nobis. The sole allegation of error is moot and needs not be addressed.

DISCUSSION

Collins claims that the court erred in concluding that he “had a total of five qualifying prior convictions at the time of his 1987 sentence enhancement” and that he “would have faced similar sentencing enhancements even in the absence of the 1973 common law assault conviction.” Although acknowledging that he had prior convictions

when he was sentenced in federal court, he maintains that only the three specific convictions relied upon by the government qualified to enhance his 1987 federal sentence. He insists that a “1970 state drug conviction for simple possession of one bag of heroin” did not qualify because it did not meet the definition of a “serious drug offense” and it “did not carry a maximum of ten (10) years imprisonment or more.” *See* 18 U.S.C. § 924(e).⁷ He also maintains that his “1977 escape conviction for failing to return to the Maryland Correctional Camp Center, did not involve an assault” and, therefore, it would not have constituted “a crime of violence” for federal sentencing enhancement purposes. Collins asserts, therefore, that the 1973 assault conviction he sought to challenge in his coram nobis petition caused him “to suffer collateral consequences of having to serve an enhanced federal sentence of twenty years until 2022[.]” He further states that the service of his enhanced federal sentence “prevented his State of New Jersey[] state sentence of life imprisonment with parole ineligibility for twenty-five years from commencing in 2001[.]” Collins finally contends that the court erred or abused its discretion in concluding, without holding a hearing, that he had failed to establish that he was suffering a significant collateral consequence.

The State responds that the court “was correct in finding that Collins is not suffering significant collateral consequences from his [1973] conviction.” In short, the State simply adopts the court’s conclusory statement that Collins had other qualifying convictions that would have enhanced his federal sentence in the absence of the 1973 conviction. The State

⁷ The limited record before us reflects a 1973 conviction for “drugs – violation of narc laws.”

further notes that “there is nothing in the record to show that Collins’s federal parole status has any effect on his current incarceration.” But even if Collins is suffering a significant collateral consequence, the State maintains that his petition is barred by laches.⁸

Based on the record before us, we cannot determine whether Collins is presently facing a significant collateral consequence as a result of the 1973 conviction. The record clearly reflects that the 1973 conviction was one of three predicate convictions that justified enhancing his 1987 federal sentence. Whether any of Collins’s other prior convictions could have, for the basis of enhanced punishment, substituted for the 1973 conviction is, based on the record before us, merely speculative. Moreover, we are unable to discern the effect of the enhanced federal sentence on the 1989 New Jersey sentence, much less how (if at all) the 1973 conviction directly affected the New Jersey sentence.

Because we believe that the record before the coram nobis court was insufficient to determine whether Collins is presently serving an enhanced or prolonged sentence as a result of the 1973 conviction, and because we believe a hearing on that issue is warranted, we shall vacate the judgment denying coram nobis relief and remand for further proceedings. We encourage the circuit court to resolve this matter in a timely fashion and avail itself of remote electronic participation for Collins. *See* Md. Rule 2-803. Upon further review, the State is free to pursue its claim, raised originally in its answer to Collins’s petition for coram nobis relief, that the action is barred by laches. Finally, it is

⁸ Although acknowledging that the coram nobis court did not rule on its laches argument, the State maintains that this Court could nevertheless affirm on that ground. We decline to address the laches argument, however, as we believe that, in this instance, the coram nobis court should address it first, after the benefit of a hearing.

worth repeating that, coram nobis “is an extraordinary remedy justified only under circumstances *compelling such action to achieve justice.*” *State v. Rich*, 454 Md. 448, 461 (2017) (quotations omitted). Assuming the prerequisites for relief are in fact established, we make no comment as to whether coram nobis relief would be compelled in this case, as that is a decision left to the discretion of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY DENYING PETITION
FOR WRIT OF ERROR CORAM NOBIS
VACATED. CASE REMANDED TO THAT
COURT FOR FURTHER PROCEEDINGS.
COSTS TO BE PAID BY MAYOR AND CITY
COUNCIL OF BALTIMORE.**