Circuit Court for Prince George's County
Case No: CT82327 & CT83423

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1760 & 1761

September Term, 2019

HOWARD HINES

v.

STATE OF MARYLAND

Shaw Geter,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 30, 2021

*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 1983, a jury in the Circuit Court for Prince George's County found appellant, Howard Hines, guilty of first-degree murder, attempted first-degree rape, and third-degree sexual offense. The court sentenced him to life for murder, a consecutive life term for attempted rape, and a consecutive term of 10 years for the sex offense. On direct appeal, Mr. Hines argued, among other things, that the evidence was insufficient to support the convictions, the trial court erred in denying his motions to dismiss for violation of the Interstate Agreement on Detainers and his right to a speedy trial, the trial court erred in admitting a custodial statement given to the police, and the court erred in denying his motion. This Court rejected his contentions and affirmed the judgments. *Hines v. State*, 58 Md. App. 637 (1984), *cert. denied*, 300 Md. 794 (1984).

In 2019, Mr. Hines, representing himself, filed a Petition for Writ of Actual Innocence. He claimed that (1) sometime after 2013, in contravention of a court order to preserve it, the Prince George's County Police Department allegedly destroyed DNA collected from the crime scene; (2) his Fifth Amendment privilege against self-incrimination had been violated by the police officers who had interrogated him pre-indictment; (3) he had not been properly "Mirandized" prior to the interrogation; (4) his right to a speedy trial was violated and the trial court erred in denying his motion to dismiss based on an alleged violation of the Interstate Agreement on Detainers; (5) the Assistant State's Attorney who prosecuted the case committed prosecutorial misconduct by making inflammatory remarks impugning his character during the course of the trial; and (6) the court committed judicial misconduct when it improperly denied his pre-trial motions to suppress his custodial statement.

The circuit court thoroughly addressed each claim in its 20-page memorandum order. The court concluded that Mr. Hines had failed to state a claim upon which actual innocence relief could be granted and, accordingly, dismissed the petition. The court subsequently denied Mr. Hines's motion for reconsideration. Because the court did not err in its rulings, we shall affirm the judgments.

DISCUSSION

Certain convicted persons may file a petition for a 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).

In pertinent part, the statute provides:

> (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
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> (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]
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> ***
>
> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
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> ***
>
> (g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

"Thus, to 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). Moreover, "[t]o 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) (footnote omitted); *see also* Rule 4-332(d)(6). As this Court explained in *Smith*, 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." *Argyrou*, 349 Md. at 604. *Accord Jackson v. State*, 216 Md. App. 347, 364, *cert. denied*, 438 Md. 740 (2014). "[U]ntil 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.'" *Argyrou*, 349 Md. at 602 (quoting *Love v. State*, 95 Md. App. 420, 432 (1993)).

233 Md. App. at 416.

A court may dismiss a petition for actual innocence without a hearing "if the court concludes that the allegations, if proven, could not entitle a petitioner to relief." *State v. Hunt*, 443 Md. 238, 252 (2015) (quotation omitted). *See also* Crim. Proc. § 8-301(e)(2). "[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*." *Smallwood*, 451 Md. 308.

Here, Mr. Hines failed to produce or cite *any evidence* that speaks to his actual innocence. "Evidence" in the context of an actual innocence petition means "testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial." *Hawes v. State*, 216 Md. App. 105, 134 (2014). The requirement that newly discovered evidence "speaks to" the petitioner's

actual innocence "ensures that relief under [the statute] is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, 'meaning he or she did not commit the crime.'" *Faulkner v. State*, 468 Md. 418, 460 (2020) (quoting *Smallwood*, 451 Md. at 323).

With regard to Mr. Hines's DNA claim, the circuit court related that in 2010 Mr. Hines had filed a motion for DNA testing pursuant to § 8-201 of the Criminal Procedural Article and Rule 4-331(c)(3). In 2013, he dismissed the petition "after DNA testing yielded no usable DNA profiles." In other words, there was no DNA evidence which speaks to Mr. Hines's actual innocence. His remaining claims, some of which this Court rejected on direct appeal, likewise are not "evidence" of his innocence.

In short, because nothing in his petition identified any "newly discovered evidence," much less anything that even suggests the possibility that Mr. Hines did not commit the crimes he was convicted of, the circuit court did not err in dismissing the petition without a hearing and did not err in denying his motion for reconsideration.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.